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Attorney for Defendants

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

YENNI EVEN GALVEZ GAMEZ, an individual;

Plaintiff,

v.

EL ANTOJITO CSC LLC, a California Limited Liability Company; JUVENTINO AGUILAR, an individual; JUVENTINO AGUILAR LOPEZ, an individual; BRYAN AGUILAR LOPEZ, an individual; and DOES 1 through 20, inclusive;

Defendants.

Case Number: 22STCV29228

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

[Filed concurrently with Declaration of Sarkis Sirmabekian, Esq.; and [Proposed] Order]

Plaintiff YENNI EVEN GALVEZ GAMEZ ("Plaintiff") and Defendants EL ANTOJITO CSC LLC, JUVENTINO AGUILAR, JUVENTINO AGUILAR LOPEZ and BRYAN AGUILAR LOPEZ ("Defendants") (collectively, "the Parties"), by and through their respective counsel of record, hereby stipulate as follows:

DEFINITIONS

1. "Action" means the Plaintiff's PAGA lawsuit alleging wage and hour violations against DEFENDANTS, Case No. 22STCV29228 initiated on September 8, 2022 and pending in Superior Court of the State of California, County of Los Angeles.
2. "Administrator" means Phoenix Settlement Administrators, the neutral entity the Parties have agreed to appoint to administer the Settlement.
3. "Administration Expenses Payment" means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator's "not to exceed" bid submitted to the Court in connection with approval of this Settlement.
4. "Aggrieved Employee" means a person employed by Defendants in California and classified as a current and former non- exempt employee who worked for Defendants during the PAGA Period.
5. "Court" means the Superior Court of California, County of Los Angeles.
6. "Defense Counsel" means The Law Offices of Thomas F. Nowland.
7. "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the day the Court enters Judgment
8. "Aggrieved Employees' Counsel" means Sarkis Sirmabekian, Esq. of Sirmabekian Law Firm, PC.
9. "Gross Settlement Amount" means \$165,000.00 which is the total amount Defendants agree to pay under the Settlement. The Gross Settlement Amount will be used to pay Plaintiff's Individual Settlement of \$65,000, Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator's Expenses Payment.
10. "Judgment" means the judgment entered by the Court based upon the Final Approval.

- 1 11. "LWDA" means the California Labor and Workforce Development Agency, the agency
2 entitled, under Labor Code section 2699, subd. (i).
- 3 12. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under
4 Labor Code section 2699, subd. (i).
- 5 13. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments
6 in the amounts approved by the Court: Plaintiff's Individual Settlement Payment, Individual
7 PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel
8 Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to
9 be paid to Aggrieved Employees as Individual PAGA Payments.
- 10 14. "PAGA Counsel" means Sirmabekian Law Firm, PC, the attorneys representing the Plaintiff
11 in the Action.
- 12 15. "PAGA Counsel Fees Payment" and "PAGA Counsel Litigation Expenses Payment" mean the
13 amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys' fees and
14 expenses, respectively, incurred to prosecute the Action.
- 15 16. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for
16 Defendants for at least one day during the PAGA Period.
- 17 17. "PAGA Period" means the period from July 5, 2021 through the date the Court enters the order
18 granting approval of the PAGA settlement.
- 19 18. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. Et seq.).
- 20 19. "PAGA Notice" means Plaintiffs September 8, 2022 letter to Defendants and the LWDA
21 providing notice pursuant to Labor Code section 2699.3, subd. (a).
- 22 20. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross
23 Settlement Amount, allocated 25% to the Aggrieved Employees (\$15,229.17) and the 75% to
24 LWDA (\$45,687.50) in settlement of PAGA claims.
- 25 21. "Plaintiff" means Yenni Even Galvez Gamez, the named plaintiff in the Action.
- 26 22. "Approval Order" means the proposed Court Order Granting Approval of PAGA Settlement.
- 27 23. "Released PAGA Claims" means the claims being released by the Plaintiff and PAGA Counsel
28 and as described in Paragraph 5 of the PAGA Settlement.

24. "Released Parties" means: DEFENDANTS and each of its former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, and assigns.

25. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

RECITALS

WHEREAS, the PAGA Settlement Agreement was fully executed on January 18, 2024, by and between plaintiff Yenni Even Galvez Gamez ("Plaintiff") and Defendants El Antojito CSC LLC, Juventino Aguilar, Juventino Aguilar Lopez, and Bryan Aguilar Lopez ("Defendants"). The Agreement refers to Plaintiff and Defendants collectively as "Parties," or individually as "Party."

WHEREAS, on or about September 8, 2022, Plaintiff by and through Plaintiff's counsel, sent a notice to the California Labor Workforce Development Agency ("LWDA") and Defendants (the "PAGA Notice") alleging that Defendants engaged in violations of the California Labor Code and California Wage Orders, seeking civil penalties pursuant to the California Labor Code Private Attorneys' General Act ("PAGA"). Pursuant to Labor Code section 2699.3, subd. (a), Plaintiff gave timely written notice to DEFENDANTS and the LWDA by sending the PAGA Notice.

WHEREAS, on or about November 18, 2022, Plaintiff commenced this Action by filing a Complaint alleging causes of action against DEFENDANTS for California wage and hour claims, PAGA, penalties, interest. The November 18, 2022 Complaint is the operative complaint in the Action (the "Operative Complaint.")[. DEFENDANTS denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.

WHEREAS, on or about January 18, 2024, the Parties participated in an all-day mediation presided over by Mark Lemke, Esq. which led to this Agreement to settle the Action. *Id. At §2.3.*

WHEREAS, The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement. *Id. At §2.5.*

WHEREAS, based on a review of its records to date, DEFENDANTS estimates there are 46 Aggrieved Employees who worked a total 3,187 of PAGA Pay Periods. *Id. At §4.1*

WHEREAS, Defendants vigorously dispute and deny the allegations and various causes of

action asserted in the Action, including, without limitation, Plaintiff's individual claims and the Aggrieved Employees' claim for civil penalties pursuant to PAGA;

WHEREAS, the Parties engaged in an informal exchange of documents and information including Defendants' financial records. The Parties have also conducted extensive independent investigation and evaluations of the claims and defenses in this matter. Both Plaintiff's counsel and Defendants' counsel have significant experience litigating and resolving the type of wage-and-hour claims alleged in the Action, including claims for civil penalties under PAGA;

WHEREAS, according to the PAGA Settlement Agreement, Plaintiff's "PAGA Claims" are defined as any and all claims for civil penalties pursuant to PAGA based on the allegations in Plaintiff's Complaints and/or PAGA Notices, broadly construed, including, but not limited to, civil penalties based on or arising from California Labor Code Sections 98.6, 200, 201, 201.5, 202, 203, 204, 205.5, 206, 206.5, 208, 210, 215, 216, 218.5, 221, 223, 224, 225.5, 226, 226(a)(1), 226(a)(5), 226(a)(8), 226(a)(9), 226(c), 226I(1), 226(f), 226.3, 226.6, 226.7, 226.8, 227.3, 233 *et seq.*, 246, 247, 432.5, 450, 500, 510, 512, 512(a), 551, 552, 553, 558, 558(a)(3), 558.1, 1102.5, 1174, 1174.5, 1175, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 1198.5, 1198.5(k), 1199, 1776, 2698 *et seq.*, 2699.3(c)(1), 2699(i), 2802 and 2810.5 *et seq.*, California Code of Civil Procedure Section 1021.5, 3294, California Constitution Article I § 8, Government Code Section 12926.1, 12940 *et seq.*, 12940(h) *et seq.*, 12940(m), 12940(n), 12945.2, 12945.2(c)(3)(C), 12965(b), 12965(c) California Business and Professions Code Section 17200 *et seq.*, and the California Wage Orders, whether known or unknown, suspected or unsuspected, concealed or hidden, that were alleged in the Action and/or the PAGA Notice, or that could have been alleged in the Action and/or PAGA Notices, which Plaintiff and any Aggrieved Employee have or had at any time through and including the Approval Date, against any of the Releases identified in the PAGA Settlement Agreement. A true and correct copy of the PAGA Settlement Agreement is attached hereto as "**EXHIBIT A**", and its defined terms are hereby incorporated by reference.

WHEREAS, California Labor Code Section 2699(l)(2) requires that this Court review and approve any settlement pursuant to PAGA.

WHEREAS, the Parties recognize that the issues presented in the Action are likely only to be resolved with extensive and costly discovery, pretrial and trial proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay and expense disproportionate to the potential benefits of litigation. The Parties agree that it reflects their good faith compromise of the claims raised in the Action, based upon their assessment of the mutual risks and costs of further litigation and the assessments of their respective counsel.

WHEREAS, the parties agree to fully cooperate to obtain approval of the settlement, pursuant to the terms set forth herein. The Parties also pledge their good faith effort and fair dealing in providing assistance and assent to a final Joint Stipulation for Settlement (or similar long-form Settlement Agreement), and in effectuating the terms of the settlement of Plaintiff's representative claims asserted in the Action.

WHEREAS, the Parties have concurrently submitted a copy of this PAGA Stipulation and PAGA Settlement Agreement to the LWDA in accordance with Labor Code Section 2699(1)(2), and a proof of service to the LWDA is attached hereto.

WHEREAS, in addition to individual settlements separately agreed upon between the Parties El Antojito Csc LLC, DEFENDANTS promises to pay \$100,000.00 and no more as the Gross Settlement Amount. DEFENDANTS has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants. *Id. at §3.1.*

WHEREAS, The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval, as follows: *Id. at §3.2.*

- i. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 33.33% which is currently estimated to be \$33,333.33 and PAGA Counsel Litigation Expenses Payment of not more than \$3,000.00. DEFENDANTS will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel

1 Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA
2 Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than
3 the amounts requested, the Administrator will allocate the remainder to the Net
4 Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any
5 other Plaintiffs Counsel arising from any claim to any portion any PAGA Counsel Fee
6 Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will
7 pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using
8 one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability
9 for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation
10 Expenses Payment and holds DEFENDANTS harmless, and indemnifies
11 DEFENDANTS, from any dispute or controversy regarding any division or sharing of
12 any of these Payments. *Id. at §3.2.1.*

13 ii. To the Administrator: An Administrator Expenses Payment not to exceed \$2,750.00
14 except for a showing of good cause and as approved by the Court. To the extent the
15 Administration Expenses are less or the Court approves payment less, the
16 Administrator will retain the remainder in the Net Settlement Amount. A true and
17 correct copy of a quote from the settlement administrator Phoenix is attached hereto as
18 **“EXHIBIT B”**. *Id. at §3.2.2.*

19 iii. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of
20 \$60,916.67 to be paid from the Gross Settlement Amount, with 75% (\$45,687.50)
21 allocated to the LWDA PAGA Payment and 25% (\$15,229.17) allocated to the
22 Individual PAGA Payments. *Id. at §3.2.3.*

23 aa. The Administrator will calculate each Individual PAGA Payment by (a) dividing
24 the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$15,229.17)
25 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees
26 during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's
27 PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and
28 liability for any taxes owed on their Individual PAGA Payment. *Id. at §3.2.3.1.*

1 bb. If the Court approves PAGA Penalties of less than the amount requested, the
2 Administrator will allocate the remainder to the Net Settlement Amount. The
3 Administrator will report the Individual PAGA Payments on IRS 1099 Forms. *Id. at*
4 §3.2.3.2.

5 **WHEREAS**, Plaintiff agrees that counsel for Plaintiff will notify the LWDA of the settlement
6 at the same time the settlement is submitted to the Court for approval, seek approval of the settlement,
7 and perform any and all statutory tasks as required by law.

8 **WHEREAS**, the Parties further agree that should the Court deny approval of the settlement
9 based on the allocation, the Parties agree to re-negotiate in good faith in an effort to obtain approval
10 of the settlement.

11 **WHEREAS**, Effective on the date when DEFENDANTS fully funds the entire Gross
12 Settlement Amount Plaintiff and PAGA Counsel will release claims against all Released Parties as
13 follows:

14 A. Plaintiff's Release. Plaintiff and his or her respective former and present spouses,
15 representatives, agents, attorneys (including PAGA Counsel), heirs, administrators,
16 successors, and assigns generally, release and discharge Released Parties from all claims,
17 transactions, or occurrences [that occurred during the PAGA Period], including, but not
18 limited to: (a) all claims that were, or reasonably could have been, alleged, based on the
19 facts contained in the Operative Complaint and the PAGA Notice“ ("Plaintiff's Release").
20 Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or
21 to any claims for vested benefits, unemployment benefits, disability benefits, social
22 security benefits, workers' compensation benefits that arose at any time, or based on
23 occurrences outside the PAGA Period. Plaintiff acknowledges that Plaintiff may discover
24 facts or law different from, or in addition to, the facts or law that Plaintiff now knows or
25 believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain
26 effective in all respects, notwithstanding such different or additional facts or Plaintiffs
27 discovery of them. *Id. at §5.1*
28

a. Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party. *Id. at §5.1.1.*

B. Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint [,] [and] the PAGA Notice. *Id. at §5.2*

C. Release by PAGA Counsel: PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice. *Id. at §5.3.*

WHEREAS, based on a review of its records to date, DEFENDANTS estimates there are 46 Aggrieved Employees who worked a total 3,187 of PAGA Pay Periods. *Id. at §4.1*

WHEREAS, within [15] days, DEFENDANTS will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. DEFENDANTS has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved

1 Employee Data omitted employee identifying information and to provide corrected or updated
2 Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by
3 which DEFENDANTS must send the Aggrieved Employee Data to the Administrator, the Parties and
4 their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any
5 issues related to missing or omitted Aggrieved Employee Data. *Id. at §4.2.*

6 **WHEREAS**, DEFENDANTS shall fully fund the Gross Settlement Amount by transmitting
7 the funds to the Administrator no later than [14] days after the Effective Date. *Id. at §4.3.*

8 **WHEREAS**, within [14] days after DEFENDANTS funds the Gross Settlement Amount, the
9 Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the
10 Administration Expenses Payment, the PAGA Counsel Expenses Payment. Disbursement of the
11 PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA
12 Payments. *Id. at §4.4.*

13 **WHEREAS**, discovery is stayed in the Action while the Parties work toward settlement and
14 court approval of the settlement. The Parties shall submit stipulations of settlement within 30 days of
15 execution of a full and complete settlement agreement, which fully executed settlement agreement
16 should occur within 45 days of the settlement.

17 **WHEREAS**, the Parties agree that this PAGA Settlement is not evidence that the operative
18 complaint filed in the Action by Plaintiff has any merit, nor does it constitute an admission of any
19 wrongdoing by Defendants. Defendants do not admit to liability or to the suitability of this case for
20 representative litigation other than for purposes of settlement. This PAGA Settlement will not be
21 deemed admissible in any other proceeding or in this proceeding other than to effectuate this
22 settlement. If the Court does not grant approval of this settlement, then the Parties revert to their
23 previous positions and Defendants will contend that a representative action is not appropriate.

24 **WHEREAS**, the Parties to this PAGA Settlement are represented by competent counsel, and
25 they have had an opportunity to consult with counsel. The Parties to this PAGA Settlement agree that
26 it reflects their good faith compromise of the claims raised in the Action, based upon their assessment
27 of the mutual risks and costs of further litigation and the assessments of their respective counsel.

28 **WHEREAS**, the Parties agree that this PAGA Settlement is confidential (except for purposes

1 of enforcement) and that no Party will communicate with or to anyone the settlement or anything to
2 do with the settlement, including, but not limited, to the issuance of any press release nor other public
3 or non-public representation regarding the settlement other than as necessary to obtain Court approval
4 and effectuate the terms of the settlement. The Parties and their counsel agree that they will not initiate
5 or have any contact with the press, respond to any press inquiry, or have any communication with the
6 press about this case.

7 **WHEREAS**, the Parties intend that this PAGA Settlement shall be fully enforceable and
8 binding upon all Parties, and that it shall be admissible and subject to disclosure in any proceeding to
9 enforce its terms under Code of Civil Procedure section 664.6 and any other applicable statute or law,
10 notwithstanding the mediation confidentiality provisions that otherwise might apply under local,
11 federal and state law.

12 **WHEREAS**, the Parties agree that the subsequent filing of a Joint Stipulation of Settlement
13 (or similar Settlement Agreement) is for settlement purposes only and if, for any reason, the settlement
14 is not approved, the Joint Stipulation of Settlement and this PAGA Settlement will be of no force or
15 effect.

16 **WHEREAS**, the Defendants shall not authorize or knowingly permit any disparaging or
17 critical statements in reference to Plaintiff's employment with Defendants. In response to requests for
18 employment verification, Defendants will only provide (i) dates of Plaintiff's employment and (ii)
19 position.

20 The Parties shall not make any disparaging or critical statement about, relating or pertaining
21 to, or otherwise involving each other.

22 **WHEREAS**, the Parties agree to jointly prepare and file an application or motion for approval
23 of this Settlement.

24 **WHEREAS**, Plaintiff will prepare and deliver to Defense Counsel all documents necessary
25 for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a
26 draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the
27 Administrator attaching a "not to exceed" bid for administering the Settlement and attesting to its
28 willingness to serve; competency; operative procedures for protecting the security of Aggrieved

1 Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other
2 misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees
3 or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel
4 or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely
5 transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code
6 section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (1)(1)), this
7 Agreement (Labor Code section 2699, subd. (1)(2)); (iv) a redlined version of the parties' Agreement
8 showing all modifications made to the Model Agreement ready for filing with the Court; and (v) all
9 facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the
10 Administrator. In their Declarations, Plaintiff and PAGA shall aver that they are not aware of any
11 other pending matter or action asserting claims that will be extinguished or adversely affected by the
12 Settlement.

13 **WHEREAS**, this Court shall retain jurisdiction to enforce the terms of the PAGA Settlement
14 Agreement pursuant to California Code of Civil Procedure Section 664.6; and

15 **NOW THEREFORE**, the Parties jointly request that the Court approve the PAGA Settlement
16 set forth in the PAGA Settlement Agreement and enter judgment accordingly to its terms.

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18
19 *[SIGNATURE PAGE FOLLOWS]*
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3 DATED: July 3, 2024

Sirmabekian Law Firm, PC

4
5 By: 

Sarkis Sirmabekian, Esq.
Attorney for Plaintiff

6
7
8
9
10 DATED: July 11, 2024

The Law Offices of Thomas F. Nowland

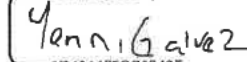
11
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13 By: 

Thomas F. Nowland, Esq.
Daniel A. Brodnax, Esq.
Kevin H. Ngai, Esq.
Attorney for Defendants

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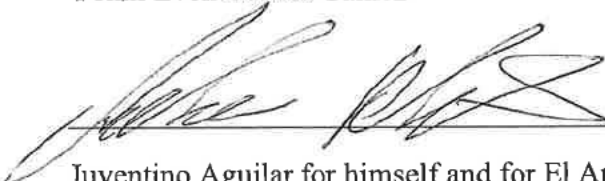
18 DATED: July __, 2024

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Yenni Even Galvez Gamez

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21 DATED: July 10, 2024


Juventino Aguilar for himself and for El Antojito CSC LLC

22
23
24 DATED: July 10, 2024


Juventino Aguilar Lopez

25
26
27 DATED: July 10, 2024


Bryan Aguilar Lopez

EXHIBIT A

MEMORANDUM OF UNDERSTANDING

Subject to approval by the Los Angeles County Superior Court and with the provision that this Memorandum of Understanding (“MOU”) will be further memorialized in a Joint Stipulation for Settlement (or similar long-form Settlement Agreement), the Parties hereby agree to the following binding settlement of Plaintiff YENNI EVEN GALVEZ GAMEZ (“Plaintiff”) individual and PAGA (Cal. Lab. Code § 2699, *et seq.*) claims designated as *Yenni Even Galvez Gamez v. El Antojito Csc LLC, et seq.*, Case No. 22STCV29228 (the “Action”).

The Parties attended a mediation on January 18, 2024. With the assistance of mediator Mark Lemke, Esq., the Parties reached the following binding agreement to resolve all the putative representative claims asserted in Plaintiff’s operative complaint in the Action.

NOW, THEREFORE, the Parties hereto agree as follows:

1. **Parties.** This MOU is entered into, on the date of the final signature below, by and between Plaintiff, on behalf of herself and “Aggrieved Employees” (defined below), on the one hand, and defendants *El Antojito CSC LLC, Juventino Aguilar, Juventino Aguilar Lopez, Bryan Aguilar Lopez* (collectively “ANTOJITO”), on the other hand, to memorialize the essential terms of the settlement of Plaintiff’s individual and representative claims asserted in the Action. Plaintiff and ANTOJITO may individually be referred to as a “Party” or collectively referred to as the “Parties” throughout this MOU.

2. **Enforceability.** This MOU becomes enforceable upon its execution by the signatories set forth below. The Parties agree to enter into a long-form, Joint Stipulation for Settlement (or similar long-form Settlement Agreement) that contains the terms set forth in this MOU and more specific information and procedures as required by law. Nonetheless, the Parties intend that the terms set forth herein in this MOU are fully enforceable by the Los Angeles County Superior Court upon motion of any Party.

3. **Duties Upon Execution.** The Parties agree to fully cooperate to obtain approval of the settlement, pursuant to the terms set forth herein. The Parties also pledge their good faith effort and fair dealing in providing assistance and assent to a final Joint Stipulation for Settlement (or similar long-form Settlement Agreement), and in effectuating the terms of the settlement of Plaintiff’s representative claims asserted in the Action.

4. **PAGA Members:** “PAGA Members” consist of all current and former non-exempt employees who worked at least one pay period for ANTOJITO in California at any time during the PAGA Period.

5. **PAGA Period.** The “PAGA Period” shall be from July 5, 2021 through the date the Court enters the order granting approval of the PAGA settlement.

Maximum Settlement Amount: The Maximum Settlement Amount that Defendant ANTOJITO will pay in connection with the Settlement is \$165,000.00, \$100,000.00 of which will be allocated to the PAGA claims and paid directly to the Settlement Administrator. The remainder will be allocated pursuant to Paragraph 9 below. The Maximum Settlement Amount is all-

inclusive of all payments contemplated in this resolution, including, but not limited to attorney's fees and costs. The Maximum Settlement Amount, therefore, is inclusive of all settlement payments to the Plaintiff for his individual wage and all other claims; the PAGA Members eligible for settlement payments; the payment to the California Labor Workforce Development Agency ("LWDA") for its share of the settlement of claims; Plaintiff's Counsel's attorneys' fees and expenses (including all attorneys' fees and expenses incurred to date and to be incurred in documenting the Settlement, securing trial and appellate court approval of the Settlement, attending to the administration of the Settlement, and obtaining a dismissal of the Action) and the Settlement Administrator's fees and expenses. Plaintiff is responsible for allocating enough monies to obtain court approval for a full PAGA release. The Defendant will pay the Maximum Settlement Amount upon expiration of the appeal period after the final Court approval of the Settlement.

This Settlement is contingent upon the Defendants securing financing for the Maximum Settlement Amount. The Defendants have until March 18, 2024, to achieve this. They are required to diligently and in good faith pursue financing by this date, or earlier if feasible, and must provide the Plaintiff's counsel with biweekly updates on their progress. Furthermore, the Defendants must notify the Plaintiff's counsel within two days of successfully securing financing. In the event that the Defendants are unable to obtain the necessary financing, either party may choose to render this Agreement voidable by any Party.

6. PAGA Gross Settlement Amount. The Parties agree to settle the Action for the non-reversionary PAGA Gross Settlement Amount ("PGSA") of \$100,000.00. From the PGSA, Plaintiff will seek, and ANTOJITO shall not oppose: (a) attorneys' fees of one-third of the PGSA; (b) attorneys' litigation costs and expenses related to the Action; (c) settlement administration costs; and (d) an enhancement payment to Plaintiff in the amount of up to \$500.00. After the amounts for attorneys' fees, costs, administration costs, and enhancement payment are deducted from the PGSA, the remaining amount shall be known as the "PAGA Net Settlement Amount" or "PNSA."

The Net Settlement Amount shall be paid (i) 75% to the California Labor and Workforce Development Agency (LWDA) and (ii) 25% to PAGA Members, pursuant to Labor Code § 2699(i), divided amongst PAGA Members based on each PAGA Member's respective number of pay periods worked for ANTOJITO in California during the PAGA Period.

Plaintiff agrees that counsel for Plaintiff will notify the LWDA of the settlement at the same time the settlement is submitted to the Court for approval, seek approval of the settlement, and perform any and all statutory tasks as required by law.

The Parties further agree that should the Court deny approval of the settlement based on the allocation of the PGSA or PNSA, the Parties agree to re-negotiate in good faith in an effort to obtain approval of the settlement.

7. Release of Claims. Upon Court approval of the Settlement and performance of the payment obligations therein, Plaintiff and PAGA Members will fully and finally release and discharge ANTOJITO and its former, present and future owners, parents, and subsidiaries, and all of their current, former and future spouse(s), children, officers, directors, members, managers,

employees, consultants, partners, shareholders, joint venturers, agents, successors, assigns, accountants, insurers, or legal representatives ("Released Parties"), from all claims, rights, demands, liabilities and causes of action for civil penalties under the PAGA asserted, or that could have been asserted in the Complaint, including, but not limited to, those under California *Labor Code* §§ 201, 202, 203, 204, 221, , 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, Wage Order sections 3, 4, 7, 9, 11, 12, 20, and a California *Civil Code* § 1542 release as to those sections, that arose during the PAGA Period, based on the factual allegations pled in the operative complaint in the Action. These released claims include, but are not limited to the following claims: (a) failure to pay all overtime wages; (b) failure to pay all minimum wages; (c) failure to pay wages; (d) failure to pay for all work, including off-the-clock work (e) failure to provide proper meal periods; (d) failure to authorize and permit rest periods; (e) failure to furnish accurate wage statements; (f) failure to reimburse employees for business expenses; (g) misclassification of employees as independent contractors, and (h) failure to timely pay final wages, including any related claims for attorneys' fees, costs, or interest resulting therefrom ("Released Claims").

8. Plaintiff's Release of All Claims: ANTOJITO shall pay \$65,000.00 to Plaintiff (via check payable to "Sirmabekian Law Firm") in exchange for a release as to Released Parties of all claims, causes of action, and matters that are based on, arise from, pertain and relate to, result from and could have been alleged based on the facts, claims and allegations pertaining and related to and forming the basis of the Action, including a Civil Code Section 1542 release and waiver of all claims known and unknown, without exception, which statute provides that:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

9. Representation as to number of PAGA Members: ANTOJITO represents that it has employed 46 persons from the beginning of the PAGA Period through present, who were employed for a total of 2879 Pay Periods. If as of the date of court approval, the number of Pay Periods exceeds 2879 by more than ten percent (10%) (i.e. the number of Pay Periods exceeds 2879 by 288 or more Pay Periods), then the amount of the Gross Settlement Amount shall increase in proportion to the increased percentage. For example, if such increase in Pay Periods during the Class Period is 11% over 1,357 class members, the Gross Settlement Fund will increase by 11%, but in no event increase the Maximum Settlement Amount.

10. Obtaining Approval of PAGA Settlement. Plaintiff will prepare and file a stipulation and/or motion, if necessary, with the Court requesting Approval of the PAGA Settlement. If the Court does not approve the settlement reached at mediation, the Parties agree to work cooperatively together to renegotiate the terms of any settlement within 30 days of the first date the Court fails to approve the settlement. Should Court approval of a settlement still not occur within 30 days after any such renegotiation, then any settlement and agreement is null and void, of no force and effect whatsoever and shall not be referred to or used for any purpose whatsoever and the Parties will be restored to their positions prior to mediation, unless the Parties mutually agree otherwise in writing.

20. Disclosure. The Parties intend that this MOU shall be fully enforceable and binding upon all Parties, and that it shall be admissible and subject to disclosure in any proceeding to enforce its terms under Code of Civil Procedure section 664.6 and any other applicable statute or law, notwithstanding the mediation confidentiality provisions that otherwise might apply under local, federal and state law.

21. Contact With the Court. The Parties agree that mediator Mark Lemke, Esq. may, at his discretion, execute a Declaration supporting the settlement and the Court may, in its discretion, contact Mark Lemke, Esq. to discuss the settlement.

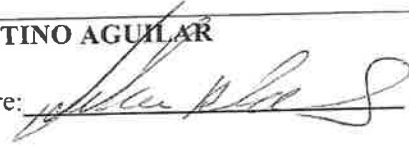
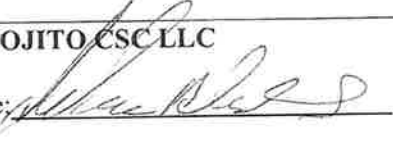
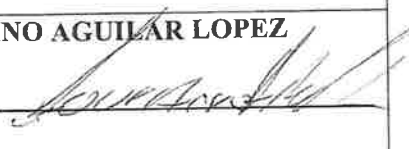
22. Settlement Purposes Only. The Parties agree that the subsequent filing of a Joint Stipulation of Settlement (or similar Settlement Agreement) is for settlement purposes only and if, for any reason, the settlement is not approved, the Joint Stipulation of Settlement and this MOU will be of no force or effect.

23. Neutral Reference: ANTOJITO shall not authorize or knowingly permit any disparaging or critical statements in reference to Plaintiff's employment with ANTOJITO. In response to requests for employment verification, ANTOJITO will only provide (i) dates of Plaintiff's employment and (ii) position.

24. No Disparagement: The Parties shall not make any disparaging or critical statement about, relating or pertaining to, or otherwise involving each other.

25. Integration Clause. The Parties to this Memorandum agree that the long-form Settlement Agreement will contain an integration clause.

[SIGNATURES ON FOLLOWING PAGE]

YENNI EVEN GALVEZ GAMEZ Signature: _____ Date: _____	JUVENTINO AGUILAR Signature:  Date: <u>02-02-2024</u>
EL ANTOJITO CSC LLC Signature:  By: Juventino Aguilar Date: <u>02/02/20</u>	JUVENTINO AGUILAR LOPEZ Signature:  Date: <u>02/02/2024</u>
BRYAN AGUILAR LOPEZ Signature:  Date: <u>02/02/2024</u>	

YENNI EVEN GALVEZ GAMEZ DocuSigned by: Signature: <u></u> ID434455CC9840E Date: <u>1/30/2024</u>	JUVENTINO AGUILAR Signature: _____ Date: _____
EL ANTOJITO CSC LLC Signature: _____ By: Juventino Aguilar Date: _____	JUVENTINO AGUILAR LOPEZ Signature: _____ Date: _____
BRYAN AGUILAR LOPEZ Signature: _____ Date: _____	

EXHIBIT B



CASE ASSUMPTIONS

Aggrieved Members	47
Opt Out Rate	N/A
Opt Outs Received	
Total Aggrieved Claimants	47
Subtotal Admin Only	\$2,750.00

Not-to-Exceed Total \$2,750.00

For 47 Aggrieved Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

April 16, 2024

Case: Yenni Galvez v. El Antojito PAGA Distribution

Phoenix Contact: Jodey Lawrence

Contact Number: 949.566.1455

Email: Jodey@phoenixclassaction.com

Requesting Attorney: Sarkis Sirmabekian

Firm: Sirmabekian Law Firm

Contact Number: (818) 473-5003

Email: sarkis@slawla.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PHX will need to adjust this Estimate accordingly.

Estimate is based on **47 Aggrieved Members**. Class data **Must** be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of \$150 per hour will be charged for any additional analysis or programming. Pricing good for 90 days.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)			
Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$125.00	1	\$125.00
Programming Database & Setup	\$125.00	1	\$125.00
Toll Free Setup*	\$29.32	1	\$29.32
Call Center & Long Distance	\$2.00	13	\$26.00
NCOA (USPS)	\$45.00	1	\$45.00
Total			\$350.32

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Check & Postage			
Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$125.00	1	\$125.00
Data Merge & Duplication Scrub	\$0.10	47	\$4.70
Notice and Check Packet	\$2.00	47	\$94.00
Estimated Postage (up to 1 oz.)*	\$0.64	47	\$30.08
Total			\$253.78

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Associate	\$125.00	1	\$125.00
Skip Tracing Undeliverables	\$2.00	7	\$14.10
Remail Notice Packets	\$2.00	7	\$14.10
Estimated Postage	\$0.61	7	\$4.30
Programming Undeliverables	\$50.00	1	\$50.00
Total			\$207.50

Database Programming			
Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Claims Database	\$125.00	1	\$125.00
Case Manager	\$125.00	1	\$125.00
Total			\$250.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks			
Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Calculations	\$125.00	1	\$125.00
Disbursement Review	\$125.00	1	\$125.00
Programming Manager	\$100.00	1	\$100.00
QSF Bank Account & EIN	\$50.00	1	\$50.00
Check Run Setup & Printing	\$125.00	1	\$125.00
Total			\$525.00

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$125.00	1	\$125.00
Remail Undeliverable Checks (Postage Included)	\$1.50	9	\$13.40
Case Associate	\$50.00	3	\$150.00
Reconcile Uncashed Checks	\$25.00	3	\$75.00
Conclusion Reports	\$100.00	1	\$100.00
Case Manager Conclusion	\$75.00	1	\$75.00
Final Reporting & Declarations	\$125.00	1	\$125.00
QSF Annual Tax Reporting * (State Tax Reporting Included)	\$500.00	1	\$500.00
Total			\$1,163.40
* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.			
Estimate Total:			\$2,750.00



TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

[PROPOSED] ORDER

The Court has reviewed and considered the *STIPULATION BY ALL PARTIES FOR ORDER APPROVING SETTLEMENT PURSUANT TO CALIFORNIA LABOR CODE PRIVATE ATTORNEYS' GENERAL ACT AND ENTERING JUDGMENT* ("Joint Stipulation"), and hereby ORDERS:

1. GOOD CAUSE appearing, the Court grants the STIPULATION BY ALL PARTIES FOR ORDER APPROVING SETTLEMENT PURSUANT TO CALIFORNIA LABOR CODE PRIVATE ATTORNEYS' GENERAL ACT, and approves the PAGA Settlement;
2. The Entire Action is Dismissed with Prejudice, the Court retains jurisdiction over the Settlement, pursuant to *Code of Civil Procedure* §664.6.

OTHER ORDERS:

IT IS SO ORDERED.

DATED: _____

Honorable Mel Red Recana
Judge of the Superior Court; Dept.45

PROOF OF SERVICE
(§ 1013a, 2015.5 C.C.P.)

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am a citizen of the United States of America; I am over the age of eighteen years and not a party to the within entitled action; my business address is: 3435 Wilshire Boulevard, Suite 1710, Los Angeles, California 90010.

On the below-indicated date, I served the following document:

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

on the interested parties in said action by placing:

___X___ a true and correct copy,

and addressed as set forth on the attached Service List and delivered by one or more of the means set forth below:

☒ **BY ELECTRONIC SERVICE IN LIEU OF SERVICE BY MAIL, EXPRESS MAIL, OVERNIGHT DELIVERY, OR FACSIMILE TRANSMISSION:** In accordance with California Code of Civil Procedure section 1010.6, I caused the document to be sent to the person(s) below at the e-mail address(es) listed below.

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

EXECUTED: August 6, 2024
At Los Angeles, California

Grigor Gregg Sirmabekhian
Grigor Gregg Sirmabekhian

SERVICE LIST

Thomas F. Nowland, Esq. The Law Offices of Thomas F. Nowland 20241 SW Birch Street – Suite 203 Newport Beach California 92660 Email: tom@nowlandlaw.com Email: khngai@nowlandlaw.com Email: dbrodnax@nowlandlaw.com <i>Attorneys for Defendants</i>	Labor and Workforce Development Agency ("LWDA") Department of Industrial Relations Attn. PAGA Administrator 1515 Clay Street, Ste. 801 Oakland, California 94612 <i>filed/served online at:</i> https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html
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