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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

LUIS RAMOS, individually, and on
behalf of all other aggrieved employees,

Plaintiff,

v.

TAQUERIA MILAGRO, INC., a
California corporation; and DOES 1
through 50, inclusive,

Defendants.

CASE NO.: 23CV409955

[Assigned for all purposes to the
Honorable Theodore C. Zayner, Dept. 19]

**STIPULATION OF SETTLEMENT AND
RELEASE UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE § 2698, ET
SEQ.**

Complaint Filed: January 17, 2023
Trial Date: None Set

HENSHAW LAW OFFICE

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*Attorney for Defendant, TAQUERIA
MILAGRO, INC.*

1 This Stipulation of Settlement and Release ("Agreement" or "Settlement") under the
2 Private Attorneys General Act, California Labor Code section 2698 et seq. ("PAGA"), is made
3 by and between Luis Ramos ("Plaintiff"), individually and as representative on behalf of
4 Aggrieved Employees as further defined herein and the State of California, and Taqueria
5 Milagro, Inc. ("Defendant"). Plaintiff and Defendant are collectively referred to herein as the
6 "Parties" and may be individually referred to as a "Party."

7 **A. FACTUAL BACKGROUND**

8 1. This Settlement is made and entered into by and between Plaintiff and Defendant,
9 and is subject to the terms and conditions hereof, and to the Court's approval. The Parties
10 expressly acknowledge that this Agreement is entered into solely for the purpose of
11 compromising significantly disputed claims and that nothing herein is an admission of liability
12 or wrongdoing by Defendant. Defendant denies that it is liable to Plaintiff or the Aggrieved
13 Employees and deny that they have violated any law.

14 2. On September 8, 2022, Plaintiff filed a notice with the Labor & Workforce
15 Development Agency ("LWDA") alleging that Defendant violated Labor Code sections 201-203,
16 204, 210, 226, 226.2 226.3, 226.7, 246, 510, 512, 558, 1174, 1174.5 1194, 1197, and 1198
17 ("PAGA Notice").

18 3. On January 17, 2023, Plaintiff filed his Private Attorneys General Act ("PAGA")
19 Complaint in Santa Clara County Superior Court, Case No: 23CV409955, (hereinafter the
20 "Action"); seeking civil penalties predicated on Defendant's alleged failure to provide meal and
21 rest periods, failure to pay overtime wages, minimum wages, sick leave, and timely wages during
22 employment and upon termination, and, as a result, derivative waiting time penalties and pay
23 stub penalties.

24 4. On February 7, 2023, Defendant filed a General Denial denying all allegations in
25 the Action and all claims of any wrongdoing whatsoever by Defendant or any of its parents,
26 subsidiaries, affiliates, divisions, agents, servants, or employees for any claims.

27 5. The Parties attended mediation on January 22, 2024, with mediator Nikki Tolt,
28 Esq. The Parties reached a settlement of the Action as a result of the mediation.

6. The Parties recognize the risk, expense, and delay in continuing the Action, and therefore believe the Settlement to be fair, reasonable, and adequate. Accordingly, the Parties desire to settle, compromise, and discharge all disputes and claims arising from or relating to the Action.

B. DEFINITIONS

1. "Action" means *Luis Ramos v. Taqueria Milagro, Inc. et al.*, filed on January 17, 2023, in the Superior Court of California, County of Santa Clara, Case No. 23CV409955.

2. "Aggrieved Employees" means all non-exempt employees who worked for Defendant in California from November 11, 2021, through the date that the Court grants approval of the settlement.

3. "Agreement" or "Settlement" means this Joint Stipulation of Settlement and Release.

4. "Plaintiff's Counsel" means Scott Ernest Wheeler and Justin A. Wheeler of Law Office of Scott Ernest Wheeler and Aubry Wand of The Wand Law Firm, P.C.

5. "Complaint" means the operative Representative Action Complaint for Violation of Labor Code Section 2698 et. seq. in this Action.

6. "Court" means the Santa Clara County Superior Court of California.

7. "Defendant" means Taqueria Milagro, Inc.

8. "Defense Counsel" or "Counsel for the Defendant" means: David S. Henshaw of Henshaw Law Office.

9. "Effective Date" means the date on which the Superior Court or any Party hereto serves notice of entry of the Superior Court's order and judgment approving the Settlement.

10. "Enhancement Payment" means the amount that the Court authorizes to be paid to Plaintiff, in addition to his Individual Settlement Payment, in recognition of his efforts and risks in assisting with the prosecution of the Action. Subject to the Court granting approval of the Settlement, the Parties agree that Plaintiff shall be paid up to Six Thousand Dollars and Zero Cents (\$6,000.00). The Enhancement Payment will be paid from the Gross Settlement Amount. It is understood by Plaintiff that the Court has final discretion in any Enhancement Payment.

1 11. "Gross Settlement Amount" means the gross amount of Seventy Thousand
2 Dollars and Zero Cents (\$70,000.00) to be paid by Defendant as provided by this Agreement to
3 fully and finally settle, resolve, and conclude this Action as to Released Parties, as providing
4 under this Agreement, without any admission of fault or liability. The Gross Settlement Amount
5 includes all Individual Settlement Payments to Aggrieved Employees, payment to the LWDA,
6 Settlement Administration Costs, Attorneys' Fees and Costs, and the Enhancement Payment to
7 Plaintiff.

8 12. "Individual Settlement Payment" means the amount payable from the Net PAGA
9 Payment to each Aggrieved Employee.

10 13. "Order and Judgment" means the Court's Order granting approval of the PAGA
11 Settlement and entering Judgment, in the form substantially similar to that attached to this
12 Agreement as **Exhibit A**.

13 14. "PAGA Penalties Fund" means the balance of the Gross Settlement Amount
14 remaining after deduction of the approved Enhancement Payment to Plaintiff, Attorneys' Fees
15 and Costs, and Settlement Administration Costs.

16 15. "PAGA Period" means the period of November 11, 2021, through the date that
17 the Court grants approval of the settlement.

18 16. "Parties" means Plaintiff and Defendant, together.

19 17. "Plaintiff" means Luis Ramos.

20 18. "Released Claims" means all claims, debts, liabilities, demands, obligations,
21 guarantees, costs, expenses, attorneys' fees, damages, action or causes of action contingent or
22 accrued for, during the time period of November 7, 2021 through the date that the Court grants
23 approval of the settlement, arising out of the PAGA claim asserted in the operative complaint
24 and/or the LWDA letter based upon the following: 1) failure to provide meal periods; 2) failure
25 to provide rest periods; 3) failure to pay overtime wages, 4) failure to timely pay wages; 5) failure
26 to pay all wages due to discharged and quitting employees; 6) failure to furnish accurate itemized
27 wage statements; 7) failure to maintain records; and 8) failure to provide sick leave. This release
28 shall only include a release for PAGA claims under California Labor Code Sections 201-203,

204, 210, 226, 226.2, 226.3, 226.7, 246, 300, 510, 512, 558, 1174, 1174.5 1194, 1197, and 1198.

19. "Released Parties" means Defendant and any and all past and present parents, affiliated companies, subsidiaries, divisions, predecessors, successors, subsidiaries of Defendant, and each of its respective past, present, and future parents, affiliated companies including but not limited to subsidiaries, divisions, predecessors, successors, partners, joint venturers, shareholders, consultants, advisors, insurers, reinsurers and assigns and each of their past, present and future officers, investors, directors, executives, trustees, agents, employees, attorneys, representatives, benefit plans sponsored or administered by the Released Parties, and any other persons or entities acting on behalf of or in concert with any of the foregoing.

20. "Settlement Administration Costs" means the fees and expenses reasonably incurred by the Settlement Administrator as a result of the procedures and processes expressly required for completion of the settlement and by this Agreement, which are estimated at \$2,645. Any portion of the Settlement Administration Costs not used or approved by the Court shall be added to the PAGA Penalties Fund.

21. "Settlement Administrator" means Phoenix Settlement Administrators.

C. PAYMENT OF CONSIDERATION

1. Settlement Consideration. Defendant shall pay the sum of the Gross Settlement Amount as specified in this Agreement, which shall be used to pay: (1) Individual Settlement Payments; (2) Attorneys' Fees and Costs; (3) Enhancement Payment; (4) Settlement Administration Costs; and (5) payment to the LWDA. The Parties agree that this is a non-reversionary Settlement and that no portion of the Gross Settlement Amount shall revert to Defendant. Payment shall be made to the Settlement Administrator for disbursement in accordance with the Court's order and judgment approving the PAGA Settlement.

2. Escalator Clause. The Gross Settlement Amount was calculated with, and is premised on, Defendant's representation that Aggrieved Employees worked approximately 352 compensable workweeks in California during the PAGA Period ("Affected Pay Periods"). If the actual number of compensable workweeks is determined to be more than 352 as represented by Defendant, the Gross Settlement Amount will be increased on a pro rata basis according to the

1 number of additional Compensable Workweeks identified (i.e., all Compensable Workweeks
2 beyond 352). Defendant shall also be responsible for any settlement administration costs of this
3 additional payment, which will not be taken out of the additional payment but will be separately
4 paid for.

5 3. Funding of the Gross Settlement Amount. In exchange for the releases,
6 obligations, and promises set forth in this Agreement (and subject to the terms and conditions
7 contained in this Agreement), Defendant is responsible for paying \$10,000 within sixty (60) days
8 from January 22, 2024 with the Settlement Administrator, and make monthly payments thereafter
9 in the amount of \$2,500, until the entire Gross Settlement Amount is paid in full, in accordance
10 with the schedule set forth in **Exhibit B** which is attached to this Agreement. All interest that is
11 earned shall be allocated to the PAGA Penalties Fund. The Parties agree to cooperate with the
12 Settlement Administrator and one another to the extent reasonably necessary to carry out the
13 provisions of this Section.

14 4. Allocation of the PAGA Penalties Fund. The PAGA Penalties Fund shall be used
15 to satisfy Individual Settlement Payments to Aggrieved Employees and payment to the LWDA
16 in accordance with the terms of this Agreement. The PAGA Penalties Fund is the maximum
17 amount that will be available for distribution to the LWDA and Aggrieved Employees in full
18 satisfaction of all Released Claims. Pursuant to PAGA, seventy-five percent (75%) of the PAGA
19 Penalties Fund will be paid to the LWDA, and the remaining twenty-five percent (25%), will be
20 paid to all Aggrieved Employees ("Net PAGA Payment").

21 5. Calculation of Individual Settlement Payment. The Settlement Administrator
22 shall calculate the Individual Settlement Payments by dividing the Net PAGA Payment by the
23 total number of Affected Pay Periods. That value will then be multiplied by the number of pay
24 periods worked by each respective Aggrieved Employee during the PAGA Period. Aggrieved
25 Employees are entitled to 100% of the Net PAGA Payment.

26 6. Tax Treatment of Individual Settlement Payment. All Individual Settlement
27 Payments shall be allocated as 100% as penalties. The amount of payments shall be reported on
28 an IRS Form 1099 (to the extent required by law) by the Settlement Administrator and shall not

1 be subject to local, state or federal tax withholdings.

2 7. No Credit Toward Benefit Plans. Payments to Aggrieved Employees as
3 referenced herein will not be utilized to calculate any additional benefits under any benefit plans
4 to which any Aggrieved Employee may be eligible, including, but not limited to profit-sharing
5 plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO
6 plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement
7 Agreement will not affect any rights, contributions, or amounts to which any Aggrieved
8 Employee may be entitled under any benefit plans.

9 8. Enhancement Payment. Defendant agrees not to oppose or impede any
10 application or motion by Plaintiff for an Enhancement Payment of up to Six Thousand Dollars
11 (\$6,000.00) to Plaintiff. The Enhancement Payment shall be paid from the Gross Settlement
12 Amount, and shall be paid in addition to Plaintiff's Individual Settlement Payment as an
13 Aggrieved Employee. It is understood by Plaintiff that the Court has final discretion in any
14 Enhancement Payment. The Settlement Administrator shall issue an IRS Form 1099 to Plaintiff
15 reflecting the Enhancement Payment. Plaintiff shall be solely and legally responsible to pay any
16 and all applicable taxes on his Enhancement Payment and shall hold harmless Defendant from
17 any claim or liability for taxes, penalties, or interest arising as a result of the Enhancement
18 Payment. Any portion of the Enhancement Payment not awarded to Plaintiff shall be added to
19 the PAGA Penalties Fund and shall be distributed to Aggrieved Employees as provided in this
20 Agreement.

21 8. Attorneys' Fees and Costs. In full satisfaction of all claims Plaintiff may have for
22 attorneys' fees, litigation costs, and expenses arising out of the Action, Defendant agrees that
23 Plaintiff's Counsel may apply to the Court for an amount of reasonable attorneys' fees not to
24 exceed Twenty-Four Thousand Dollars and Zero Cents (\$24,000) and will request actual costs,
25 up to a maximum of Fifteen Thousand Dollars and Zero Cents (\$15,000) ("Attorneys' Fees and
26 Costs"), pursuant to PAGA, which provides for the recovery of attorneys' fees and costs, which
27 shall be paid from the Gross Settlement Amount. The Settlement Administrator shall issue an
28 IRS Form 1099 to Plaintiff's Counsel reflecting the awarded attorneys' fees, costs, and expenses.

1 The Parties understand that the Court makes the final determination on the award of Attorneys'
2 Fees and Costs, and that any portion of these amounts not awarded as Attorneys' Fees and Costs
3 shall be added to the PAGA Penalties Fund and distributed to Aggrieved Employees and LWDA
4 as provided in this Agreement.

5 9. Settlement Administration Costs. The Settlement Administrator shall be paid for
6 the reasonable costs of administration of the Settlement from the Gross Settlement Amount,
7 currently estimated at \$2,645. These costs, which shall be paid from the Gross Settlement
8 Amount, shall include, *inter alia*, the required tax reporting on the Individual Settlement
9 Payments, the issuance of Form 1099 IRS forms, and providing necessary reports and
10 declarations. Any portion of the Settlement Administration Costs not allowed shall be added to
11 the PAGA Penalties Fund and shall be distributed to Aggrieved Employees and the LWDA as
12 provided in this Agreement.

13 **D. ADMINISTRATION OF SETTLEMENT**

14 1. Approval of PAGA Settlement. Plaintiff's Counsel shall request the entry of an
15 order granting approval of the Settlement, which shall include findings and orders: (i) approving
16 the Settlement, (ii) adjudging the terms to be fair, reasonable, and adequate and binding on the
17 State of California, (iii) reciting the release terms, (iv) directing that the Settlement's terms and
18 provisions be carried out; (v) entering final judgment in accordance with this Agreement and
19 without further fees or costs to any party except as expressly set forth in this Agreement; and (vi)
20 retaining jurisdiction to oversee administration and enforcement of the terms of this Agreement
21 and the Court's orders. Plaintiff's motion shall be unopposed by Defendant, unless Plaintiff's
22 approval motion seeks relief inconsistent with or not specified by this Agreement. In such event,
23 Defendant reserves the right to address any assertions that are not contained in this Agreement.

24 2. Settlement Administration. The Parties agree to cooperate in the administration
25 of the Settlement and to make all reasonable efforts to control and minimize the costs and
26 expenses incurred in the administration of the Settlement. The Settlement Administrator shall
27 provide the following services:

28 a. Calculate the Individual Settlement Payment to be paid to each Aggrieved

- 1 Employee in accordance with the terms and provisions of this Agreement;
- 2 b. Print and issue Individual Settlement Payment checks;
- 3 c. Verify the last known address for each Aggrieved Employee through a
- 4 generally utilized, national address update database prior to mailing the
- 5 Individual Settlement Payment check;
- 6 d. Disburse any awards of costs and attorneys' fees;
- 7 e. Prepare and issue 1099 Forms; and
- 8 f. Perform such other tasks necessary to effectuate the terms of this
- 9 Agreement or as the Parties mutually agree or the Court orders the Parties
- 10 to perform.

11 3. Delivery of the Aggrieved Employee List and Data. Within fourteen (14) calendar

12 days after the Effective Date, Defendant shall provide the Settlement Administrator with a

13 Microsoft Office Excel spreadsheet and shall include each Aggrieved Employee's: full name;

14 employee number; most recent mailing address; social security number; and the number of

15 Affected Pay Periods worked by the employee during the PAGA Period.

16 4. Timing of Distribution. Within fourteen (14) calendar days after the payment of

17 the entire Gross Settlement Amount, the Settlement Administrator will issue payments to: (a)

18 Aggrieved Employees; (b) the Labor and Workforce Development Agency; (c) Plaintiff; and (d)

19 Plaintiff's Counsel. The Settlement Administrator will issue the appropriate tax forms for all

20 payments issued under this Settlement.

21 5. Mailing of Individual Settlement Payments to Aggrieved Employees:

22 a. On the Payment Date, the Settlement Administrator will mail to each

23 Aggrieved Employee, via first-class United States Mail, the following: (a) the PAGA Settlement

24 Notice in English and Spanish, attached as **Exhibit C**; and (b) their Individual PAGA Payment

25 (collectively, the "PAGA Packet").

26 b. Prior to mailing, the Settlement Administrator will update all addresses

27 using the National Change of Address System (NCOA). In the event that a PAGA Packet is

28 returned to the Settlement Administrator with a forwarding address, the Settlement Administrator

1 will re-send the PAGA Packet to the forwarding address identified. If no forwarding address is
2 provided, then the Settlement Administrator will promptly conduct a "standard search,"
3 sometimes called, "Skip Trace" or "Credit Header" searches, to locate a better address. If a better
4 address is found, the Settlement Administrator will promptly re-send the PAGA Packet. If a
5 better address is not found or the PAGA Packet is ultimately returned without a forwarding
6 address, neither the Settlement Administrator, Defendants, or PAGA Counsel shall be required
7 to take further action.

8 c. Aggrieved Employees shall have 180 calendar days after the date the
9 PAGA Packet is mailed to them to cash their settlement payment checks. If any Aggrieved
10 Employee's check is not cashed within that period, the settlement payment check will be voided
11 and a stop-payment will be issued. Neither Defendant, Defendant's counsel, Plaintiff, nor PAGA
12 Counsel will have any liability for lost or stolen settlement payment checks, forged signatures on
13 settlement payment checks, unauthorized negotiation of settlement payment checks or failure to
14 timely cash a settlement payment check within the 180-day period.

15 d. Any unpaid cash residue or unclaimed Aggrieved Employee funds, plus
16 any accrued interest that has not otherwise been distributed pursuant to order of the Court, shall
17 be transmitted to Legal Aid at Work.

18 **E. RELEASE OF CLAIMS**

19 6. Release of Claims by Aggrieved Employees. Upon the payment of the Gross
20 Settlement Amount by Defendant, Plaintiff and all Aggrieved Employees, hereby do and shall
21 be deemed to have fully and finally released and discharged the Released Parties from all
22 Released Claims that that arose during the time period of November 11, 2021 through the date
23 that the Court grants approval of the settlement, arising out of the PAGA claim asserted in the
24 operative complaint and/or the LWDA letter, including any related claims for attorneys' fees,
25 costs, or interest resulting therefrom. It is understood and agreed that this Agreement neither
26 releases the Released Parties from liability, if any, to Aggrieved Employees for violations of any
27 predicate statutes other than PAGA, nor effects a waiver of claims by Aggrieved Employees
28 against the Released Parties for any individual wage and hour claims.

1 7. No Right to Opt-Out. The Parties agree there is no statutory right for any
2 Aggrieved Employee to opt out or otherwise exclude himself or herself from the Settlement.

3 8. General Release and Waiver of Claims by Plaintiff. Plaintiff (on behalf of himself
4 and his spouse, heirs, executors, administrators, trustees, and/or permitted assigns) also agrees to
5 a general release of any and all claims against Releasees—which shall include without limitation
6 any and all claims which in any way relate to his employment with Defendant or cessation
7 thereof, under State or Federal law, in tort, common law, statute, contract, or equity, whether
8 pled in the Complaint or not, including but not limited to any claims under the FLSA, Title VII,
9 ADA, FEHA, ADEA, PAGA, California Labor Code, or any Industrial Welfare Commission
10 Wage Order—now existing or arising in the future, based on any act, omission, event,
11 occurrence, or nonoccurrence from the beginning of time to the date of execution hereof. Plaintiff
12 further expressly waives and relinquishes, to the fullest extent permitted by law, the provisions,
13 rights and benefits of Section 1542 of the California Civil Code, which provides: “**A general
14 release does not extend to claims that the creditor or releasing party does not know or
15 suspect to exist in his or her favor at the time of executing the release and that, if known by
16 him or her, would have materially affected his or her settlement with the debtor or released
17 party.**” Notwithstanding the provisions of section 1542, and for the purpose of implementing a
18 full and complete release and discharge of all of their Released Claims, Plaintiff expressly
19 acknowledges that this Settlement is intended to include in its effect, without limitation, all
20 Released Claims which Plaintiff does not know or suspects to exist in his favor at the time of
21 execution hereof, and that the Settlement contemplates the extinguishment of all such Released
22 Claims. This excludes Plaintiff’s individual wrongful termination and retaliation causes of action
23 pursuant to Labor Code Section 1102.5, which the Parties have agreed to settle for \$5,000.00
24 which will be set forth in a separate individual settlement agreement.

25 9. No Additional Attorneys’ Fees or Costs. The Parties agree to bear their own
26 attorneys’ fees and costs related to this Action except as specifically provided in this Agreement
27 with respect to Attorneys’ Fees and Cost.
28

1 **F. MISCELLANEOUS**

2 1. Tax Liability. Defendant, Defendant's counsel, the Settlement Administrator, and
3 Plaintiff's Counsel make no representation as to the tax treatment or legal effect of the payments
4 called for hereunder, and Plaintiff and Aggrieved Employees are not relying on any statement,
5 representation, or calculation by Defendant, Defendant's counsel, Plaintiff's Counsel, or by the
6 Settlement Administrator in this regard. Plaintiff and Aggrieved Employees understand and agree
7 that they will be solely responsible for the payment of any and all taxes and penalties assessed
8 on their respective payments described herein and will defend, indemnify, and hold Defendant,
9 Defendant's counsel, Plaintiff's Counsel and the Settlement Administrator free and harmless
10 from and against any claims resulting from treatment of such payments as non-taxable
11 penalties/damages.

12 2. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
13 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY
14 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER
15 PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
16 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN
17 OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR
18 WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR
19 DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX
20 ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT
21 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY
22 (A) HAS RELIED EXCLUSIVELY UPON HIS OR ITS OWN, INDEPENDENT LEGAL AND
23 TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH
24 THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON
25 THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR
26 TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
27 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
28 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE

1 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
2 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
3 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
4 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
5 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
6 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
7 AGREEMENT.

8 3. No Prior Assignments. The Parties and their counsel represent, covenant, and
9 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported
10 to assign, transfer, or encumber to any person or entity any portion of any liability, claim,
11 demand, action, cause of action or right herein released and discharged. None of the rights,
12 commitments, or obligations recognized under this Agreement may be assigned by any Party,
13 Plaintiff's Counsel, or Defense Counsel without the express written consent of each Party.
14 Plaintiff expressly warrants that Plaintiff has not transferred to any person or entity any right or
15 cause of action, or claim released by this Agreement.

16 4. Nullification of Settlement Agreement. In the event that: (i) the Court does not
17 approve the Settlement as provided herein; or (ii) the Settlement does not become final for any
18 other reason, then this Settlement Agreement, and any documents generated to bring it into effect,
19 will be null and void, and the Parties will be returned to their original respective positions.

20 5. Continued Jurisdiction. After entry of the judgment, the Court will have
21 continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement
22 of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-Court
23 Approval matters as may be appropriate under court rules or as set forth in this Settlement.

24 6. Entire Agreement. This Settlement Agreement constitutes the entirety of the
25 Parties' settlement terms. No other prior or contemporaneous written or oral agreements may be
26 deemed binding on the Parties.

27 7. Amendment or Modification. This Settlement Agreement may be amended or
28 modified only by a written instrument, signed by either the Parties or their successors-in-interest

1 or counsel for all Parties.

2 8. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant
3 and represent they are expressly authorized by the Parties whom they represent to negotiate this
4 Agreement and to take all appropriate action required or permitted to be taken by such Parties
5 pursuant to this Agreement to effectuate its terms and to execute any other documents required
6 to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each
7 other and use their best efforts to effect the implementation of the Settlement. If the Parties are
8 unable to reach agreement on the form or content of any document needed to implement the
9 Settlement, or on any supplemental provisions that may become necessary to effectuate the terms
10 of this Agreement, the Parties may seek the assistance of the Court to resolve such disagreement.

11 9. Binding on Successors and Assigns. This Settlement Agreement will be binding
12 upon, and inure to the benefit of, the successors or assigns of the Parties hereto.

13 10. California Law Governs. All terms of this Settlement Agreement will be governed
14 by and interpreted according to the laws of the State of California.

15 11. Execution and Counterparts. This Agreement is subject only to the execution of
16 all Parties. However, the Agreement may be executed in one or more counterparts. All executed
17 counterparts and each of them, including facsimile and scanned copies of the signature page, will
18 be deemed to be one and the same instrument provided that counsel for the Parties will exchange
19 among themselves original signed counterparts.

20 12. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe
21 this Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at
22 this Settlement after arm's-length negotiations. The Parties further acknowledge that they are
23 each represented by competent counsel and that they have had an opportunity to consult with
24 their counsel regarding the fairness and reasonableness of this Settlement.

25 13. Invalidity of Any Provision. Before declaring any provision of this Agreement
26 invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible
27 consistent with applicable precedents so as to define all provisions of this Agreement valid and
28 enforceable. If any provision of this Agreement is or becomes invalid or unenforceable in any

1 respect, the validity and enforceability of the remaining provisions contained herein shall not be
2 affected.

3 14. Captions. The captions and section numbers in this Agreement are inserted for the
4 reader's convenience, and in no way define, limit, construe or describe the scope or intent of the
5 provisions of this Agreement.

6 15. Waiver. No waiver of any condition or covenant contained in this Agreement or
7 failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
8 constitute a further waiver by such party of the same or any other condition, covenant, right or
9 remedy.

10 16. Enforcement Action. In the event that one or more of the Parties institutes any
11 legal action or other proceeding against any other Party or Parties to enforce the provisions of
12 this Settlement or to declare rights and/or obligations under this Settlement, the successful Party
13 or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys'
14 fees and costs, including expert witness fees incurred in connection with any enforcement
15 actions.

16 17. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
17 and conditions of this Agreement. Accordingly, this Agreement will not be construed more
18 strictly against one party than another merely by virtue of the fact that it may have been prepared
19 by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations
20 between the Parties, all Parties have contributed to the preparation of this Agreement.

21 18. Representation by Counsel. The Parties acknowledge that they have been
22 represented by counsel throughout all negotiations that preceded the execution of this Agreement,
23 and that this Agreement has been executed with the consent and advice of counsel, and reviewed
24 in full.

25 19. Binding Agreement. The Parties warrant that they understand and have full
26 authority to enter into this Settlement, and further intend that this Agreement will be fully
27 enforceable and binding on all parties, and agree that it will be admissible and subject to
28 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality

provisions that otherwise might apply under federal or state law.

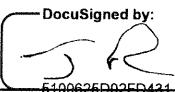
20. Denial of Liability. The Parties expressly recognize that the making of this Agreement does not in any way constitute an admission or concession of wrongdoing on the part of Defendant. Nothing in this Settlement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of this Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Agreement may be used in any proceeding in the Court that has as its purpose the interpretation, implementation, or enforcement of the Settlement or any orders or judgments of the Court entered into in connection therewith, including, without limitation, by Defendant should any party seek relief against any of the Released Parties on any Released Claims.

IN WITNESS WHEREOF, the undersigned Settling Parties and their duly authorized representatives accept and agree to the terms of this Agreement and hereby execute it voluntarily and with a full understanding of its consequences.

DATE: [Date] 3/14/2024

PLAINTIFF LUIS RAMOS

By:

DocuSigned by:

 6490626D02FD431...

Plaintiff Luis Ramos

DEFENDANT TAQUERIA MILAGRO, INC.

DATE: March 11, 2024

By:

DocuSigned by:

 027ED289BF9E45C

Melissa Valenzuela, CEO of TAQUERIA MILAGRO, INC.

1 **APPROVED AS TO FORM ONLY:**

2
3 DATE:

March 11, 2024
[Signature]

LAW OFFICE OF SCOTT ERNEST WHEELER

4
5 By:

[Signature]

6 SCOTT ERNEST WHEELER
JUSTIN A. WHEELER

7 THE WAND LAW FIRM, P.C.
AUBRY WAND

8 Attorneys for Plaintiff and the other Aggrieved
9 Employees

10
11 DATE:

March 11, 2024

HENSHAW LAW OFFICE

12
13 By:

[Signature]

14 DAVID S. HENSHAW

15 Attorney for Defendant,
16 TAQUERIA MILAGRO, INC.

LAW OFFICE OF SCOTT ERNEST WHEELER

Scott Ernest Wheeler (SBN 187998)

Justin A. Wheeler (SBN 342226)

250 West First Street, Suite 216

Claremont, California 91711

Telephone: (909) 621-4988

Facsimile: (909) 621-4622

Email: sew@scottwheelerlawoffice.com

jaw@scottwheelerlawoffice.com

THE WAND LAW FIRM, P.C.

Aubry Wand (SBN 281207)

100 Oceangate, Suite 1200

Long Beach, California 90802

Telephone: (310) 590-4503

Email: awand@wandlawfirm.com

Attorneys for Plaintiff and the other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

LUIS RAMOS, individually, and on behalf of
all other aggrieved employees,

Plaintiff,

v.

TAQUERIA MILAGRO, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.: 23CV409955

**[PROPOSED] FINAL ORDER AND
JUDGMENT**

1 **[PROPOSED] FINAL ORDER AND JUDGMENT**

2 The Court has before it the Plaintiff's Motion for Approval of PAGA Settlement,¹ and
3 determining that the Settlement provides genuine and meaningful relief that benefits the public, is
4 fair, adequate, reasonable, and otherwise being fully informed and good cause appearing therefor,
5 it is hereby ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

6 1. Unless otherwise provided herein, all capitalized terms used herein shall have the
7 same meaning as defined in the Stipulation and Agreement for PAGA Representative Action
8 Settlement ("Settlement Agreement"). The Court has jurisdiction over the subject matter of this
9 lawsuit and all matters relating thereto, and over all parties to the action.

10 2. The Court finds that the Settlement has been reached as a result of serious and non-
11 collusive, arm's-length negotiations. The Court has considered the nature of the claims, the
12 procedural history of this case, the amounts to be paid under the Settlement, the involvement of an
13 experienced private mediator to facilitate the Settlement, the risks of continued litigation that
14 Plaintiff would face, the civil penalties recoverable if Plaintiff were to prevail at trial on their
15 theories of liability under their PAGA claim, the allocation of settlement proceeds among the
16 Aggrieved Employees, and the fact that a settlement represents a compromise of the Parties'
17 respective positions rather than the result of a finding of liability at trial.

18 3. The Court hereby finds the Settlement involves the resolution of a bona fide dispute,
19 was entered into in good faith, and is fair, reasonable, and adequate. The Court also finds that the
20 Settlement provides genuine and meaningful relief that benefits the public consistent with the
21 purpose of the Private Attorneys General Act of 2004, California Labor Code § 2699, *et seq.*

22 4. The Court therefore approves the Settlement as set forth in the Settlement
23 Agreement and directs the Parties to effectuate the Settlement according to the terms set forth in the
24 Settlement Agreement.

25 ///

26 _____
27 ¹ The Court has also reviewed and considered the records and files of this case, as well as all
28 documents submitted in connection with the Parties' Stipulation for Approval of PAGA Settlement,
and all declarations.

1 5. Neither the Settlement nor any of the terms set forth in the Settlement Agreement are
2 admissions by Defendant, or any of the other Released Parties, of liability on any of the allegations
3 alleged in the Action, nor is this Order a finding of the validity of any claims in the Action, or of
4 any wrong doing by the Defendant, or any of the other Released Parties.

5 6. The Court finds that Plaintiff's Counsel has adequately represented Plaintiff, the
6 Aggrieved Employees, and the LWDA throughout the litigation and for purposes of entering into
7 and implementing the Settlement.

8 7. The Court finds that the PAGA Gross Settlement Amount ("GSA") of \$70,000.00 to
9 be distributed as set forth herein and in the Settlement Agreement, is in all respects fair, reasonable,
10 and adequate and is hereby approved. *See* California Labor Code § 2699(1)(2).

11 8. Pursuant to the terms of the Settlement, Administration Costs in the amount of
12 \$ _____, which are necessary and reasonable to administer the Settlement, are hereby
13 granted and shall be paid to Phoenix, the designated third-party Claims Administrator.

14 9. Pursuant to the terms of the Settlement, the requested attorneys' fees in the amount
15 of \$24,000 are reasonable under the common fund method. The GSA of \$70,000.00 represents a
16 true and common fund, as Defendant must pay the full GSA pursuant to the Settlement Agreement,
17 and no portion of the GSA will return to Defendant under any circumstances. Attorneys who recover
18 a common fund are entitled to a reasonable fee award from the fund. *See, e.g., Boeing Co. v. Van*
19 *Gemert* (1980) 444 U.S. 472, 478 ("a litigant or a lawyer who recovers a common fund for the
20 benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the
21 fund as a whole."); *In re Washington Public Power Supply Sys. Sec. Litig.* (9th Cir. 1994) 19 F.3d
22 1291, 1300 ("[T]hose who benefit from the creation of the fund should share the wealth with the
23 lawyers whose skill and effort helped create it."); *Serrano v. Priest* (1977) 20 Cal.3d 25, 34
24 ("[W]hen a number of persons are entitled in common to a specific fund, and an action brought by
25 a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such
26 plaintiff or plaintiffs may be awarded attorney's fees out of the fund. [Citations.]").

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10. Moreover, one-third or more of the common fund is standard in settlements similar to this one. *See, e.g., Laffitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480, 506 (approving fees of one-third of the common fund); *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558 n.13 (“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”); *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (recognizing that fee awards in class actions average around one-third of the recovery”). Courts also regularly approve fee awards in excess of one-third of the fund. *See, e.g., Scott, et al. v. Kuehne+Nagel, Inc.*, Cal. Sup. Ct. San Bernardino Cty. No. CIVDS1707477 (awarding 35% of the common fund); *Cubillas v. Dav-El Los Angeles*, 2018 WL 3760657, at *3-4 (Cal. Sup. Ct.) (awarding 40% of the common fund); *Weber v. Einstein Noah Restaurant Group, Inc.*, No. 37-2008-00077680 (San Diego Super. Ct.) (awarding 40% of the common fund); *Crandall v. U-Haul Intl., Inc.*, No. BC178775 (L.A. Super. Ct.) (awarding 40% of the common fund).

11. The Settlement Agreement provides that Plaintiff’s counsel may seek reimbursement costs in the amount of up to \$15,000.00. The Court further finds that Plaintiff’s counsel’s actual litigation costs in the amount of \$_____ are reasonable and were necessary to prosecute the action. The remainder of \$_____ shall return to the Net Settlement Amount.

12. Accordingly, and consistent with California Labor Code § 2699(g)(1), which authorizes an award of attorneys’ fees and costs, the requested attorneys’ fees in the amount of \$_____ and litigation costs in the amount of \$_____ (totaling \$_____), are hereby granted, and the fees and costs to each firm shall be paid to Plaintiff’s counsel as follows: \$_____ to the Law Office of Scott E. Wheeler and \$_____ to the Wand Law Firm, P.C.

13. Pursuant to the terms of the Settlement, a payment in the amount of \$6,000.00 for the named Plaintiff, in recognition of his efforts in prosecuting this action for the benefit of the State of California and Aggrieved Employees. Comparable service awards are routinely issued to named plaintiffs in analogous wage-and-hour class and/or PAGA representative action settlements. *See, e.g., Covillo v. Specialtys Cafe*, 2014 WL 954516, at *8 (N.D. Cal. Mar. 6, 2014) (awarding \$8,000

1 each to two named plaintiffs, noting that “the incentive awards are particularly appropriate in this
2 wage and hour class action, where Plaintiffs undertook a significant ‘reputational risk’ in bringing
3 this action against their former employer.”); *Alikhan v. Goodrich Corp.*, 2020 WL 4919382, at *
4 (C.D. Cal. Jun. 25, 2020) (approving a \$10,000 service award); *Abelar v. American Residential*
5 *Services, L.L.C.*, 2019 WL 6054607, at *6 (C.D. Cal. Nov. 14, 2019) (approving PAGA only
6 settlement and holding “[t]he service award of \$5000 is reasonable compensation for the time and
7 acceptance of adverse employment risk by Plaintiff.”); *Garcia v. Macy’s West Stores, Inc.*, San
8 Bernardino County Superior Court, Case No. CIVDS1515007 (Sept. 13, 2017) (awarding the PAGA
9 plaintiff a service award of \$10,000).

10 14. After deducting administration costs, attorneys’ fees and costs, and the service
11 awards from the GSA, the remainder of \$ _____, consistent with California Labor Code §
12 2699(i), shall be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%)
13 to Aggrieved Employees. Accordingly, \$ _____ shall be paid to the LWDA, and
14 \$ _____ shall be paid to Aggrieved Employees. The payments to the Aggrieved Employees
15 will be paid proportionally based on the number of pay periods that each individual employee
16 worked for Defendant during the Covered Period.

17 15. Upon the date that Defendant fully funds the GSA, Plaintiff, as the representative for
18 the State of California, and on behalf of Aggrieved Employees, will forever completely release and
19 discharge Defendant and the Released Parties from all claims set forth in Section 9 of the
20 Agreement, which includes all claims that were, or reasonably could have been, alleged, based on
21 the facts contained in the Consolidated Complaint and in the PAGA Letters, including, but not
22 limited to, any claim for: 1) failure to provide meal periods; 2) failure to provide rest periods; 3)
23 failure to pay overtime wages; 4) failure to timely pay wages; 5) failure to pay all wages due to
24 discharged and quitting employees; 6) failure to furnish accurate itemized wage statements; 7)
25 failure to maintain records; and 8) failure to provide sick leave. This release shall only include a
26 release for PAGA claims under California Labor Code Sections 201-203, 204, 210, 226, 226.2,
27 226.3, 226.7, 246, 300, 510, 512, 558, 1174, 1174.5 1194, 1197, and 1198.

1 16. The terms of the Settlement Agreement, and this Order, are binding on the Plaintiffs
2 and Aggrieved Employees, and those terms shall have res judicata and other preclusive effect in all
3 pending and future claims, lawsuits or other proceedings maintained by or on behalf of Aggrieved
4 Employees, to the extent those claims, lawsuits or other proceedings constitute Released Claims as
5 set forth in the Settlement Agreement.

6 17. Neither this Order nor the Settlement Agreement (nor any other document referred
7 to herein, nor any action taken to carry out this Order) is, may be construed as, or may be used as,
8 an admission or concession by or against Defendant or the Released Parties of the validity of any
9 claim or actual or potential fault, wrongdoing, or liability. Neither this Order nor the Settlement can
10 be construed in any way as a Court finding of fact or legal ruling that Defendant violated the law,
11 and thus cannot be used to support subsequent violation penalty rates under the PAGA in a future
12 action. Entering into or carrying out the Settlement Agreement, and any negotiations or proceedings
13 related to it, shall not be considered as, or deemed evidence of, an admission or concession as to
14 Defendant's denials or defenses and shall not be offered or received in evidence in any action or
15 proceeding against any party hereto in any court, administrative agency or other tribunal for any
16 purpose whatsoever, except as evidence of the Settlement or to enforce the provisions of this Order
17 and the Settlement Agreement; provided, however, that this Order and the Settlement Agreement
18 may be filed in any action against or by Defendant or the Released Parties to support a defense of
19 res judicata, collateral estoppel, release, waiver, good-faith settlement, judgment bar or reduction,
20 full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or
21 counterclaim.

22 18. Judgment in this matter is entered in accordance with the terms of the Settlement
23 Agreement and Approval Order. This judgment is intended to be a final disposition of the above
24 captioned action in its entirety and is intended to be immediately appealable.

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1 19. The Court reserves exclusive and continuing jurisdiction over the lawsuit for the
2 purposes of supervising the implementation, enforcement, construction, administration, and
3 interpretation of the Settlement Agreement and this Order.

4 **IT IS SO ORDERED.**

5
6 DATED: _____

7
8 HONORABLE THEODORE C. ZAYNER
9 JUDGE OF THE SUPERIOR COURT
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EXHIBIT A

Installment Payment Number	Date	Amount
No. 1	3/22/2024	\$10,000
No. 2	4/1/2024	\$2,500
No. 3	5/1/2024	\$2,500
No. 4	6/1/2024	\$2,500
No. 5	7/1/2024	\$2,500
No. 6	8/1/2024	\$2,500
No. 7	9/1/2024	\$2,500
No. 8	10/1/2024	\$2,500
No. 9	11/1/2024	\$2,500
No. 10	12/1/2024	\$2,500
No. 11	1/1/2025	\$2,500
No. 12	2/1/2025	\$2,500
No. 13	3/1/2025	\$2,500
No. 14	4/1/2025	\$2,500
No. 15	5/1/2025	\$2,500
No. 16	6/1/2025	\$2,500
No. 17	7/1/2025	\$2,500
No. 18	8/1/2025	\$2,500
No. 19	9/1/2025	\$2,500
No. 20	10/1/2025	\$2,500
No. 21	11/1/2025	\$2,500
No. 22	12/1/2025	\$2,500
No. 23	1/1/2026	\$2,500
No. 24	2/1/2026	\$2,500
No. 25	3/1/2026	\$2,500

<<DATE>>
<<FIRST_NAME>> <<LAST_NAME>>
<<ADDRESS 1>>
<<ADDRESS 2>>

Re: Payment from PAGA Settlement

Dear <<FIRST_NAME>> <<LAST_NAME>>:

Enclosed is your payment from the settlement of the lawsuit entitled *Luis Ramos v. Taqueria Milagros, Inc.*, Santa Clara Superior Court, Case No. 23CV409955 (the "Lawsuit"). You are receiving this payment as your share of the Settlement. You have 180 days to cash or deposit the settlement check. If you do not negotiate your settlement check by on or before _____, those funds will be paid to State of California Department of Industrial Relations Unclaimed Wages Fund.

The Lawsuit was filed against Taqueria Milagro, Inc. ("Defendant") pursuant to the California Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* (called "PAGA"). The claim was brought on behalf of the State of California and all similarly situated aggrieved employees of Defendant. You have been identified as one of the employees on whose behalf the case was brought. The Plaintiff in the case claimed that Defendant owed penalties under PAGA for certain California Labor Code violations. Defendant denies that it did anything wrong or that they owe any penalties but nonetheless has agreed to resolve the PAGA claim raised in the Lawsuit without further court action.

The parties agreed to resolve the case, and as part of that settlement, Defendant agreed to pay a certain amount of money categorized as PAGA penalties. The Court approved the Settlement on _____. Under California law, any settlement of a PAGA case results in 75 percent of the awarded PAGA penalty being paid to the State of California and 25 percent of the penalty being paid to the employees who worked during the applicable period. In exchange for this payment, the settlement releases any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action contingent or accrued for, arising out of the PAGA claim asserted in the operative Complaint, for the period of November 11, 2021 through _____.

This Notice summarizes the Action and the basic terms of the Settlement. For more complete information, the pleadings and other records in this litigation may be examined during regular court hours at the Santa Clara Superior Court, located at 191 North First Street, San Jose, California 95113, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

If you have any questions about this payment, contact the Settlement Administrator at [CONTACT]. Please note that the Settlement Administrator cannot provide tax advice.