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Attorneys for Defendants Huxtable's Kitchen, Inc.,
and HMR Foods Holding, LP

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ANNETTE MARTINEZ,

Plaintiff,

v.

HUXTABLE'S KITCHEN, INC., a
Corporation; HMR FOODS HOLDING,
LP, a Limited Partnership; and DOES 1-
10, inclusive,

Defendants.

Case No.: BC605517

[Assigned to the Hon. Stephanie M. Bowick,
Dept. 19]

**STIPULATION RE: COURT REVIEW AND
APPROVAL OF SETTLEMENT AND
RELEASE OF CLAIMS FOR CIVIL
PENALTIES UNDER CALIFORNIA LABOR
CODE SECTION 2698, ET SEQ.**

Complaint Filed:
Trial Date:

December 31, 2015
October 29, 2019

1 **TO THE HONORABLE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 IT IS HEREBY STIPULATED by and between Plaintiff Annette Martinez (“Plaintiff”), on
3 the one hand, and Defendants Huxtable’s Kitchen, Inc. and HMR Foods Holding, LP
4 (“Defendants”), on the other, by and through their respective attorneys, with reference to the
5 following facts:

- 6 1. Plaintiff was previously employed by Defendants;
- 7 2. On November 24, 2015, Plaintiff sent an administrative claim to the California Labor
8 & Workforce Development Agency (“LWDA”) that alleged certain California Labor Code section
9 1102.5 violations and sought remedies pursuant to the Private Attorneys General Act of 2004
10 (“PAGA”) codified at California Labor Code section 2698, et seq.;
- 11 3. On December 31, 2015, Plaintiff commenced a lawsuit in the Los Angeles County
12 Superior Court, entitled ANNETTE MARTINEZ, Plaintiff, vs. HUXTABLE’S KITCHEN, INC., a
13 Corporation; HMR FOODS HOLDING, LP, a Limited Partnership; and DOES 1-10, inclusive,
14 Defendants, Los Angeles County Superior Court Case No. BC605517. Plaintiff alleged ten causes
15 of action: (1) Failure to Engage in a Timely, Good-Faith Interactive Process (Gov. Code, §
16 12940(n)); (2) Failure to Provide Reasonable Accommodation (Gov. Code, § 12940(m));
17 (3) Disability Discrimination (Gov. Code, § 12940(a)); (4) Retaliation (Gov. Code, § 12940(h));
18 (5) Failure to Prevent or Remedy Discrimination, and/or Retaliation (Gov. Code, § 12940(k));
19 (6) Interference with Rights Under the California Family Rights Act (Gov. Code, § 12945.2);
20 (7) Retaliation Under the California Family Rights Act (Gov. Code, § 12945.2(l)); (8) Retaliation in
21 Violation of Labor Code Sections 1102.5(b) & (c); (9) Wrongful Discharge in Violation of Public
22 Policy; and (10) Civil Penalties Pursuant to Labor Code Private Attorneys General Act (Lab. Code,
23 § 2698 et seq.). Plaintiff alleges, among other things, that she was wrongfully terminated by
24 Defendants, and a contributing factor in Defendants’ decision to terminate her employment was due
25 to her complaining/opposing what she reasonably believed was an unlawful business practice.
26 Plaintiff sought damages arising out of her termination by Defendants as well as civil penalties under
27 PAGA for the Labor Code § 1102.5(b), (c) violations;

1 4. On June 24, 2016, Defendants filed voluntary petitions under Chapter 7 of Title 11 of
2 the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the
3 District of Delaware;

4 5. On August 5, 2016, Plaintiff and Defendants’ bankruptcy trustee entered into a
5 stipulation to grant Plaintiff relief from the bankruptcy automatic stay to allow her to prosecute this
6 lawsuit to settlement or final judgment and to satisfy such settlement or final judgment from
7 applicable insurance proceeds only;

8 6. On August 8, 2016, the United States Bankruptcy Court for the District of Delaware
9 granted a stipulation between Plaintiff and Defendants’ bankruptcy trustee to lift the automatic stay
10 of 11 U.S.C. § 362 in order for Plaintiff to continue the present lawsuit to the extent such claims are
11 covered by the proceeds of from any applicable liability and/or excess insurance policies of the
12 Defendants;

13 7. On September 28, 2016, Defendants’ Insurer, U.S. Specialty Insurance Company
14 (“USSIC”), provided a supplemental coverage analysis of Plaintiff’s claims. USSIC stated the civil
15 penalties under PAGA for Defendants’ Labor Code § 1102.5(b), (c) violations are not covered loss
16 under the insurance policy.

17 8. Pursuant to Defendants’ Directors, Officers and Private Organization Liability
18 Insurance Policy issued by USSIC, which is the applicable insurance policy, Definition (J), as
19 amended by Endorsement No. 10, does not include any loss as a result of “fines, taxes or penalties”
20 or other matters uninsurable by law.

21 9. As a result of Defendants’ bankruptcy and the specific exclusion under the provisions
22 set forth in the applicable insurance policy, any PAGA penalty for the alleged violation of Labor
23 Code section 1102.5, if proven at trial, would not be paid by USSIC (nor the bankrupt Defendants)
24 in this case.

25 10. Further, an award of PAGA penalties is not mandatory but is in the discretion of the
26 Court. (See *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 589 [holding trial court did not
27 abuse discretion in approving wage and hour class settlement that involved PAGA claims even
28

1 though no settlement money was allocated to the PAGA claims and, therefore, no portion of the
2 settlement was paid to the LWDA].)

3 11. On October 25, 2019, the Parties entered into a settlement agreement pursuant to
4 which Plaintiff agreed to dismiss without prejudice all claims;

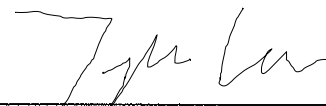
5 12. Counsel for the parties agree that the reasonable settlement value of Plaintiff's claims
6 for civil penalties under PAGA, if any, is \$0.00. This value is based on the considerations outlined
7 above in paragraphs 2 through 10.

8 13. In order to satisfy the requirements of Labor Code section 2699(l), which requires
9 Court approval of any settlement for penalties sought pursuant to PAGA, the parties have agreed that
10 acceptable PAGA penalty in the present case is \$0.00. No portion of the settlement will be paid to
11 the LWDA as settlement of the claims brought under the PAGA.

12
13 **IT IS SO STIPULATED.**

14
15 DATED: October 25, 2019

CLARK EMPLOYMENT LAW, APC

16
17 By: 

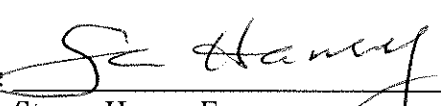
Tyler F. Clark, Esq.

Yi-Hsuan Rachel Lin, Esq.

Attorneys for Plaintiff Annette Martinez

18
19
20 DATED: October 25, 2019

HANEY & YOUNG, LLP
THE ZAMORA LAW FIRM

21
22 By: 

Steven Haney, Esq.

J. Adrian Zamora, Esq.

Attorneys for Defendants Huxtable's
Kitchen, Inc. and HMR Foods Holding, LP

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ORDER

GOOD CAUSE APPEARING, the Court hereby approves this Stipulation and Order
approving PAGA settlement.

IT IS SO ORDERED.

DATED: _____

HONORABLE STEPHANIE M. BOWICK
LOS ANGELES SUPERIOR COURT JUDGE

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California. I am over the age of 18
3 years and am not a party to the within action. My business address is 16000 Ventura Boulevard,
4 Suite 850, Encino, California 91436.

5 On October 25, 2019, I served the foregoing document(s) described as **STIPULATION RE:
6 COURT REVIEW AND APPROVAL OF SETTLEMENT AND RELEASE OF CLAIMS FOR
7 CIVIL PENALTIES UNDER CALIFORNIA LABOR CODE SECTION 2698, ET SEQ.** on the
8 interested parties in this action by placing a true copy thereof enclosed in a sealed envelope and
9 addressed as follows:

10 Steven H. Haney, Esq.
11 HANEY & YOUNG LLP
12 1055 W. Seventh Street, Suite 1950
13 Los Angeles, CA 90017
14 E-mail: shaney@haneyyoung.com

Attorneys for Defendants Huxtable's
Kitchen, Inc. and HMR Foods
Holding, LP

11 J. Adrian Zamora, Esq.
12 THE ZAMORA LAW FIRM
13 714 W Olympic Boulevard, Suite 450
14 Los Angeles, CA 90015
E-mail: adrian@thezamoralelawfirm.com

Attorneys for Defendants Huxtable's
Kitchen, Inc. and HMR Foods
Holding, LP

15 **BY MAIL**

16 *I deposited such envelope with the U.S. Postal Service in Encino, California with postage
17 thereon fully prepaid. I am aware that on motion of a party served, service is presumed invalid if
the postal cancellation date or the postage meter date is more than one (1) day after the date of
deposit for mailing in this affidavit.*

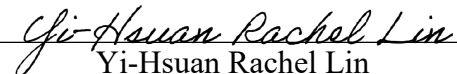
18 X **BY ELECTRONIC SERVICE**

19 *Pursuant to the agreement by the parties, I electronically served the above documents to the
20 following email address(es): Steven Haney <shaney@haneyyoung.com>; J. Adrian Zamora
21 <adrian@thezamoralelawfirm.com>. A true and correct copy of transmittal will be produced if
requested by any party or the court.*

22 **BY PERSONAL SERVICE**

23 *I delivered such envelope by hand to the addressee(s) set forth above.*

24 I declare under penalty of perjury under the laws of the State of California that the foregoing
25 is true and correct. Executed October 25, 2019, at Encino, California.

26 
27 Yi-Hsuan Rachel Lin
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