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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

DELFINO MUNOZ, as an individual and on
behalf of the California Labor Commissioner as
the California Private Attorney General,

Plaintiff,

vs.

BATTEN DOWN, INC, a California corporation,
JLA, Inc., a California corporation, GARAGE
PIZZA (business entity unknown), BAZAAR
PIZZA INC., a California corporation, JASON
BATTEN, an individual, and DOES 1-50,
inclusive,

Defendants.

) Case No.: BC617880

) Assigned for all Purposes to Honorable
Judge Maureen Duffy-Lewis

) **JOINT STIPULATION RE APPROVAL
OF SETTLEMENT AND DISMISSAL OF
PAGA CLAIMS**

) *[Concurrently filed with Declaration of Armond
Jackson in Support of Joint Stipulation Re
Settlement and Request for Dismissal of PAGA
Causes of Action; and Proposed Order]*

) **CASE FILED: April 21, 2016**

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 Plaintiff Delfino Munoz ("Plaintiff") and Defendants Batten Down, Inc. ("BDI"), Garage
3 Pizza ("Garage"), Bazaar Pizza, Inc. ("BPI"), and Jason Batten ("JB") (collectively referred to
4 herein as "Defendants") by and through their respective attorneys of record, hereby submit the
5 following Joint Stipulation with respect to Plaintiff's claims arising under the Private Attorney
6 General Act of 2004, ("PAGA"), as follows:

7 1. WHEREAS Plaintiff filed a civil action entitled *Delfino Munoz v. Batten Down, Inc.*,
8 , *et al.*, filed as Los Angeles County Superior Court Case No. BC 617880 (hereinafter referred to as
9 "the Action"), asserting claims for: (1) Failure to Provide and Maintain Accurate Itemized Wage
10 Statements and Maintain Records (Labor Code §§226(a), 1174, & 1198); (2) PAGA Claim for
11 Failure to Provide and Maintain Accurate Itemized Wage Statements and Maintain Records (Labor
12 Code §§226(a), 1174, & 1198); (3) PAGA Claim for Failure to Maintain Records (Labor Code §§
13 1174, & 1198); (4) Failure to Provide Meal Breaks (IWC Wage Order 5); (5) PAGA Claim for
14 Failure to Provide Meal Breaks (IWC Wage Order 5); (6) Failure to Provide Rest Periods (IWC
15 Wage Order 5); (7) PAGA Claim for Failure to Provide Rest Periods (IWC Wage Order 5) (8)
16 Failure to Pay Overtime (Labor Code §§510, 1198); (9) PAGA Claim for Failure to Pay Overtime
17 (Labor Code §§510, 1198); (10) Disability Discrimination; (11) Retaliation; (12) Failure to Prevent
18 Discrimination; (13) Failure to Accommodate; (14) Failure to Engage in Timely Good Faith,
19 Interactive Process; (15) Retaliation (Cal. Lab. Code § 1102.5) (16) Wrongful Termination in
20 Violation of Public Policy; (17) Unlawful Business Practices (Bus. and Prof. Code §17200); (18)
21 Fraudulent Transfer; and (19) Successor Corporation Liability. The Second, Third, Fifth, Seventh,
22 and Ninth Causes of Action are hereinafter the "PAGA Claims" and all other causes of action are
23 the "Non-PAGA Claims;"

24 2. WHEREAS, PAGA permits an aggrieved employee to sue an employer for civil
25 penalties associated with the employer's alleged violation of various California Labor Code
26 provisions. (*Labor Code* §2699(a).) Pursuant to the statute, of the amount paid to settle a claim for
27 PAGA penalties, twenty five percent (25%) is payable to the employee prosecuting the action and
28 seventy-five percent (75%) is payable to the California Labor and Workforce Development Agency

1 (LWDA). (*Labor Code* §2699(i).) Under Labor Code section 2699(l), “[t]he Superior Court shall
2 review and approve any penalties sought” as part of the resolution of a case that involved PAGA
3 claims. (*Labor Code* §2699(l).) The Parties believe that continued litigation would be protracted,
4 expensive, uncertain, and contrary to the best interest of all parties and therefore reached a fair and
5 reasonable settlement of Plaintiff’s individual claims, including the claims brought under PAGA by
6 Plaintiff individually.

7 3. WHEREAS, there are no specific guidelines for purposes of approving a settlement of
8 PAGA penalties. Rather this requirement is one of the necessary procedures when litigating a
9 PAGA claim. (*Labor Code* §2699(l).) When trial courts consider settlements, the trial court’s
10 analysis “must be limited to the extent necessary to reach a reasoned judgment that the agreement
11 is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and
12 that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Dunk v.*
13 *Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996).

14 4. WHEREAS, this Joint Stipulation is between the Parties to this Action only, and
15 approval of the settlement of Plaintiff’s individual PAGA Claims will not impact the exercise of
16 any rights whatsoever that other potentially Aggrieved Employees may have, or that of the Labor
17 and Workforce Development Agency (“LWDA”);

18 5. WHEREAS, here, Plaintiff’s core claims in this action were the claims alleging
19 violations of the Fair Employment and Housing Act (“FEHA”) for disability discrimination, failure
20 to accommodate, failure to engage in the good-faith interactive process, retaliation under
21 Government Code sections 12940(j)(1)(k)(m)(n) and wrongful termination. Plaintiff’s potential
22 recovery under PAGA is small and both parties agree that there is substantial uncertainty regarding
23 Plaintiff’s ability to recover under the PAGA on either his own behalf or on behalf of other
24 aggrieved employees. The Defendants further dispute that Plaintiff has standing to sue them for
25 any of the claims asserted herein. In light of the uncertainty of continued litigation and the
26 potentially significant legal hurdles under the PAGA, the Parties agree that allocation of \$4,625.00
27 to Plaintiff’s PAGA claims shall be considered a fair and reasonable allocation in this context.

28 6. WHEREAS, a trial court does not abuse its discretion in approving the settlement of a

1 case involving PAGA claims even when the settlement allocates none of the settlement payment to
2 PAGA claims. (*Nordstrom Commission Cases* (2010) 186 Cal.App.4th 576, 689.)

3 7. WHEREAS, here, the Parties have allocated a sum of Four-Thousand, Six-Hundred and
4 Twenty-Five Dollars (\$4,625.00) to a settlement of Plaintiff's individual PAGA claims. Out of this
5 sum, Three-Thousand Four-Hundred and Sixty-Eight Dollars and Seventy-Five Cents (\$3,468.75)
6 shall be paid to the LWDA to resolve Plaintiff's individual PAGA claims. Under the circumstances
7 of this case, this is more than a fair and reasonable allocation. Thus, the Parties request the Court
8 approve this aspect of the settlement and dismiss Plaintiff's individual PAGA claims with
9 prejudice.

10 8. WHEREAS, the Parties further agree that the Court should dismiss the pending claims
11 under PAGA on behalf of other Aggrieved Employees or the LWDA without prejudice;

12 9. WHEREAS, the approval and dismissal of Plaintiff's individual PAGA Claims with
13 prejudice, shall have no res judicata or collateral estoppel effect on the LWDA or any other
14 potentially Aggrieved Employees of the Defendants;

15 10. WHEREAS, the approval and dismissal of the PAGA Claims without prejudice as to
16 other Aggrieved Employees and/or LWDA shall be deemed as if the PAGA Claims were never
17 brought by Plaintiff to protect the interest of LWDA and other Aggrieved Employees;

18 11. WHEREAS, each party shall bear his/their own attorneys' fees and costs and no Party
19 shall be deemed to be the "Prevailing Party" as to the dismissal of the Plaintiff's PAGA claims;

20 12. WHEREAS, this Joint Stipulation is made as the Action has been resolved and
21 confidentially settled to the satisfaction of all Parties; and

22 13. WHEREAS, Plaintiff's counsel shall cause this Joint Stipulation and [Proposed] Order
23 to be served on the Labor Workforce and Development Agency at the same time it is submitted to
24 the Court in accordance with Labor Code § 2699(1)(2).

25 **THEREFORE IT IS HEREBY STIPULATED THAT:**

26 1. Plaintiff's Second, Third, Fifth, Seventh, and Ninth, Causes of Action (collectively
27 "PAGA Claims"), contained in the Complaint are dismissed without prejudice as to the LWDA and
28 other potentially Aggrieved Employees;

1 2. The Order and the dismissal of Plaintiff's Second, Third, Fifth, Seventh, and Ninth
2 Causes of Action shall have no res judicata or collateral estoppel effect on the LWDA or any other
3 potentially Aggrieved Employees of Defendants;

4 3. Plaintiff's Second, Third, Fifth, Seventh and Ninth Causes of Action, contained in the
5 Complaint are dismissed with prejudice only on behalf of Plaintiff as a result of the Parties'
6 Confidential Settlement Agreement; and

7 4. The Parties respectfully request that the Court enter an Order consistent with this
8 Stipulation.

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10 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**
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14 Dated: September 27, 2017

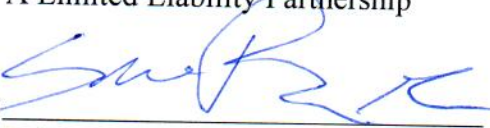
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17 By: 

Armond Jackson
Andrea M. Fernandez
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21 Dated: September 27, 2017

LEWIS BRISBOIS,
A Limited Liability Partnership

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Garage Pizza, Bazaar Pizza, Inc. and Jason
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