

Eli Banayan, Esq. SBN 322075
BANA LEGAL GROUP, P.C.
11835 W. Olympic Blvd., Suite 695E
Los Angeles, CA 90064
Telephone: (310) 736-3616
Facsimile: (310) 736-3616
Email: eb@banalegal.com

Attorneys for Plaintiff, FRANCISCA GUTIERREZ

Brian D. Fahy, Esq. (SBN 266750)
Morgan, Lewis & Bockius, LLP
300 South Grand Avenue, 22nd Floor
Los Angeles, CA 90071-3132
Telephone: (213) 612-2500
Facsimile: (213) 612-2501
e-mail: Brian.fahy@morganlewis.com

Attorneys for Defendant BARCEL USA, LLC, incorrectly named as POPCORNOPOLIS, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

FRANCISCA GUTIERREZ,

Plaintiff,

v.

BARCEL USA LLC, incorrectly named as
POPCORNOPOLIS, LLC; 2R STAFFING LLC
d/b/a MVP STAFFING; and DOES 1 through
20, inclusive,

Defendants.

Case No.: 22STCV39840

Hon. Randolph M. Hammock
Dept. 49

**STIPULATION BY ALL PARTIES FOR
ORDER APPROVING SETTLEMENT
PURSUANT TO CALIFORNIA LABOR
CODE PRIVATE ATTORNEYS'
GENERAL ACT AND ENTERING
JUDGMENT; [PROPOSED ORDER]**

Complaint Filed: December 22, 2022

Trial Date: Not Set

1
2 **I. INTRODUCTION**

3 Plaintiff FRANCISCA GUTIERREZ (“Plaintiff”) and Defendant BARCEL USA LLC,
4 incorrectly named as POPCORNOPOLIS, LLC (“Defendant” or “Barcel”) (collectively, “the
5 Parties”), have reached an agreement to settle the above-captioned action (the “Action”). The Parties
6 have memorialized the terms of this settlement in a Settlement Agreement (the “Settlement
7 Agreement”). Attached as “**Exhibit A**” is a copy of the Settlement Agreement. By this stipulation
8 and pursuant to California Labor Code § 2699(l), the Parties seek an order permitting settlement on
9 the terms outlined in the Settlement Agreement.

10 Defendant adamantly denies any liability or wrongdoing of any kind whatsoever
11 associated with the Action, and further denies that, for any purpose other than settling the Action,
12 the Action is appropriate for representative treatment. It is the desire of the Parties to fully,
13 finally, and forever compromise, and discharge all claims known or unknown related to those
14 alleged in the Action.

15 **II. ALLEGATIONS AND INVESTIGATION**

16 Defendant BARCEL USA LLC is in the food packaging industry. Defendant 2R STAFFING
17 LLC d/b/a MVP STAFFING (“MVP”) is a staffing agency. Plaintiff was employed by Defendant
18 MVP from in or about October of 2021 until the termination of her employment on or about April 2,
19 2022. At all times during her employment, Plaintiff was considered an hourly, non-exempt employee
20 of MVP. Plaintiff alleges Barcel was her joint employer.

21 Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit under the
22 Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq. (“PAGA”). On
23 September 9, 2022, Plaintiff, on behalf of herself and Defendant’s other California non-exempt
24 hourly employees (hereafter collectively the “Aggrieved Employees”) gave written notice by
25 electronic service to the California Labor and Workforce Development Agency (“LWDA”) and via
26 certified mail to Defendant of her claims against Defendant. In her notice to the LWDA, Plaintiff
27 asserted on behalf of herself and the Aggrieved Employees that Defendant violated various laws,
28 including California Labor Code sections 204, 226(a), 226.7, 510, 512, 558, and 1194, and related

1 IWC Wage Orders (including but not limited to Wage Order No. 1), based on various theories of
2 liability, including, but not limited to Defendant's alleged failure to: provide meal periods pay for all
3 hours worked, pay overtime wages, provide accurate wage statements, timely pay all wages due in
4 accordance with time periods prescribed by law, keep accurate payroll records, timely pay all final
5 wages at separation of employment. Plaintiff filed her initial lawsuit on December 22, 2022 in the
6 Superior Court for the County of Los Angeles, Case Number 22STCV39840, with ten causes of
7 action, including one cause of action for penalties under PAGA. On July 11, 2023, Plaintiff
8 submitted to the LWDA a First Amended PAGA notice, adding MVP as a Defendant and naming
9 Barcel as a Defendant (Barcel was erroneously sued as Popcornopolis, LLC). On August 4, 2023,
10 Plaintiff filed a First Amended Complaint adding MVP as a named Defendant and identifying Barcel
11 as the correctly named Defendant.

12 According to information provided by Defendant, there are 202 Aggrieved Employees at
13 issue from October 18, 2021 through April 22, 2024, and there are paychecks issued for a total of
14 approximately 13,320 pay periods worked for that same time period.

15 Defendant denies any liability or wrongdoing of any kind whatsoever associated with the
16 lawsuit and the Representative PAGA Claim. Defendant specifically denies employing or jointly
17 employing Plaintiff or other PAGA group members employed by MVP. It is the desire of the Parties
18 to fully, finally, and forever compromise, and discharge all claims known or unknown related to
19 those alleged in Plaintiff's lawsuit.

20 On February 22, 2024, the Parties attended a Mandatory Settlement Conference hosted by
21 the LA Resolve Law Program ("the MSC"). At the MSC, the Parties agreed to settle the
22 Representative PAGA claim for the violation of Labor Code § 2698, et seq. Before agreeing to the
23 terms of the Settlement, the Parties engaged in informal discovery regarding Defendant's policies,
24 practices, operations, time and payroll information and other topics. Through extensive arm's length
25 negotiations at the mediation and only after discovery and investigation were performed, the Parties
26 agreed to settle the terms.

27 The Parties conducted investigation of the facts and law both before and after the lawsuit was
28 filed. Counsel for the Parties have further investigated the applicable law as applied to the facts

1 discovered regarding Plaintiff's claims, the defenses thereto, and the Labor Code violations claimed
2 by Plaintiff. Based on their own independent investigations and evaluations, the Parties and their
3 respective counsel are of the opinion that the Settlement for the consideration and on the terms set
4 forth in this Stipulation are fair, reasonable and adequate and are in the best interests of Plaintiff, the
5 Aggrieved Employees, and Defendant in light of all known facts and circumstances and the risks
6 inherent in litigation

7 The Parties further recognize that the issues presented in the Representative PAGA Claim are
8 likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further
9 litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate to
10 the maximum potential benefits.

11 **III. FAIRNESS OF THE SETTLEMENT**

12 While this lawsuit is a Representative PAGA Claim, the Parties are not obligated to follow
13 the class action procedural rules for obtaining approval of this settlement. *Arias v. Superior Court*
14 (*Angelo Dairy*) (2009) 46 Cal.4th 969.

15 Plaintiff alleges that the strongest claim is that Plaintiff and other Aggrieved Employees were
16 not properly provided with timely meal breaks, and that there would be derivative penalties under
17 Labor Code section 226 based on the failure to itemize meal and rest break premiums on the paystubs.
18 Note that Defendant vehemently denies that there were any violations especially in light of the fact
19 that it had proper policies, and engaged with MVP Staffing for MVP Staffing to properly compensate
20 all of its employees.

21 Plaintiff contends that the civil penalty statutes applicable to the Representative PAGA Claim
22 are Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 2802 and 2699(f)(2). Under these civil penalty
23 statutes, an employee who suffers a Labor Code violation, may be awarded a sum of money for each
24 pay period in which he or she was underpaid. However, under Labor Code § 2699(e)(2), the Court
25 can reduce an award of civil penalties if the award is unjust, arbitrary, oppressive, or confiscatory.

26 Under the civil penalty formulas applicable under PAGA, Plaintiff estimated a maximum
27 exposure of approximately \$1,200,000 for civil penalties for Plaintiff's strongest disputed claims of
28

1 failure to provide meal breaks and the derivative Labor Code section 226 penalties for inaccurate
2 paystubs.

3 Moreover, Plaintiff is aware of no California state courts awarding Plaintiff multiple PAGA
4 penalties for the same violation for the same pay period under different Labor Code provisions. As
5 such, one of the risks Plaintiff faces is that the Court would refuse to “stack” civil penalties arising
6 under the various Labor Code statutes. Furthermore, judges have awarded extremely small sums to
7 PAGA claimants in the past. In addition, Defendant would make an argument under *Naranjo v.*
8 *Spectrum Security Services, Inc.*, 40 Cal. App. 5th 444 (Cal. App. 2d Dist., Sept. 26, 2019) and other
9 similar cases, that meal period violations are not a predicate for civil penalties for improper wage
10 statements and untimely final wages under Labor Code secs. 201-203, 226, 226.3, and 2699.
11 Defendant also adamantly disputes all of Plaintiff’s allegations in the operative Complaint.

12 The source of penalties available is under PAGA, which allows employees to seek civil
13 penalties for certain violations of the Labor Code so long as the penalties are not unjust, arbitrary,
14 oppressive, or confiscatory. There are no State Court decisions under the PAGA to date with
15 substantial awards of civil penalties. There is a substantial risk that the Court could reduce civil
16 penalties to an insignificant amount if it is unpersuaded by Plaintiff’s evidence of willful and
17 intentional conduct. The PAGA expressly counsels against such awards. *See* Lab. Code § 2699(e)(2)
18 (“...a court may award a lesser amount than the maximum civil penalty amount specified by this part
19 if, based on the facts and circumstances of the particular case, to do otherwise would result in an
20 award that is unjust, arbitrary and oppressive, or confiscatory.”). Further, although, class certification
21 is not required for a PAGA claim, Defendant could contend that Plaintiff should show that the PAGA
22 claims are manageable.

23 As such, Defendant could also convince the Court to dismiss the claims due to
24 unmanageability. *Wesson v. Staples The Office Superstore, LLC* (2021) 68 Cal.App.5th 746
25 (“*Wesson*”); *Feltzs v. Cox Communs. Cal.* (October 21, 2021) 2021 U.S. Dist. LEXIS 207087.
26 Defendant contends that Plaintiff’s allegations require a host of individualized inquiries which would
27 arguably devolve into a series of mini-trials based on whether each employee voluntarily elected to
28 unilaterally waive a provided meal period or authorized rest break, based on position titles, job duties

1 and the type of work they perform. (See, e.g., *Brinker*, 53 Cal.4th at 1004.) In *Ortiz v. CVS Caremark*
2 *Corp.*, the court dismissed a PAGA claim because it was unmanageable. 2014 WL 1117614, at *3–
3 4 (N.D. Cal. 2014). The *Ortiz* court cited the “multitude of individualized assessments” that case
4 would have required in ordering dismissal. *Id.* at *4. Several other courts have adopted *Ortiz*, and
5 dismissed PAGA claims where, as here, there are a large number of allegedly aggrieved individuals
6 whose claims require individual assessments. See, e.g., *Litty v. Merrill Lynch & Co.*, 2014 WL
7 5904904, at *3 (C.D. Cal. 2014); *Bowers v. First Student, Inc.*, 2015 WL 1862914, at *4 (C.D. Cal.
8 2015); see also *Stafford v. Dollar Tree Stores, Inc.*, 2014 WL 6633396, at *2–4 (E.D. Cal. 2014)
9 (bifurcating trial of plaintiff’s claim from representative claims: “in light of the number of potential
10 aggrieved employees, judicial economy favors deferring the representative portion of the PAGA
11 claim”); *Amey v. Cinemark USA Inc.*, 2015 WL 2251504, at *16 (N.D. Cal. May 13, 2015). DS, ¶
12 24. The risk of an unmanageable trial is heightened in a representative PAGA claim because the
13 burden of proof rests with the plaintiff to establish violations of the Labor Code “with respect to each
14 and every individual on whose behalf [they] seek[] to recover civil penalties.” *Molina v. Dollar Tree*
15 *Stores, Inc.*, 2013 U.S. Dist. LEXIS 138642, at *33-34 (C.D. Cal. Aug. 9, 2013); *Hibbs-Rines v.*
16 *Seagate Techs, LLC*, 2009 WL 513496, at *4 (N.D. Cal. Mar. 2, 2009). Moreover, in a PAGA case
17 the plaintiff must prove liability with respect to “each and every individual” through representative
18 evidence – but without sacrificing the defendant’s due process right to present proof of their
19 affirmative defenses. *Elkins v. Superior Court*, 41 Cal. 4th 1337, 1357 (2007); *Walmart Stores, Inc.*
20 *v. Dukes*, 131 S. Ct. 2541, 2561 (2011); *Duran v. U.S. Bank Nat’l Ass’n*, 59 Cal. 4th 1, 33-34 (2014).
21 Plaintiff is required to establish a violation of the Labor Code in each pay period of each and every
22 one of the approximately 211 employees. The Court could find that this is an impractical task and
23 require the Aggrieved Employees to bring individual claims instead of a PAGA representative claim.

24 The Parties further recognize that the issues presented in the Representative PAGA Claim are
25 likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further
26 litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate to
27 the maximum potential benefits to the Aggrieved Employees and Plaintiff from continued litigation,
28 especially in this specific scenario wherein MVP Staffing has not formally appeared in this case.

1 The settlement of the Representative PAGA Claim involves monetary relief to all Aggrieved
2 Employees, Plaintiff, her attorneys, and the State of California.

3 Furthermore, Plaintiff recognizes that continued litigation presents significant risks that
4 support a significant downward departure from Plaintiff's estimated civil penalties amount. In view
5 of the risks, the Settlement represents a fair, adequate, and reasonable compromise amount for these
6 claims and is in the best interest of Plaintiff and Aggrieved Employees and thus, warrants approval.

7 *See Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014 WL 2465049,

8 * 3. The PAGA settlement and its terms are fair, just, reasonable, adequate, and equitable to
9 Defendant, Plaintiff, and the State, especially in light of the current economic climate, and are the
10 product of good faith, and informed arms-length negotiations between the Parties consistent with
11 public policy and fully comply with applicable provisions of law.

12 **IV. TERMS AND PROCEDURES OF THE SETTLEMENT**

13 The Settlement covers any and all civil penalties claims arising from Plaintiff's allegations
14 in her Complaint, as laid out above.

15 **A.** Defendant agrees to pay \$96,666 toward the Settlement ("The Gross Settlement Amount" or
16 "GSA") which will be distributed by Defendant as follows:

17 **a.** \$1,095.98 in attorney litigation costs to Bana Legal Group, P.C.

18 **b.** \$4,250 in PAGA Settlement Administrator costs to Settlement Administrators
19 (Pheonix Class Action Administration Solutions)

20 **c.** \$91,320.02 (the "Net Settlement Amount" or "NSA") will be divided as follows:

21 **i.** \$68,490.02 (75% of the NSA) to the LWDA, which represents civil penalties
22 payable to the LWDA under the Labor Code Private Attorneys General Act
23 ("PAGA"), Labor Code section 2698, *et seq.*; and

24 **ii.** \$22,830 (25% of the NSA) (the "Aggrieved Employee Amount") to
25 the Aggrieved Employees which represents civil penalties payable to
26 the Aggrieved Employees as compensation for civil penalties that are
27 allegedly owed on the Representative PAGA Claim for the period from
28 October 18, 2021 through April 22, 2024.

1 Plaintiff and each Aggrieved Employee shall receive a portion of the Aggrieved Employee
2 Amount on a pro-rata basis by multiplying the Aggrieved Employee Amount by the ratio of (i) the
3 number of pay periods worked by the Aggrieved Employee during the release period and (ii) the total
4 number of pay periods worked by all Aggrieved Employees during the release period.

5 For purposes of computing taxes, one-hundred percent (100%) of the Aggrieved Employee
6 Settlement Award shall be considered to be a civil penalty and shall not be subject to withholding,
7 unless otherwise required by law. The Claims Administrator shall file proof of payment.

8 **V. THE PROPOSED COST AMOUNT FOR LITIGATION EXPENSES IS FAIR,**
9 **ADEQUATE, AND REASONABLE AND SHOULD BE APPROVED**

10 Plaintiff's counsel is not seeking to recover attorney's fees from the PAGA Claim.

11 Plaintiff's counsel represents Plaintiff on a straight contingency basis. Plaintiff's counsel's
12 request for \$1,095.98 as reimbursement for costs expended is fair and reasonable.

13 **VI. NO ADMISSION OF LIABILITY OR WRONGDOING**

14 The payment of consideration or any other obligation are not and shall not be construed in
15 any way as an admission of wrongdoing or liability on the part of Defendant, or any other person or
16 business entity. Defendant adamantly denies all allegations of wrongdoing arising out of the
17 employment relationship between the Parties, including the Aggrieved Employees. The Parties
18 intend merely to avoid the expense, delay, uncertainty and burden of continued litigation.

19 **VII. PAGA SETTLEMENT ADMINISTRATION**

20 The Parties Agree to Use Phoenix Class Action Administration Solutions to Handle The
21 Administration Of This Settlement

22 **a. Administration Costs and Expenses**

23 All costs and expenses due to the Settlement Administrator in connection with its
24 administration of the Settlement described in the Agreement, including, but not limited to, formatting
25 and mailing the Settlement Letter and Individual Settlement Payments, performing a National
26 Change of Address database search to update Settlement Group Members addresses prior to the
27 mailing, performing skip-traces to locate and update Settlement Group Members' addresses,
28 calculating, and distributing Individual Settlement Payments, and any other tasks requested by the

1 Parties or by the Court, among other tasks as reflected within this Agreement, will be paid through
2 the Gross Settlement Amount.

3 **b. Funding And Distribution**

4 **Funding**

5 The Settlement Administrator will provide Defendant with its bank wire instructions to
6 establish the Qualified Settlement Fund (QSF).

7 Within (21) days of the Effective Date, Defendant shall transmit the Gross Settlement
8 Amount to the Settlement Administrator.

9 **Distribution**

10 Within 15 calendar days of the Effective Date, the Administrator will pay to Settlement
11 Group Members, their Individual Settlement Payments via first-class regular U.S. Mail; to PAGA
12 Counsel, the Court-awarded Attorneys' Litigation Expenses Payment; to the LWDA, the Court-
13 approved LWDA Payment; and to the Administrator, the Court-awarded Administration Fees and
14 Expenses.

15 **Non-Cashed Settlement Checks.**

16 Settlement Group Members shall have one hundred eighty days (180) to cash their checks.
17 Any funds associated with uncashed checks after one hundred eighty (180) days will be sent to the
18 Controller of the State of California to be held pursuant to the Unclaimed Property Law, California
19 Civil Code § 1500 et seq., for the benefit of those Settlement Group Members whose checks were
20 voided.

21 **VIII. TAXES**

22 Plaintiff and each Aggrieved Employee bear full responsibility for the payment of any taxes
23 or withholdings arising from the Aggrieved Employee Settlement Awards paid to them.

24 **IX. RELEASE CLAIMS**

25 Upon the approval by the Court of this Settlement, Plaintiff, the State of California and each
26 Aggrieved Employee shall fully release and forever discharge Defendant and the Released Parties
27 from any and all claims, rights, demands, liabilities for violation of PAGA (Labor Code § 2699, et
28 seq.) that were set forth, or that could have been set forth based on the facts alleged in the Action.

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X. CONCLUSION

The Parties respectfully request the Court grant this Stipulation.

Bana Legal Group, P.C.

Date: August 14, 2024


Eli Banayan, Esq.
Attorneys for Plaintiff
FRANCISCA GUTIERREZ

Morgan, Lewis & Bockius, LLP

Date: August 9, 2024

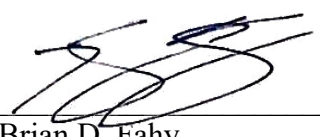

Brian D. Fahy
Attorneys for Defendant
BARCEL USA LLC

EXHIBIT A

1 BANA LEGAL GROUP, P.C.
Eli Banayan, Bar No. 322075
10250 Constellation Boulevard, Suite 100
2 Los Angeles, CA 90067
Tel: (310) 736-3616 / Fax: (310) 736-3616

3 LAW OFFICES OF MATTHEW RABBAN, APC
4 Matthew Rabban, Bar No. 277910
401 Wilshire Blvd., 12th Floor Penthouse
5 Santa Monica, CA 90401
Tel: (818) 448-5625 / Fax: (424) 645-1180

6 Attorneys for Plaintiff
7 Francisca Gutierrez

8 MORGAN, LEWIS & BOCKIUS LLP
Brian D. Fahy, Bar No. 266750
9 300 South Grand Avenue, Twenty-Second Floor
Los Angeles, CA 90071
10 Tel: (213) 612-2500 / Fax: (213) 612-2501

11 Attorneys for Defendant
12 Barcel USA, LLC

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **COUNTY OF LOS ANGELES**

15 FRANCISCA GUTIERREZ, individually, and
16 on behalf of other aggrieved employees
pursuant to the California Private Attorneys
17 General Act,

18 Plaintiff,

19 vs.

20 BARCEL USA, LLC,

21 Defendant.

Case No. 22STCV39840

*[Assigned to Hon. Randolph M. Hammock,
Dept. 49]*

**JOINT STIPULATION OF
SETTLEMENT OF PAGA
REPRESENTATIVE ACTION**

JOINT STIPULATION OF SETTLEMENT OF PAGA REPRESENTATIVE ACTION

Subject to Superior Court approval, Plaintiff Francisca Gutierrez (“Plaintiff” or “Gutierrez”), individually and as the authorized proxy for the State of California and the Labor and Workforce Development Agency, and Defendant Barcel USA, LLC (“Barcel”) (collectively with Plaintiff, the “Parties”), hereby agree to the following binding Joint Stipulation of Settlement of Private Attorneys General Act (“PAGA”) Representative Action (“Settlement” or “Settlement Agreement”) concerning the lawsuit *Francisca Gutierrez v. Barcel et al.*, Los Angeles Superior Court Case No. 22STCV39840 (the “Lawsuit”).

This Agreement and all associated exhibit(s) or attachment(s) are made for the purpose of settling the Lawsuit. This Agreement and the settlement it evidences are made in compromise of disputed claims. Because this action is being settled under PAGA, the “superior court shall review and approve any settlement of any civil action filed pursuant to [Labor Code §§ 2698 et seq.].” Cal. Lab. Code § 2699(1)(2). Accordingly, the Parties enter into this Agreement and associated settlement on a conditional basis. If the Court does not enter the Approval Order and Judgment and/or the Effective Date does not occur, this Agreement shall be deemed null and void *ab initio*, it shall be of no force or effect whatsoever, it shall not be referred to or utilized for any purpose whatsoever, and the negotiation of the Agreement shall remain subject to the provisions of California Evidence Code section 1152 and any other analogous rules of evidence that are applicable.

Because this is a PAGA settlement on behalf of the State of California, not a settlement of a class action, there shall be no mechanism for any aggrieved employee to (a) object to the settlement after the Court’s Approval Order is made, or (b) opt out from being covered by the release of PAGA claims at any time before or after the Approval Order is made.

DEFINITIONS

The following terms, when used in this Settlement Agreement, shall have the following meanings:

1. “Approval Order and Judgment” means the signed order of the Superior Court approving the Settlement and entering Judgment.

- 1 2. “Defendant’s Counsel” means Morgan, Lewis & Bockius LLP.
- 2 3. “Effective Date” means the date on which an order and judgment on the
3 Settlement becomes final. Such order and judgment becomes final upon the later of: (a) provided
4 that no appeal from the order and judgment approving the Settlement is filed, the date after the
5 deadline for any appeal expires; or (b) if an appeal of the order and judgment is filed, and the
6 appeal is finally disposed of in favor of Settlement approval by ruling, dismissal, denial, or
7 otherwise, the day after the last date for filing a request for further review of the decision passes,
8 and no further review is requested.
- 9 4. “Eligible Pay Period” means any pay period in which non-exempt employees of
10 Defendant 2R Staffing d/b/a MVP Staffing (“MVP”) and non-exempt employees of Barcel
11 performed work in California as a PAGA Settlement Member during the PAGA Period.
- 12 5. “Funding Date” means twenty-one (21) calendar days after the Effective Date, or
13 fourteen (14) business days after the PAGA Settlement Administrator sends Barcel confirmation
14 of the Gross Settlement Amount and wiring instructions to fund the Settlement, whichever is
15 later.
- 16 6. “Gross Settlement Amount” means Ninety-SixThousand, Six Hundred and Sixty
17 Six Dollars and No Cents (\$96,666).
- 18 7. “Individual PAGA Payment” means the proportional pro rata share to be paid to
19 each of the PAGA Settlement Members from the 25% of the PAGA Payment attributable to civil
20 penalties that are paid to PAGA Settlement Members under Labor Code section 2699, with such
21 individual shares to be based on the number of Eligible Pay Periods during which a PAGA
22 Settlement Employee worked during the PAGA Period as a percentage of the total number of
23 Eligible Pay Periods. The Settlement Administrator will use the following formula: 25% of the
24 PAGA Payment will be divided by the aggregate total number of Eligible Pay Periods, resulting
25 in the “Pay Period Value.” Each PAGA Settlement Member’s Individual PAGA Payment will be
26 calculated by multiplying each PAGA Settlement Member’s total number of Eligible Pay Periods
27 by the Pay Period Value. The Settlement Administrator will issue IRS Form 1099s to PAGA
Settlement Employees for their Individual PAGA Payments.

1 8. “PAGA Claims” means Plaintiff’s representative non-individual PAGA claims
2 based on alleged predicate violations of California Labor Code §§ 201, 202, 203, 204(a), 218,
3 218.5, 226, 226(a), 226.3, 226.7(a), 226.7(b), 510, 510(a), 512, 558, 558.1, 1174.5, 1194, 1194.2,
4 1198, 1198.5, 1199, IWC Wage Order No. 1, and civil penalties pursuant to PAGA and Labor
5 Code §§ 2698–2699.5.

6 9. “PAGA Payment” means the amount remaining to distribute to the LWDA and
7 PAGA Settlement Members after the following amounts, if approved by the Court, are subtracted
8 from the Gross Settlement Amount: (a) Plaintiff’s Costs up to \$1,095.98, (c) Administration
9 Costs which are estimated to be no more than \$4,250,.The entirety of the PAGA Payment shall be
10 allocated to civil penalties under Labor Code section 2699, with 75% of the PAGA Payment
11 going to the LWDA and 25% going to the Individual PAGA Payments.

12 10. “PAGA Period” means October 18, 2021, through April 22, 2024.

13 11. “PAGA Released Claims” means the PAGA Claims that Plaintiff, the LWDA and
14 the PAGA Settlement Members release and forever discharge Barcel and the Released Parties
15 from as set forth in Paragraph 15.

16 12. “PAGA Settlement Members” means (i) the non-exempt employees employed by
17 MVP who were assigned by MVP to work at Barcel’s facility in California and who worked
18 Eligible Pay Periods at any time during the PAGA Period and (ii) non-exempt employees of
19 Barcel in California who worked Eligible Pay Periods at any time during the PAGA Period.

20 13. “PAGA Settlement” or “Settlement” means the settlement of the Lawsuit as
21 memorialized in this Agreement.

22 14. “Plaintiff’s Counsel” means BANA Legal Group, P.C. and the Law Offices of
23 Matthew Rabban, APC.

24 15. “Released Claims” means all non-individual claims that were alleged, or
25 reasonably could have been alleged, based on the facts stated in Plaintiff’s initial and amended
26 LWDA Notice letters and in Plaintiff’s initial and First Amended Complaint, including but not
27 limited to, any and all non-individual claims under PAGA arising under Labor Code sections 201-

203, 218, 218.5, 226, 226.3, 226.7, 510, 512, 1194, 1194.2, 1198, 1198.5, 1199, and any civil penalties based on alleged violations of these sections, that arose during the PAGA Period.

16. “Released Parties” means Barcel and its parents, subsidiaries, affiliates, predecessors or successors, and all agents, employees, officers, directors, insurers, partners, investors, shareholders and attorneys thereof and all persons acting or alleged to be joint employers or client employers or acting by, through, under or in concert with any of them, past and present, including MVP, and each of their trustees, directors, officers, agents, alleged joint employers or client employers, attorneys, employees, contractors, insurers, representatives, assigns, all persons acting by, through, under, or in concert with any of them, and/or all persons acting on behalf of them.

17. “Settlement Administrator” means Phoenix Class Action Administration Solutions.

18. “Settlement Period” means the time period from October 18, 2021, through the date April 22, 2024.

RECITALS

19. WHEREAS, Plaintiff was employed by MVP as an employee during a part of the PAGA period, and as an employee of MVP was assigned by MVP to perform work Barcel’s facility in California. Plaintiff has asserted various claims against Barcel and MVP, as described below.

20. WHEREAS, on September, 9, 2022, Plaintiff Francisca Gutierrez sent a PAGA letter to the California Labor and Workforce Development Agency (“LWDA”) describing the purported facts and theories supporting Plaintiff’s alleged claims against Barcel for alleged (a) failure to pay overtime wages, (b) failure to provide meal periods, (c) failure to timely pay wages owed and due to current and former employees, (d) wage statement violations, and (e) failure to maintain required records based on alleged violations of the Labor Code, and incorporated by reference a draft Complaint alleging violations of Labor Code §§ 201, 202, 204, 226, 226.7, 510, 512, 1174, 1198; and IWC Wage Order No. 1.

21. WHEREAS, on December 22, 2022, Plaintiff filed her initial Complaint in Los

1 Angeles County Superior Court, alleging claims for (1) Failure to Provide Meal Periods, (2)
2 Failure to Pay All Wages Due Upon Termination, (3) Failure to Pay All Wages Earned, (4)
3 Failure to Pay Overtime Wages, (5) Failure to Issue Accurate, Itemized Wage Statements, (6)
4 Failure to Timely Produce Personnel File, (7) Violations of California's Unfair Competition Act,
5 (8) Violation of the Private Attorneys General Act, (9) Discrimination on the Basis of Age in
6 Violation of FEHA, and (10) Wrongful Termination in Violation of Public Policy.

7 22. WHEREAS, on July 11, 2023, following Barcel's removal of the action to federal
8 court, Plaintiff submitted to the LWDA and served on Barcel a First Amended PAGA notice,
9 adding MVP as a defendant and naming Barcel as a defendant (Barcel was erroneously sued as
10 Popcornopolis, LLC).

11 23. WHEREAS, on August, 4, 2023, Plaintiff filed a First Amended Complaint in the
12 U.S. District Court for the Central District of California, asserting the same claims as those
13 alleged in Plaintiff's initial complaint filed in Los Angeles Superior Court, but adding MVP as a
14 named defendant and identifying Barcel as the correctly named defendant, as Popcornopolis was
15 incorrectly named as a defendant in Plaintiff's initial Complaint.

16 24. WHEREAS, Barcel denies all of the allegations in the LWDA Letters, the
17 allegations and individual and putative PAGA claims alleged in Plaintiff's initial and First
18 Amended Complaint, and denies that it or any Released Parties committed any misconduct,
19 statutory or regulatory violation, wrongdoing, or any other actionable conduct of any kind.

20 25. WHEREAS, at a Mandatory Settlement Conference hosted by the LA Resolve
21 Program on February 22, 2024, Plaintiff and Barcel reached a global settlement in principle that
22 settles all of Plaintiff's claims against all Defendants, and which covers (i) all non-exempt
23 employees of MVP in California who were assigned by MVP to work at Barcel's facility in
24 California during the PAGA Period and (ii) all non-exempt employees of Barcel who worked in
25 California during the PAGA Period.

26 26. WHEREAS, the Parties understand, acknowledge, and agree that this Agreement
27 constitutes a compromise of Plaintiff's PAGA Claims, and that it is the desire and intention of the
Parties to affect a final and complete resolution of the PAGA Claims against all Defendants in

1 this action. The Parties further acknowledge that this Agreement is a compromise of disputed
2 claims and that nothing in this Agreement shall be construed as an admission by Barcel of
3 liability.

4 27. WHEREAS, the Parties believe and agree that this Agreement provides for a fair,
5 adequate, and reasonable resolution of the PAGA Claims, and have arrived at the Settlement after
6 extensive, arms-length negotiations in a full-day private mediation on February 22, 2024 taking
7 into account all relevant factors, including the strengths and weaknesses of Plaintiff's claims,
8 Barcel's merits defenses, Barcel's contention that the Lawsuit is not manageable, and the risk that
9 the Court would significantly reduce any penalties that could be awarded under Labor Code
10 section 2699(e)(2).

11 28. WHEREAS, California Labor Code section 2699(1)(2) requires Court approval of
12 "any settlement of any civil action filed" pursuant to PAGA.

13 29. WHEREAS, Plaintiff and Plaintiff's Counsel represent that they are not aware of
14 and have no knowledge of any liens filed or placed on this Action by any person.

15 30. THEREFORE, in consideration of the promises and agreements contained herein,
16 the Parties agree and covenant as follows:

17 SETTLEMENT CONSIDERATION

18 31. Non-Admission of Liability, Wrongdoing, or Standing. This Agreement shall not
19 in any way be construed as an admission by Barcel and/or any of the Released Parties that it or
20 they acted wrongfully with respect to Plaintiff or any other allegedly aggrieved employees.
21 Barcel specifically disclaims any liability to, or wrongful acts against Plaintiff, on the part of
22 itself, and/or any respective parents, subsidiaries, affiliates, predecessors, successors, officers,
23 directors, employees, or agents, and all persons acting or alleged to be joint employers or client
24 employers or acting by, through, under or in concert with any of them, including MVP. Barcel
25 denies that there is any factual evidence or legal basis to support any claims or Labor Code or
26 associated IWC Wage Order violations that Plaintiff alleges on behalf of alleged aggrieved
27 employees. Barcel specifically denies that it was the joint or client employer of any individuals
employed by MVP.

1 32. Gross Settlement Amount. In consideration for the covenants, promises, waivers,
2 and releases contained in this Agreement, and subject to Court approval, Barcel shall pay the sum
3 of Ninety Six Thousand, Six Hundred and Sixty Six Dollars (\$96,666.00) in full and final
4 settlement of all the PAGA Claims.

5 Subject to Court approval, Barcel will not oppose Plaintiff's Counsel's request for costs
6 not to exceed \$1,095.98 (to be paid out of the Gross Settlement Amount). Subject to Court
7 approval, up to \$4,250 (to be paid out of the Gross Settlement Amount) shall be allocated to the
8 payment of the third-party Settlement Administrator. The remaining amount shall be allocated to
9 the PAGA Payment.

10 If the awarded Plaintiff's costs, and/or settlement administration costs approved by the
11 court are less than any of the amounts set forth above, the unawarded amounts shall be added to
12 the PAGA Payment.

13 33. Release.

14 a. Release by Plaintiff on Behalf of the LWDA. In her capacity as private
15 attorneys general "aggrieved employees" acting as a proxy or agent of the LWDA and State of
16 California, Plaintiff agrees to release Barcel and the Released Parties, from any and all non-
17 individual claims under PAGA that were alleged, or reasonably could have been alleged, based
18 on the facts stated in the Complaint or the PAGA Notice Letter, including, but not limited to,
19 claims under PAGA arising under Labor Code Sections 201, 202, 203, 204, 210, 218, 218.5, 226,
20 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1 1198, 1198.5, 2699,
21 and IWC Wage Order No. 4-2001, and any civil penalties based on alleged violations of these
22 sections (collectively, the "PAGA Released Claims") that arose during the PAGA Period. Upon
23 approval of this Agreement and the funding of the Settlement by Barcel, Plaintiff, the LWDA, the
24 State of California, and any other individual or entity acting on behalf of or purporting to act on
25 behalf of the LWDA and/or the State shall be barred from asserting any of the PAGA Released
26 Claims in any other litigation, arbitration, or other legal forum. Any party to this Agreement may
27 use the Agreement to assert that this Agreement and the Judgment to be entered by the Court
following approval of this Agreement bars any other action asserting any of the PAGA Released

1 Claims against any of the Released Parties during the PAGA Period. The provisions of this
2 paragraph apply regardless of whether the PAGA Settlement Members cash their Individual
3 PAGA Payment checks.

4 b. Release by PAGA Settlement Members. For and in consideration of the
5 mutual promises and consideration set forth in this Agreement, Plaintiff and the PAGA
6 Settlement Members, on behalf of themselves, and their heirs, successors, assigns, attorneys and
7 agents, hereby release and forever discharge the Released Parties from any and all PAGA
8 Released Claims, as defined herein, during the PAGA Period.

9
10 34. PAGA Settlement Administrator and Distribution Method. The Parties agree that
11 Phoenix Class Action Administration Solutions shall serve as the PAGA Settlement
12 Administrator to among other things determine Individual PAGA Payment amounts for each
13 PAGA Settlement Member; distribute Individual PAGA Payments to PAGA Settlement
14 Members; and otherwise process and distribute the Gross Settlement Amount in accordance with
15 this Agreement.

16 The Parties agree that the Settlement Administrator shall establish a Qualified Settlement
17 Fund ("QSF") that is intended to be pursuant to Section 468B of the Code and Treas.
18 Reg. §1.468B-1, 26 CFR § 1.468B-1 et seq., and will be administered by the Settlement
19 Administrator as such. With respect to the QSF, the Settlement Administrator shall: (1) open and
20 administer a settlement account in such a manner as to qualify and maintain the qualification of
21 the QSF as a "Qualified Settlement Fund" under Section 468B of the Code and Treas. Reg.
22 §1.468B-1; (2) satisfy all federal, state and local income and other tax reporting, return, and filing
23 requirements with respect to the QSF (if any is required); and (3) satisfy out of the QSF all fees,
24 expenses, and costs incurred in connection with the opening and administration of the QSF and
25 the performance of its duties and functions as described in this Agreement. The aforementioned
26 fees, costs, and expenses shall be treated as and included in the costs of administering the QSF by
27 the Settlement Administration.

a. In addition to and subject to Court approval, the timelines and methods

1 related to the administration of this Agreement shall be as follows: The PAGA Payment shall be
2 available for distribution to the PAGA Settlement Members and the LWDA consistent with Labor
3 Code section 2699(i) and shall be allocated as follows: 75% to the LWDA ("LWDA Payment")
4 and 25% to the PAGA Settlement Members as the amount used for payment of their Individual
5 PAGA Payments.

6 b. Within twenty-one (21) calendar days after the Effective Date of the
7 Settlement, Barcel shall: (1) transmit funds equaling the Gross Settlement Amount to the
8 Settlement Administrator, and (2) confidentially provide the Settlement Administrator with the
9 following information from available records for each PAGA Settlement Member, which shall be
10 formatted as a Microsoft Excel spreadsheet or Microsoft Word Document: his/her name; social
11 security number; last known address; and number of Eligible Pay Periods worked during the
12 Settlement Period. This information shall be treated as and remain confidential by the Settlement
13 Administrator and shall be used solely to manage the notice and payment process described
14 herein, shall not be disclosed to Plaintiff's Counsel, or to anyone other than the necessary staff of
15 the Settlement Administrator, except as needed to effectuate the settlement, including to resolve
16 any dispute over the eligibility for or amount of a PAGA Settlement Member's Individual PAGA
17 Payment.

18 c. Within fifteen (15) calendar days of the Funding Date, the PAGA
19 Settlement Administrator shall distribute the amounts for costs to Plaintiff's counsel, and the
20 PAGA Payment to the LWDA and PAGA Settlement Members. With respect to Individual
21 PAGA Payments to PAGA Settlement Members, the Settlement Administrator shall send by first-
22 class mail, at their last known address, the court-approved notice letter, and a check for their
23 individual payment. The Settlement Administrator will conduct a standard skip trace and re-mail
24 any returned, undelivered mailings for which another address is found to such PAGA Settlement
25 Members within fourteen (14) calendar days of receiving notice that a mailing was undeliverable.

26 d. Because the Individual PAGA Payments are in compromise and settlement
27 of claims for civil penalties, and are not payment of any wages, the entirety of these payments
will be treated as non-wage income that is not subject to any withholdings or deductions. The

1 PAGA Settlement Administrator shall be responsible, to the extent necessary based on the
2 amount of a payment, for all tax reporting and documentation related to the PAGA Settlement
3 Member Payments, as well as all other payments made under the Agreement. Plaintiff
4 acknowledges that Barcel makes no representations or warranties with respect to any tax
5 consequences or characterization of the nature of any payment under this Agreement. Plaintiff
6 and Plaintiff's Counsel each agree to hold Barcel and the Released Parties harmless from and
7 against any damage or penalty incurred by Plaintiff and/or Plaintiff's Counsel as a result of any
8 taxing authority assessing any tax or penalty upon Barcel as a consequence of any tax being due
9 and unpaid on each of their portions of the Settlement.

10 e. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of
11 this section, the "acknowledging party" and each Party to this Agreement other than the
12 acknowledging party, an "other party") acknowledges and agrees that (1) no provision of this
13 Agreement, and no written communication or disclosure between or among the Parties or their
14 attorneys and other advisers, is or was intended to be, nor shall any such communication or
15 disclosure constitute or be construed or be relied upon as, tax advice within the meaning of
16 United States Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) the
17 acknowledging party (a) has relied exclusively upon his, her, or its own, independent legal and
18 tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not
19 entered into this Agreement based upon the recommendation of any other party or any attorney or
20 advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure by
21 any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the
22 acknowledging party; and (3) no attorney or adviser to any other party has imposed any limitation
23 that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of
24 whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax
25 treatment or tax structure of any transaction, including any transaction contemplated by this
26 Agreement.

27 f. Because this is a PAGA settlement and not a class action settlement, and
because there is no claims procedure and no ability to "opt out," there will be no prior notice to

1 the PAGA Settlement Members advising them of the Settlement or any procedure by which the
2 PAGA Members must submit claims in order to receive a settlement payment. No later than
3 fifteen (15) business days after the Funding Date, the Settlement Administrator will mail a notice
4 (“PAGA Notice”) approved by the Court (in substantially the form attached as Exhibit A) along
5 with the Individual PAGA Payment to the PAGA Settlement Members in the PAGA Data.

6 g. PAGA Settlement Members shall have one hundred eighty (180) calendar
7 days to cash their Individual PAGA Payment checks under this Agreement. Any checks that are
8 returned as undeliverable or that remain uncashed after 180 days shall be voided. Within fourteen
9 (14) days of the expiration of the 180-day deadline, the Settlement Administrator shall transmit
10 the funds represented by such checks to the California Controller's Unclaimed Property Fund in
11 the name of the employee to whom the check was issued, thereby leaving no “unpaid residue”
12 subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). In the
13 alternative, and to the extent that the Court may require that the funds be transmitted to a *cy pres*
14 beneficiary, the Settlement Administrator shall transmit the funds associated with any uncashed
15 checks to the *cy pres* beneficiary of Alliance for Children’s Rights, subject to approval by the
16 Court in accordance with California law.

17 35. Impact of Non-Approval by the Court. Should the Court initially deny approval of
18 this Agreement, the Parties shall work jointly to make reasonable efforts to attempt to address the
19 Court’s concerns in order to obtain the Court’s approval, except that Barcel will not be required
20 under any circumstances to increase the Gross Settlement Amount. If the Parties cannot obtain
21 court approval, the Parties shall be restored to their respective litigation positions before they
22 entered into this Agreement. A reduction by the Court or on appeal as to the amount of
23 Attorneys’ Costs does not provide a basis for nullifying this Agreement. If the Court ultimately
24 denies approval of the Agreement, or if the Court’s approval is reversed on appellate review, this
25 Agreement shall be deemed null and void, shall be of no force or effect whatsoever, and shall not
26 be referred to or used for any purpose whatsoever.

27 36. The Parties stipulate and agree, pursuant to California Code of Civil Procedure
section 583.330(a), in the event the settlement is not finally approved, to extend the time within

1 which the Action must be brought to trial pursuant to Code of Civil Procedure sections 583.310
2 through 583.360, by that period of time from February 22, 2024 until the date of the Court's
3 Order finally granting approval or denial of the Settlement, and that said period of time shall not
4 be included in the computation of the five-year period specified in Code of Civil Procedure
5 section 583.310.

6 37. Applicable Law. This Agreement shall be construed and interpreted in accordance
7 with the laws of the State of California. Pursuant to California Code of Civil Procedure section
8 664.6, the Court shall retain jurisdiction solely with respect to the interpretation, implementation,
9 and enforcement of the terms of this Settlement, and the Parties and their counsel submit to the
10 jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement
11 embodied in this Agreement and all orders and judgments entered in connection therewith. In the
12 event either party is reasonably required to seek to enforce any of the terms of this Agreement,
13 the prevailing party shall be entitled to attorney's fees and costs. This Agreement will be binding
14 upon, and inure to the benefit of, the successors of each of the Parties.

15 38. Dismissal/Judgment in this Action. Plaintiff's Counsel shall prepare, file, and
16 serve a stipulation, application, or motion for approval of this Agreement pursuant to California
17 Labor Code § 2699(1)(2), advocating that the terms of the Settlement are fair, adequate, and
18 reasonable and satisfy other requirements for approval of a PAGA settlement, and Barcel shall
19 not oppose such a motion provided that it is consistent with the terms of this Agreement.
20 Plaintiff's Counsel shall send a draft of the stipulation, application, or motion to Barcel's counsel
21 allowing seven business days for review and comment which shall be reasonably considered by
22 Plaintiff's Counsel. Counsel for the Parties will jointly prepare and submit a proposed Approval
23 Order and Judgment granting the motion, consistent with the terms of this Agreement and
24 Settlement. The proposed Approval Order and Judgment will include a dismissal of the PAGA
25 Claim, or cause of action number 8 in the Lawsuit, with prejudice as to Plaintiff and the PAGA
26 Settlement Members. Plaintiff shall serve the LWDA with the motion referenced above when
27 Plaintiff files the motion with the Court. Within ten (10) calendar days of the date the Court
enters the Judgment, Plaintiff shall also submit a copy of the Judgment to the LWDA consistent

1 with Labor Code section 2699(1)(3). The Parties agree that, after entry of Judgment, the Court will
2 retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing
3 this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii)
4 addressing such post-Judgment matters as are permitted by this Agreement or by law.

5 39. Confidentiality. Neither side shall issue any press release or public announcement
6 of any kind related in any way to the Settlement, except any notice required to effectuate the
7 terms of the settlement. Plaintiff agrees to maintain the terms and conditions of this Agreement
8 as confidential and agrees not to disclose the terms of this Agreement until the motion for
9 approval is filed with the Court and/or submitted to the LWDA, after which time Plaintiff shall
10 refer any questions or comments about the Settlement or this Agreement from PAGA Settlement
11 Members to Plaintiff's Counsel. The Parties agree that this paragraph is a material inducement to
12 entering into this Agreement. Nothing in this Agreement shall limit Plaintiff's right to
13 communicate with her spouse(s), legal counsel retained by Plaintiff, personal certified accountant,
14 financial adviser, or tax consultant, or as required or compelled by legal authority before or after
15 the motion for approval is filed with the Court.

16 Counsel for the Plaintiff shall not publicize the Settlement on their website or in
17 advertising/marketing materials, other than filing documents with the Court in connection with
18 seeking approval of the Agreement. After the Approval Order has been entered by the Court,
19 Plaintiff and Plaintiff's Counsel may: (1) as required by law, (2) as required under the terms of
20 the Agreement, or (3) as required under Plaintiff's Counsel's duties and responsibilities as
21 counsel for the PAGA Settlement Members, comment regarding the specific terms of the
22 Agreement. In all other cases, Plaintiff and Plaintiff's Counsel agree to limit their statements
23 regarding the terms of the Agreement, whether oral, written, or electronic, to say the Lawsuit has
24 been resolved and that Plaintiff and Plaintiff's Counsel are satisfied with the terms of the
25 Agreement. Nothing in this paragraph is intended to interfere with Plaintiff's Counsel's duties
26 and obligations to faithfully discharge their duties as counsel for the PAGA Settlement Members,
27 including but not limited to, communicating with PAGA Settlement Members regarding the
Agreement, and nothing shall prohibit Plaintiff's Counsel from referring to the Settlement in

adequacy of counsel declarations or related court filings.

40. No Admission of Wrongdoing. Except for the purposes of effectuating and enforcing the terms of this Agreement which include barring claims that are released pursuant to this Agreement, neither this Agreement nor any of its terms nor the settlement itself shall be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Barcel and/or any of the Released Parties, including but not limited to, evidence of any violation of the Labor Code, presumption, concession, indication, or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to, or offered in evidence against Barcel and/or any of the Released Parties in any other civil, criminal, or administrative action or proceeding, or any arbitration. The Parties agree that an express condition of this Agreement is that there has been no finding of liability on the merits, and that this Agreement and the Approval Order and Judgment therefore cannot be a basis to assert subsequent violation penalty rates in any action or proceeding seeking civil penalties, or to assert offensive collateral estoppel against Barcel. Notwithstanding the foregoing, nothing in this Agreement shall limit Barcel's use of the Approval Order and Judgment to establish res judicata and/or collateral estoppel in any other PAGA action.

41. Costs and Fees. The Parties shall each bear their own costs, attorneys' fees, and other fees incurred in connection with this Agreement and in connection with the Lawsuit, except as otherwise set forth specifically herein.

42. No Other Pending Claims. Other than Plaintiff's claims/charges/complaints with the Civil Rights Department, the Labor Workforce and Development Agency, and the instant Lawsuit, Plaintiff represents that she has not filed or otherwise presented any other claims, complaints, charges, arbitration claims, or lawsuits of any kind whatsoever with any court, governmental agency, other regulatory body, or arbitration tribunal with respect to any matter arising out of her employment with MVP, or otherwise related to MVP or Barcel. Plaintiff's counsel represents that, other than Plaintiff herself, they do not currently represent any other current or former employees of MVP in connection with any actual or planned claims, charges, complaints or other matters against Barcel or MVP, and Plaintiff's counsel is not aware of any

1 current or former employees of MVP or Barcel who are planning to bring any claims, charges,
2 complaints, or other matters against Barcel. In their stipulation, application or motion for
3 approval of the settlement, Plaintiff and Plaintiff's Counsel shall aver that they are not aware of
4 any other pending matter or action asserting claims that will be extinguished or adversely affected
5 by the Settlement.

6 43. Knowing and Voluntary Agreement. Each Party has carefully read, and knows
7 and understands the full contents of this Agreement and is voluntarily entering into this
8 Agreement after having received independent legal advice from his or its attorneys with respect to
9 the advisability of making the settlement provided for herein and the advisability of executing this
10 Agreement.

11 44. Joint Drafting. Each of the Parties has participated in the drafting of all provisions
12 of this Agreement, has had an adequate opportunity to read, review, and consider the effect of the
13 language of this Agreement, and has agreed to its terms.

14 45. Severability. If any provision of this Agreement is held to be invalid by a court of
15 competent jurisdiction, that provision shall be deemed severed and deleted from this Agreement,
16 and neither that provision nor its severance and deletion shall affect the validity of the remaining
17 provisions, except that if the Court severs a provision that either of the Parties reasonably
18 considers to be a material term of this Agreement, that Party shall have the option to send a
19 written notice to the other Party no later than fourteen (14) calendar days after the Court severs
20 the provision that it wishes to void the entire Agreement and to restore the Parties to their
21 litigation positions as of before this Agreement was reached. If the Parties are thereafter unable
22 to resolve the issue by reasonable efforts, this Agreement in its entirety shall be deemed null and
23 void, shall be of no force or effect whatsoever, and shall not be referred to or used for any
24 purpose whatsoever. Notwithstanding the foregoing, no portion of any release contained herein
25 may be deemed severed or deleted from this Agreement except upon agreement in writing by
26 Barcel.

27 46. Counterparts. This Agreement may be signed in counterparts. Fax, scan, and/or
electronic copies of signatures shall be deemed effective as originals.

1 47. Cal. Code Civ. Proc. § 583.330. The Parties stipulate and agree, pursuant to
2 California Code of Civil Procedure section 583.330(a), in the event the settlement is not finally
3 approved, to extend the time within which the Action must be brought to trial pursuant to Code of
4 Civil Procedure sections 583.310 through 583.360, by that period of time from February 22, 2024
5 until the date of the Court's Order finally granting approval or denial of the Settlement, and that
6 said period of time shall not be included in the computation of the five-year period specified in
7 Code of Civil Procedure section 583.310.

8 48. Entire Agreement. This Agreement sets forth the entire agreement between the
9 Parties hereto and fully supersedes any and all prior and/or supplemental understandings, whether
10 written or oral, between the Parties concerning the subject matter of this Agreement. Any
11 modification to this Agreement must be in writing and signed by Plaintiff and Plaintiff's Counsel
12 and Barcel and Barcel's counsel.

13 49. Waiver of right to appeal. Provided the Approval Order and Judgment is
14 consistent with the terms and conditions of this Agreement, the Parties, their respective counsel
15 waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate
16 proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary
17 writs, and appeals, except that Plaintiff and/or Plaintiff's Counsel may appeal any order denying
18 or reducing their requested Attorneys' Fees and Costs or Service Payment.

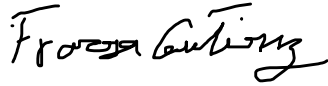
19 The waiver of appeal does not include any waiver of the right to oppose such motions,
20 writs or appeals. If another party appeals the Judgment, the Parties' obligations to perform under
21 this Agreement will be suspended until the appeal is finally resolved and the Judgment becomes
22 final. This provision only applies to matters on appeal that could affect the approval of the
23 PAGA Settlement or the amount of the PAGA Payment.

24 50. Cooperation. The Parties and their Counsel will cooperate in good faith and apply
25 their best efforts to implement this Settlement, by, among other things, executing all documents to
26 the extent reasonably necessary to effectuate the terms of this Settlement Agreement, submitting
27 supplemental evidence and/or supplemental points and authorities if requested by the Court, or
making changes to the Settlement if requested by the Court that do not materially affect the

essential settlement terms.

IN WITNESS WHEREOF, the Parties each acknowledge that they have read the foregoing Joint Stipulation of Settlement of PAGA Representative Action, accept and agree to the provisions contained in this Agreement and hereby execute it voluntarily and with full understanding of its consequences, as of the date set forth below.

Dated: 08/07/2024, 2024



Plaintiff Francisca Gutierrez

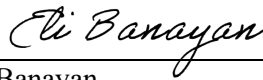
Dated: _____, 2024

Barcel USA, LLC

By: _____
Printed Name: _____
Title: _____

Approved as to form

Dated: 8/8/24, 2024



Eli Banayan
Bana Legal Group, P.C.

Dated: 08/08/2024, 2024



Matthew Rabban
Law Offices of Matthew Rabban, APC
Counsel for Plaintiff Francisca Gutierrez

Dated: 08/09/24, 2024



Brian D. Fahy
Morgan, Lewis & Bockius LLP
Counsel for Barcel USA, LLC

essential settlement terms.

IN WITNESS WHEREOF, the Parties each acknowledge that they have read the foregoing Joint Stipulation of Settlement of PAGA Representative Action, accept and agree to the provisions contained in this Agreement and hereby execute it voluntarily and with full understanding of its consequences, as of the date set forth below.

Dated: _____, 2024

Plaintiff Francisca Gutierrez

Dated: August 13, 2024

Barcel USA, LLC

By: Juanita Duarte
Printed Name: Juanita Duarte
Title: Sr. People Manager

Approved as to form

Dated: _____, 2024

Eli Banayan
Bana Legal Group, P.C.

Dated: _____, 2024

Matthew Rabban
Law Offices of Matthew Rabban, APC
Counsel for Plaintiff Francisca Gutierrez

Dated: _____, 2024

Brian D. Fahy
Morgan, Lewis & Bockius LLP
Counsel for Barcel USA, LLC

Eli Banayan, Esq. SBN 322075
BANA LEGAL GROUP, P.C.
11835 W. Olympic Blvd., Suite 695E
Los Angeles, CA 90064
Telephone: (310) 736-3616
Facsimile: (310) 736-3616
Email: eb@banalegal.com

Attorneys for Plaintiff, FRANCISCA GUTIERREZ

Brian D. Fahy, Esq. (SBN 266750)
Morgan, Lewis & Bockius, LLP
300 South Grand Avenue, 22nd Floor
Los Angeles, CA 90071-3132
Telephone: (213) 612-2500
Facsimile: (213) 612-2501
e-mail: Brian.fahy@morganlewis.com

Attorneys for Defendant BARCEL USA, LLC, incorrectly named as POPCORNOPOLIS, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

FRANCISCA GUTIERREZ,

Plaintiff,

v.

BARCEL USA LLC, incorrectly named as
POPCORNOPOLIS, LLC; 2R STAFFING LLC
d/b/a MVP STAFFING; and DOES 1 through
20, inclusive,

Defendants.

Case No.: 22STCV39840

Hon. Randolph M. Hammock
Dept. 49

**[PROPOSED ORDER] ON
STIPULATION FOR APPROVAL OF
PAGA SETTLEMENT**

Complaint Filed: December 22, 2022

Trial Date: Not Set

1
2 **[PROPOSED ORDER]**

3 Under Labor Code section 2699(1)(2) of the Private Attorneys General Act of 2004
4 ("PAGA"), the Parties submitted a Stipulation for Approval of Settlement under PAGA.

5 Plaintiff's Complaint, filed on or about December 22, 2022, seeks civil penalties on behalf
6 of the State of California and similarly situated aggrieved employees (the "Aggrieved Employees"),
7 as authorized by PAGA under Labor Code § 2699, in relation to alleged violations of the predicate
8 statutes set forth in Plaintiff's Complaint and the letters to the Labor Workforce and Development
9 Agency ("LWDA") dated September 29, 2022 and July 11, 2023 (the "LWDA Letter"), on behalf of
10 all current and former non-exempt employees of Defendant BARCEL USA LLC. ("Defendant")
11 from October 18, 2021 through April 22, 2024, inclusive.

12 Under PAGA, in any action brought by an aggrieved employee, the Court "shall review and
13 approve any settlement of any civil action filed pursuant to this part." Lab. Code § 2699(1)(2).
14 Accordingly, the Court, having considered the proposed settlement set forth in the Settlement
15 Agreement, including the proposed PAGA penalties, under Labor Code § 2699(1)(2), having
16 considered the papers filed in support of the proposed settlement and the arguments of counsel, and
17 good cause appearing, HEREBY ORDERS AS FOLLOWS:

18 1. The Court finds the instant Action presents a good faith dispute of the claims alleged;
19 2. The Court finds in favor of settlement approval, and therefore approves the Settlement
20 of the above-captioned action, as set forth in the Settlement Agreement and each of the releases and
21 other terms, as fair, just, reasonable, and adequate;

22 3. The Court finds further that Plaintiff, acting on behalf of herself, the Aggrieved
23 Employees, and the State of California, by operation of this Order and Judgment hereby releases and
24 forever discharges Defendants and the Released Parties (as defined in the Settlement Agreement)
25 from any and all PAGA Released Claims (as defined in the Settlement Agreement) including
26 penalties asserted in Plaintiff's Complaint, including any and all known and unknown claims for
27 civil penalties under the Private Attorneys General Act, California Labor Code §§ 2698, et seq., that
28 arise;

1 4. The Court finds further that the felease shall be binding on Plaintiff and the State of
2 California, and shall bar any claim under PAGA brought by any person, including the
3 Aggrieved Employees, on behalf of the State of California, as to the PAGA Released Claims and
4 Released Parties;

5 5. The Parties are directed to comply with all terms of the Settlement Agreement, and
6 Defendants are directed to make all payments required by the Settlement Agreement;

7 6. Under the Settlement Agreement, Defendant agrees to pay an all-in gross amount of
8 Ninety-Nine Thousand Six Hundred and Sixty-Six Dollars (\$96,666.00) (the "Gross Settlement
9 Amount"). The Gross Settlement Amount is inclusive of payments to the LWDA and Aggrieved
10 Employees, Settlement Administrator Costs, and Attorney's Costs. No portion of the Gross
11 Settlement Amount will revert to Defendant. Plaintiff's Counsel requests an award of costs of One
12 Thousand and Ninety-Five Dollars and Ninety-Eight Cents (\$1,095.98). The settlement administrator
13 Phoenix Class Action Administration Solutions requests administration costs of Four Thousand Two
14 Hundred and Fifty Dollars (\$4,250.00). Defendant does not oppose these requests. The Court finds
15 the Gross Settlement Amount is fair, reasonable and adequate, and approves each of these payments,
16 and directs the Settlement Administrator to make the above payments to payments from the Gross
17 Settlement Amount as follows:

- 18 a. \$1,095.98 in costs to Bana Legal Group, P.C.;
- 19 b. \$4,250 in administration costs to Phoenix Class Action Administration Solutions;
- 20 c. After deducting the foregoing payments, the estimated remainder of approximately
21 \$91,320.02 shall form the Net Settlement Amount ("NSA"). Pursuant to Labor Code section 2699(i),
22 the NSA will then be distributed 75 percent (\$68,490.02) to the LWDA, and the remaining 25 percent
23 (\$22,830) to the Aggrieved Employees on a pro rata basis, as set forth in the Settlement Agreement.
24 The Court approves these payments, and directs the Settlement Administrator to issue checks to the
25 LWDA and Aggrieved Employees, along with the Notice of PAGA Settlement, as set forth in the
26 Settlement Agreement, and to otherwise carry out its duties as set forth in the Settlement Agreement;
27 and
28

7. The Court reserves exclusive and continuing jurisdiction over the Action and the Parties under Code of Civil Procedure § 664.6 for the purpose of supervising implementation, enforcement, construction, administration, and interpretation of the Settlement Agreement

It is further ordered that: _____

IT IS SO ORDERED.

DATED: _____

Judge of the Los Angeles County
Superior Court

1 Koorosh Banayan, Esq., SBN 122359
Eli Banayan, Esq. SBN 322075
2 **BANA LEGAL GROUP, P.C.**
10250 Constellation Blvd., Suite 100
3 Los Angeles, CA 90067
Telephone: (310) 736-3616
4 Facsimile: (310) 736-3616
Email: kb@banalegal.com
5 Email: eb@banalegal.com

6 Attorneys for Plaintiff, FRANCISCA GUTIERREZ

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**

11 FRANCISCA GUTIERREZ,

12 Plaintiff,

13 vs.

14
15 BARCEL USA, LLC, incorrectly named as
16 POPCORNOPOLIS, LLC; 2R STAFFING LLC
d/b/a MVP STAFFING, and DOES 1 through
20, inclusive,

17 Defendants.
18

Case No.: 22STCV39840

Case Initiated: December 22, 2022

Hon. Randolph M. Hammock
Dept. 49

PROOF OF SERVICE

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am over the age of 18 and not a party to the within action. My business address is
BANA LEGAL GROUP, P.C., 10250 Constellation Blvd., Suite 100, Los Angeles, CA 90067.

On **August 14, 2024**, I served the document(s) described as:

**STIPULATION BY ALL PARTIES FOR ORDER APPROVING SETTLEMENT
PURSUANT TO CALIFORNIA LABOR CODE PRIVATE ATTORNEYS' GENERAL
ACT AND ENTERING JUDGMENT; [PROPOSED ORDER]**

on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof
☐ to interested parties as follows [or] ☒ as stated on the attached service list:

See Attached Service List

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the
envelope(s) for mailing in the ordinary course of business at Los Angeles, California.
I am "readily familiar" with this firm's practice of collection and processing
correspondence for mailing. Under that practice, sealed envelopes are deposited with
the U.S. Postal Service that same day in the ordinary course of business with postage
thereon fully prepaid at Los Angeles, California.

I am a resident or employed in the county where the mailing occurred. The envelope or
package was placed in the mail in the County of Los Angeles, State of California.

☒ **BY ELECTRONIC MAIL:** I caused a copy of the document(s) to be sent to the
persons at the email addresses listed above, or the Service List. I did not receive,
within a reasonable time after the transmission, any electronic message or indication
that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

Executed this **August 14, 2024**, at Los Angeles, California.

Eli Banayan

Name

Signature



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Service List

Brian D. Fahy, Esq.
Morgan, Lewis & Bockius, LLP
300 South Grand Avenue, 22nd Floor
Los Angeles, CA 90071-3132
e-mail: Brian.fahy@morganlewis.com
Attorneys for Defendant BARCEL USA, LLC, incorrectly named as POPCORNOPOLIS, LLC