

1 JAMES HAWKINS APLC
JAMES R. HAWKINS SBN 192925
2 GREGORY MAURO, SBN 222239
MICHAEL CALVO, SBN 314986
3 9880 Research Drive, Suite 200
Irvine, California 92618
4 Telephone: (949) 387-7200
Facsimile: (949) 387-6676
5 James@jameshawkinsaplc.com
Greg@jameshawkinsaplc.com
6 Michael@jameshawkinsaplc.com

7 Attorneys for DANIEL ALVAREZ on behalf of
the general public as private attorney general
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES, SPRING STREET COURTHOUSE

11 DANIEL ALVAREZ, on behalf of the general
public as private attorney general,

12 Plaintiff,

13 v.
14

15 CULINART OF CALIFORNIA INC., a
California Corporation; CULINART GROUP
16 INC., a New York Corporation; and DOES 1-
50, inclusive,
17

Case No.: 22STCV39814
Assigned for all Purposes to:
Hon. Gregory Keosian
Dept.: 61

**DECLARATION OF JAMES HAWKINS
IN SUPPORT OF MOTION TO
APPROVE PAGA SETTLEMENT**

Date: June 5, 2024
Time: 10:00 a.m.
Dept.: 61

RESERVATION ID: 872281871392

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1 efforts to obtain the facts regarding the claims asserted, including the exchange of detailed
2 statistical data regarding weeks and pay periods worked by individuals and Plaintiff. Thereafter,
3 the parties worked together to finalize the terms of the long form settlement agreement that is
4 now placed before this Court for approval.

5 5. The claim before this court is the representative claim under PAGA on behalf of
6 the State of California for civil penalties pursuant to the PAGA. The parties have agreed to
7 settle this PAGA claim in its entirety after discovery and arm's length mediation. Defendants
8 filed and served its answer generally denying the claims therein and asserting affirmative
9 defenses. Defendants deny any wrongdoing and denies liability with respect to the matters
10 alleged in the Complaint and believes that it has valid defenses to all of Plaintiff's claims.
11 Defendants further contend that it has complied with all wage and hour laws applicable to the
12 employment of Plaintiff and other Class Members. To date, no court has made any findings that
13 Defendants engaged in any wrongdoing or in any wrongful conduct, or otherwise acted
14 improperly or in violation of any law, rule or regulation with respect to any of the issues
15 presented in this action.

16 6. The Agreement negotiated by the parties provides for Defendants to pay
17 \$145,000.00 as the Gross Settlement Amount ("GSA"). (Agreement at § 1.10). The "Net
18 Settlement Amount" ("NSA") is the amount remaining of the GSA minus the Court-approved
19 amounts awarded for the Attorneys Fees and Costs, Settlement Administration Fees,
20 Enhancement Award to Plaintiff (if any), and the LWDA Payment. (Agreement at § 1.12). The
21 Net Settlement Amount is estimated to be \$63,478.48.

22 7. The settlement is intended to fully and finally resolve the PAGA claims asserted
23 by Plaintiff on behalf of the State of California. This is only a settlement of the PAGA claims for
24 civil penalties, and is not a class settlement and does not release the individual claims, if any, of
25 the PAGA Members. The NSA is calculated as follows: (1) \$50,750.00 (i.e. 35% of the GSA)
26 shall be paid to Plaintiff's Counsel for payment of attorneys' fees; (2) Plaintiff's Counsel's
27 litigation expenses not to exceed \$20,000.00 (Plaintiff's counsel's litigation costs to date is
28 \$16,781.52, (Agreement at § 1.16); (3) \$10,000.00 Enhancement Award to the Plaintiff for

1 Plaintiff's time and risks in prosecuting this case and Plaintiff's service to the PAGA Members as
2 well as for Plaintiff's general release of Plaintiff's Released Claims; (4) Administration costs not
3 to exceed \$10,000.00 (The current estimated Administrator's fee is \$3,990.00). (Agreement at §§
4 1.9, 1.26). Any difference from these maximum amounts will be added to the Net Settlement
5 Amount.

6 8. The Gross Settlement Amount is subject to Court approval consistent with Labor
7 Code § 2699. Should the Net Settlement Amount increase or decrease, the amount to be
8 distributed shall be adjusted according to the changes made by the Court. Upon approval, the Net
9 Settlement Amount shall be allocated 75% (\$47,6068.86) to the LWDA and 25% (\$15,869.62)
10 among PAGA Group Members. The share of the Net Settlement Amount to be distributed to each
11 PAGA Member is based on the number of his or her Pay Periods worked in the PAGA Period in
12 relation to the aggregate number of Pay Periods worked by the Settlement Group during the
13 PAGA Period. (Agreement at § 1.11). The 75/25 allocation is required by Labor Code § 2699 as
14 explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019). Each PAGA member will receive
15 approximately \$3.00 per pay period worked.

16 9. The "PAGA Members" are defined as "all persons who worked for Defendants as
17 non-exempt, hourly employees in the State of California at any time from October 17, 2021
18 through December 31, 2023." There are approximately 110 PAGA Members who worked
19 approximately 5,400 pay periods. (Agreement at § 5.7). The PAGA Period is October 17, 2021
20 through December 31, 2023. (Agreement at §1.18).

21 10. Since the filing of the complaint, the Parties have exchanged extensive discovery
22 and engaged in numerous discussions regarding the factual and legal issues surrounding this case.
23 Throughout the litigation, Defendants produced thousands of pages of information and data,
24 including policies, handbooks, time and payroll records of for the PAGA Members reflecting time
25 punches at the start of employees' shifts, and at the end of the shift, and meal period punches as
26 well as the applicable pay rates. Defendants also provided Plaintiff's personnel file, records
27 regarding documents identifying the non-exempt positions and information regarding the number
28 of employees holding these positions during the relevant time period. Defendants also provided

1 substantial information concerning the total number of potential size of the PAGA group, the total
2 number of pay periods at issue, and the applicable hourly rates and other summary data related to
3 the alleged class. The Parties have conducted themselves in informed, good faith arms-length
4 negotiations after conducting discovery and exchanging extensive evidence and information
5 about the claims and defenses of this lawsuit and engaging in pre-mediation discussions,
6 telephone conferences, and correspondence all aimed at settling their dispute.

7 11. In preparation for the mediation, Plaintiff reviewed the entire discovery produced.
8 The information had to be extrapolated and processed to figure out the amount of compensation
9 Plaintiff contends are due to the PAGA Members. Defendants also provided substantial
10 information concerning the total number of potential PAGA Members, the total number of
11 workweeks at issue, and the applicable hourly rates and other summary data related to the alleged
12 class. The evidence and information gathered and reviewed by Plaintiff's counsel provided a
13 factual framework for a comprehensible and reliable damage model pertaining to all Settlement
14 PAGA Members. The mediation included discussion and examination of the PAGA Members
15 and the Parties' respective positions on the legal and factual issues raised in the Complaint.

16 12. The PAGA Members recovery compares favorably to the estimated amount of
17 PAGA penalties. With the assistance of an expert, Plaintiff calculated that the maximum amount
18 of statutory PAGA civil penalties was potentially \$1,100,000 based on 5,400 pay periods
19 multiplied by a maximum per pay period violation rate of \$200. These were for penalties for
20 violations of Labor Code § 226.7/ 512/ (meal periods) at a 26% pay period violation rate,
21 penalties for violation of Labor Code § 226.7/ 512 (rest periods) also valued at a 25% violation
22 rate, penalties for violation of Labor Code § 226, penalties under Labor Code § 510/558 at a 60%
23 violation rate assessment, and penalties for violation of Labor Code §§ 201/202/203 for 83 former
24 employees at approximately \$8,300. Importantly, however, in total, these calculations were
25 performed at the \$200 statutory rate for the penalties for the first violation, and it is likely that any
26 penalties awarded would be at a much lower rate given the facts of this case. California Labor
27 Code Section 2699(e)(1) permits a Court to award a lesser amount than the maximum civil
28 penalty if based on the facts and circumstances to do otherwise would result in an award that is

1 "unjust, arbitrary and oppressive or confiscatory." (Hawkins Decl., ¶ 12). The maximum
2 exposure here would be approximately \$1,100,000 if the Court awarded 100% penalties for each
3 and every pay period at \$200 per pay period. Of course, these amounts would probably have
4 been reduced given the policies in place, and manageability issues, the issues of why someone
5 missed a meal break on any occasion or worked off the clock, and the issues of payment of meal
6 period premiums. Given the risks involved, a reasonable Risk Value reduction would put the
7 realistic possibility of recovery of penalties at approximately \$440,000 taking account for a
8 reasonable 40% chance of recovery. The risks include manageability issues, not prevailing on the
9 merits, prevailing on certain claims for certain periods, reduced penalty amounts awarded by the
10 trial Court, and reversal on appeal.

11 13. Defendants dispute that the penalties assessed by Plaintiff and his expert would
12 have been awarded. Further, it is Defendants' contention that PAGA penalties cannot be stacked,
13 and that at most just one PAGA penalty can be awarded to an aggrieved employee in any one pay
14 period. See Labor Code section 2699 (f)(2) (authorizing awardable PAGA penalties to be
15 measure by "each "each aggrieved employee per pay period"); *Smith v. Lux Retail North*
16 *America, Inc.*, 2013 WL 2932243, at *1, *4 (N.D. Cal. 2013) (rejecting a pleading that sought the
17 "stacking of penalties"; "[f]or the single mistake of failing to include commissions in the
18 overtime base, plaintiff has asserted *five* (count them, five) separate labor code violations that
19 could lead to statutory penalties;" "is it plausible that we would really pile one penalty on another
20 for a single substantive wrong?"; noting that "no actual holding in any judicial decision has ever
21 blessed such stacking"). As such, and for this initial reason, Defendants contends that the
22 maximum potential recovery in this action is significantly lower than as stated by Plaintiff.

23 14. Further, Defendants argues that Plaintiff's calculation of penalties as applicable to
24 any employee and for any pay period, is inflated for an additional reason. Defendants argues that
25 even were liability established, one does not reach the second-tier penalty for that violation unless
26 and until the employer is first cited for the violation, and that Defendants has never been cited.
27 See *Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Servs., Inc.*, 2009 WL
28 2448430 *1, *9 (S.D. Cal. 2009) ("For the purposes of subsequent violation penalties, the issue is

1 not whether [Defendants] willfully violated the Labor Code, but rather whether a court or
2 commissioner had notified it of any violation.”); *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th
3 1157, 1209 (2008) (“[u]ntil the employer has been notified that it is violating a Labor Code
4 provision (whether or not the Commissioner or court chooses to impose penalties), the employer
5 cannot be presumed to be aware that its continuing underpayment of employees is a ‘violation’
6 subject to penalties” at a second tier); *Robinson v. Open Top Sightseeing San Francisco, LLC*,
7 No. 14-CV-00852-PJH, 2018 WL 895572, at *20 (N.D. Cal. Feb. 14, 2018) (applying “initial”
8 penalty to each violation of § 226 and § 2699(f)(2) because there was no evidence showing
9 Defendants was previously notified its practice violated § 226); *Willis v. Xerox Bus. Servs., LLC*,
10 2013 WL 605383, at *1, *6 (E.D. Cal. 2013) (“for a plaintiff to recover for a ‘subsequent
11 violation,’ an employer must have notice that it has violated the Labor Code”). As such,
12 Defendants contend that Plaintiff’s calculation are inflated not only because the “stack” penalties
13 for a single person during a single pay period, but because the penalties Plaintiff would award in
14 each instances are at an inapplicable (doubled) rate.

15 15. Defendants further argues that Plaintiff would still face significant practical
16 problems in aggregating any material exposure, as each violation would need to be proven as to
17 each person and for each period for which recovery is sought. Defendants argues that it is
18 unlikely that any significant number of current and former employees would travel to the venue of
19 a trial, stay at a hotel, prepare for and deliver testimony, all in exchange for – at most – 25% of
20 \$50 or \$100 (i.e. \$12.50 or \$25) for each pay period in which there was a violation. wage
21 statement penalties”). For purposes of section 226, “a good faith dispute presents when there is
22 (1) uncertainty in the law; (2) representations by an authority that compliance was not required;
23 or (3) an employer’s good faith mistaken belief grounded in a good faith dispute.” *Magadia v.*
24 *Wal-Mart Assocs., Inc.*, 384 F. Supp. 3d 1058 (N.D. Cal. 2019). “Mere recklessness” is not a
25 basis for liability. *Pedroza*, 2012 WL 9506073, *5.

26 16. As a result of the mediation and the consideration of all facts, evidence, and
27 arguments presented to Plaintiff and his counsel, the Parties agreed to settle this matter for
28 \$145,000.00.

1 17. Defendants represented that PAGA Group Members consisted of approximately
2 110 employees who worked approximately 5,400 pay periods. The Gross Settlement Amount of
3 \$145,000.00 constitutes approximately \$26.85 per pay period before deductions for fees, costs,
4 enhancement award, and administration costs. The Gross Settlement Amount accounts for
5 approximately 32% of the maximum potential recovery of \$440,000 given the reasonable applied
6 risks factors. Upon approval, approximately \$47,606.86 will be sent to the State of California
7 and approximately \$15,869.62 will be shared with aggrieved employees. This equates to
8 approximately \$144.26 to each aggrieved employee.

9 18. Plaintiff's counsel balanced the terms of the proposed Settlement against the risk
10 of litigation and probable outcome if this matter went at trial. Based on their own respective
11 independent investigations and evaluations, and after taking into account the sharply disputed
12 factual and legal issues involved in this matter, the risks attending further prosecution of the case,
13 and the monetary benefits received under the Settlement despite the questionable nature of the
14 claims, Plaintiff's counsel is of the opinion that Settlement for the consideration and on the terms
15 set forth in the Settlement Agreement is fair, reasonable and adequate and is in the best interests
16 of the State, Plaintiff, and the PAGA Members. Counsel for the Parties investigated the
17 applicable law as applied to the facts discovered regarding the claims of Plaintiff, Defendants'
18 defenses thereto and the damages claimed by Plaintiff on behalf of the PAGA Members.

19 19. I further believe that the consideration and terms set forth in the Settlement
20 Agreement are fair, reasonable, and adequate and are in the best interests of the Settlement PAGA
21 Members in light of all known facts and circumstances, including the various defenses asserted by
22 Defendants, and numerous potential appellate issues. In addition, the prospect of a potential
23 adverse summary judgment ruling at trial, the difficulties of complex litigation, the lengthy
24 process of establishing specific damages and various possible delays and appeals, were also
25 carefully considered in agreeing to the proposed Settlement.

26 20. The predominant claims in this action arise from alleged violations of California
27 law with respect to Defendants' failure to pay wages including overtime to the PAGA Members
28 for off the clock work performed by PAGA Members during meal and rest periods due to work

1 interruptions and as a result of alleged limited staffing ratios. Plaintiff alleges that Defendants'
2 practices do not provide proper payment for missed meal periods, rest periods and overtime for
3 off the clock work. Defendants contends that it had compliant meal and rest period policies in
4 place and such policies also prohibited employees from working off the clock.

5 21. Defendants contends that Plaintiff and the PAGA Members were properly
6 compensated, and that they did not violate the Labor Code as to any of them. Defendants asserted
7 additional defenses to the PAGA claim as discussed above. These defenses present a risk to the
8 PAGA claim and the potential that some or all of the PAGA penalties sought may not be awarded

9 22. The Labor Code section 203 claim was uncertain given the defenses asserted for
10 the underlying claims as well as the lack of evidence of the "willfulness" prong necessary for a
11 Labor Code §203 claim. Plaintiff's counsel also recognized a risk of an adverse finding on given
12 Defendants' apparently compliant policies and procedures at the time of mediation. The labor
13 code section 226 claim was dependent on the underlying claims for failure to pay wages.

14 23. Further, Plaintiff's Counsel considered the fact that continued litigation would
15 likely take years and would be extremely expensive given the breadth and complexity of the
16 claims. In this case, post-trial and appellate proceedings are likely to occur, which will surely
17 drag the case far into the future even with a positive trial result. When facing a distant and unsure
18 resolution of the allegations in this action, the swift, sure and substantial Settlement is all the
19 more reasonable. Avoiding such costly litigation in favor of more immediate benefits to the
20 PAGA Members was a consideration favoring settlement. Given these realities, it is highly likely
21 that the future expense of this litigation, and its likely duration if the settlement is not approved,
22 would be significant and weigh heavily in favor of approval of this settlement.

23 24. Based on the Settlement Amount of \$145,000.00 75% of this amount will be
24 distributed to the LWDA and 25% to the aggrieved employees. As such, provides on average
25 each PAGA Members with approximately \$144.26. The highest amount a Settlement PAGA
26 Member will receive is approximately \$164 calculated by taking \$2.93 per pay period times
27 approximately 56 maximum recoverable pay periods in the PAGA period. To the extent any
28 amount for Attorneys' Fees, Costs, Settlement Administration Costs or Enhancements are not

1 awarded, the difference in those amounts will be added to the Net Settlement Amount. This is a
2 guaranteed amount of money paid to Settlement PAGA Members now, rather than the continued
3 risk of further litigation and receiving no money sometime in the far future and after trial and
4 appeals.

5 25. Plaintiff as PAGA Representative has provided extensive supporting documents
6 and assisted Counsel in developing information necessary to litigate and settle this case.
7 Plaintiffs also conducted record review and consultation with counsel in preparation for discovery
8 and eventual mediation, and to assist in evaluating and proving the claims. The settlement
9 provides for a Payment to be paid to the Plaintiff in the amount of \$10,000 subject to Court
10 approval. The purpose is to compensate the Plaintiff as PAGA Representative an additional
11 enhanced payment, taking into consideration the risks, time, effort and expenses incurred in
12 coming forward to provide invaluable information and negotiate and litigate this matter on behalf
13 of all PAGA Members who otherwise, would probably not file their own individual claims to
14 recover what may be relatively low damages. Further, the Payment of \$10,000.00 Plaintiff is a
15 very fair and justified as part of the Settlement based on the risks Plaintiff has taken and benefits
16 conferred upon the Settlement Class.

17 26. I have a great deal of experience in wage and hour class action litigation. I have
18 obtained certification of several classes, I have been approved as class counsel in many other
19 wage/hour class actions, and I am currently litigating numerous others. Although not an all
20 inclusive list, over the years I have prosecuted the following class action matters as lead and/or
21 co-lead counsel, all of which implicated similar law and facts to those associated with this action:

22 a. *Aguilar v. 7-Eleven, Inc., et. al.*, Orange County Superior Court- Case No.:
23 30-2009-00268714-CU-OE-CXC. Certified Wage and Hour Class action seeking
24 premium wages for meal period and rest periods and resultant penalties. Class
25 Notice pending.

26 b. *Carey, et. al. v. Arthur J. Gallagher, et. al.*, USDC, SOUTHERN
27 DISTRICT- Case No.: 09-cv-0168. Wage and Hour Class action seeking past
28 wages of overtime for mis-classification of insurance claims adjusters employed

1 by Gallagher Bassett, a third party administrator (TPA) in the State of California.
2 Certification granted. Plaintiffs' counsel co-lead counsel. Case settled, Final
3 Approval granted, no objections and funds fully distributed.

4 c. *Dao v. 3M Company, et al.* USDC, CENTRAL DISTRICT, Case No. CV-
5 08-04554. Wage and Hour Class Action case seeking past wages for "off the
6 clock", overtime and meal and rest break violations for production workers in the
7 State of California. Plaintiffs' Counsel appointed as Lead Counsel. Case settled,
8 Final Approval granted, no objections and funds fully distributed.

9 d. *Ortiz v. Kmart*, USDC, CENTRAL DISTRICT, Case No. SACV 06-638
10 ODW. Wage and Hour Class Action case seeking past wages for meal and rest
11 period violations for retail employees in the State of California. Plaintiffs' counsel
12 appointed co-lead counsel. Case settled, Final Approval granted, no objections
13 and funds fully distributed.

14 e. *Morgan v. Aramark Campus, LLC*, USDC, CENTRAL DISTRICT, Case
15 No. SACV08-00412. Wage and Hour Class Action case seeking past wages for
16 meal and rest period violations for retail employees in the State of California.
17 Plaintiffs' Counsel appointed as Lead Counsel. Case settled, Final Approval
18 granted, no objections and funds fully distributed.

19 f. *West v Iron Mountain Information Management, Inc, et. al.*; Los Angeles
20 County Superior Court, Case No. BC393709. Wage and Hour Class Action
21 seeking past wages for overtime, meal and rest break violations for driver
22 employees in the State of California. Settlement for "binding arbitration."
23 Arbitration Award for Plaintiff Class. Arbitration Award confirmed. Plaintiffs'
24 counsel, lead trial counsel and class counsel.

25 g. *Gonzalez v. Superior Industries Inter, Inc., et al.*, Los Angeles County
26 Superior Court, Case No. BC 357912. Wage and Hour Class Action seeking past
27 wages for overtime, meal and rest breaks violations for production employees in
28 the State of California. Plaintiffs' counsel appointed as lead counsel. Case settled,

Final Approval granted, no objections and funds fully distributed.

h. *Acosta v. Fleetwood Travel Trailers of California, Inc., et al.*, Riverside County Superior Court, Case No. RIC 440630. Wage and Hour Class Action seeking past wages for overtime, meal and rest break violations for production employees in the State of California. Plaintiffs' counsel appointed as co-lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

i. *Walker v. Sharkeez, et al.*, Orange County Superior Court, Case No. 05CC00293. Wage and Hour Class Action seeking past wages for unlawful deductions, meal and rest break violations for restaurant employees in the State of California. Plaintiffs' counsel appointed as lead counsel. Case settled, Final Approval granted and funds fully distributed.

j. *Padron v. Universal Protection Service, et al*, Orange County Superior Court, Case No. 05CC00013. Wage and Hour Class Action seeking past wages for overtime, meal and rest break violations for security officers in the State of California. Plaintiffs' counsel appointed as co-lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

k. *Martinez v. Securitas Security Services USA, et al.*, Santa Clara Superior Court, Case No. 105-CV047499, et al. J.C.C.P. No. 4460. Wage and Hour Class Action seeking past wages for meal and rest break violations for security officers employed by defendant in the State of California. Plaintiffs' counsel and co-counsel. Case settled, Final Approval granted and funds fully distributed.

l. *Velasquez-Lopez v. Hotel Cleaning Services, Inc. et al.*, Riverside Superior Court, Case No. RIC 420909. Wage and Hour Class Action seeking past wages for overtime, meal and rest break violations for housekeepers employed by defendant in the State of California. Plaintiffs' counsel appointed as lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

m. *Ruiz, et al. v. Unisource Worldwide, Inc., et al.*, USDC, CENTRAL

1 DISTRICT, Case No. CV09-05848. Wage and Hour Class Action seeking past
2 wages for meal and rest period violations for non-exempt employees employed by
3 defendant in the state of California. Case settled. Awaiting Preliminary Approval
4 hearing. Plaintiff has petitioned the Court for Lead Counsel.

5 n. *Herrador v. Culligan International Company, et al.*, USDC, CENTRAL
6 DISTRICT, Case No. SACV 08-680. Wage and Hour Class Action seeking past
7 wages for field and branch employees of defendant in the State of California.
8 Plaintiffs' counsel appointed as lead counsel. Case settled and awaiting Final
9 Approval.

10 o. *Defries v. Domain Restaurants, et al.*, Orange County Superior Court, Case
11 No. 05CC00128. Wage and Hour Class Action seeking past wages for restaurant
12 employees of defendant in the State of California. Plaintiffs' counsel appointed as
13 lead counsel. Case settled, Final Approval granted, no objections and funds fully
14 distributed.

15 p. *Denton v. BLB Enterprises, Inc., et al.*, Orange County Superior Court,
16 Case No. 07CC01292. Wage and Hour Class Action seeking unpaid overtime,
17 meal and rest break violations for security guards employed by defendant in the
18 State of California. Plaintiffs' counsel appointed as lead counsel. Case settled,
19 Final Approval granted, no objections and funds fully distributed.

20 q. *Rios v. Sandberg Furniture Manufacturing Co., Inc, et al.*, Los Angeles
21 Superior Court, Case No. BC411477. Wage and Hour Class Action seeking
22 unpaid meal and rest break violations for production employees employed by
23 defendant in the State of California. Plaintiff counsel appointed as lead counsel.
24 Case settled, Final Approval granted, no objections and funds fully distributed.

25 r. *McMurray v. Dave and Busters, Inc., et al.*, Orange County Superior Court,
26 Case No. 06CC00099. Wage and Hour Class Action seeking past wages for meal
27 and rest break violations for restaurant employees employed by defendant in the
28 State of California. Plaintiffs' counsel appointed as co-lead counsel. Case settled,

Final Approval granted, no objections and funds fully distributed.

s. *Osuna v. DFG Restaurants, Inc., et al.*, Los Angeles Superior Court, Case No. BC 330145. Wage and Hour Class Action seeking past wages of overtime for mis-classification of managers employed by Defendant, DBA Carl's Jrs. in the State of California. Plaintiffs' counsel appointed as co-lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

t. *Burns v. Gymboree Operations, Inc., et al.*, San Francisco Superior Court, Case No. CGC-07-461612. Wage and Hour Class Action seeking past wages for meal and rest break violations for retail employees employed by defendant in the State of California. Plaintiffs' counsel appointed lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

u. *Willems v. Diedrich Coffee, Inc., et al.*, Orange County Superior Court, Case No. 07CC00015. Wage and Hour Class Action seeking past wages of overtime for mis-classification of managers employed by Defendant in the State of California. Plaintiffs' counsel appointed lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

v. *Davila, et al. v. Beckman Coulter, Inc., et al.*, Orange County Superior Court, Case No. 07CC01347. Wage and Hour Class Action seeking past wages for overtime, meal and rest break violations for production workers employed by defendant in the State of California. Plaintiffs' counsel appointed lead counsel. Case settled; final approval granted; no objections and funds fully distributed.

w. *Perez v. Naked Juice Company of Glendora, Inc.*, Los Angeles Superior Court, Case No. BC387088. Wage and Hour Class Action seeking past wages for overtime, meal and rest period violations for production employees employed by defendant in the State of California. Plaintiff counsel appointed as lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

27. Here, the Parties' agreement to pay Counsel Fees of \$50,750.00 of the Gross Settlement Amount is reasonable.

1 28. First, the requested fees are justified by the result achieved. Plaintiff's Counsel
2 negotiated a recovery of \$145,000.00 and this result justifies the requested fees equal to 35% of
3 this recovery (\$50,750.00). This percentage is within the standard contingent recovery
4 percentage. Second, the requested fees are justified by the work performed. Finally, Plaintiff's
5 counsel's lodestar far exceeds the amount requested.

6 29. Finally the award of litigation expenses is based upon the actual expenses incurred
7 by Plaintiff and Plaintiff's Counsel, and were all reasonably necessary to the litigation, and are
8 detailed in **Exhibit 2** attached hereto. Under the Agreement, Plaintiffs' Counsel will be
9 recovering litigation expenses in the total amount of \$16,781.52.

10 30. The California Labor Workforce Development Agency ("LWDA") is being
11 served with a copy of this motion with the Settlement Agreement through the online process as
12 required by Labor Code § 2699(1). This service on the LWDA is verified in the separately filed
13 proof of service.

14 I declare under penalty of perjury that the foregoing is true and correct. Executed on
15 April 26, 2024 at Irvine, California.

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17 James R. Hawkins
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Exhibit 1

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1 JAMES HAWKINS APLC
 James R. Hawkins, Esq. (#192925)
 2 Gregory Mauro, Esq. (#222239)
 Michael Calvo, Esq. (#314986)
 3 Lauren Falk, Esq. (#316893)
 Ava Issary, Esq. (#342252)
 4 9880 Research Drive, Suite 200
 Irvine, CA 92618
 5 Tel.: (949) 387-7200
 Fax: (949) 387-6676
 6 Email: James@jameshawkinsaplc.com
 Email: Greg@jameshawkinsaplc.com
 7 Email: Michael@jameshawkinsaplc.com
 Email: Lauren@jameshawkinsaplc.com
 8 Email: Ava@jameshawkinsaplc.com

9 Attorneys for Plaintiff
 DANIEL ALVAREZ

10 Lonnie D. Giamela (SBN 228435)
 11 E-Mail: lgiamela@fisherphillips.com
 FISHER & PHILLIPS LLP
 12 444 South Flower Street, Suite 1500
 Los Angeles, California 90071
 13 Telephone: (213) 330-4500
 Facsimile: (213) 330-4501
 14 Attorneys for Defendants
 CULINART OF CALIFORNIA INC. and CULINART
 15 GROUP INC.

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **COUNTY OF LOS ANGELES**

18 DANIEL ALVAREZ, on behalf of the general
 public as private attorney general,
 19
 Plaintiff,
 20

21 v.

22 CULINART OF CALIFORNIA INC., a
 California Corporation; CULINART GROUP
 23 INC., a New York Corporation; and DOES 1-
 24 50, inclusive,
 25 Defendants.

) Case No. : 22STCV39814
) Assigned for all purposes to the
) Honorable Gregory Keosian, Dept. 61
)

) **JOINT STIPULATION OF SETTLEMENT**
) **AND RELEASE OF PAGA ACTION**
)

) Action Filed: December 22, 2022
)
)
)
)

This Joint Stipulation of Settlement and Release of PAGA Action (“Agreement”) is made and entered into between Plaintiff DANIEL ALVAREZ (“Plaintiff”), individually and on behalf of the proposed PAGA Group, (defined below), and Defendants CULINART OF CALIFORNIA INC. and CULINART GROUP INC., (collectively, “Defendants”). This Agreement is subject to approval of the Court and is made for the sole purpose of attempting to consummate settlement of the Action (as defined below) on a PAGA basis subject to the following terms and conditions. As detailed below, in the event the Court does not enter an order granting approval of the PAGA Settlement (as defined below) and enter judgment, or the conditions precedent are not met for any reason, this Agreement is void and of no force or effect whatsoever.

1. **DEFINITIONS**

As used in this Agreement, the following terms shall have the meanings specified below. To the extent terms or phrases used in this Agreement are not specifically defined below, but are defined elsewhere in this Agreement, they are incorporated by reference into this definition section.

1.1 **Action.** “Action” shall mean this civil action entitled *Daniel Alvarez v. Culinart Of California Inc., et al.*, Los Angeles County Superior Court Case No. Case No. 22STCV39814, filed on or about December 22, 2022, and the underlying PAGA Notice sent to the Labor and Workforce Development Agency (“LWDA”) by Plaintiff on October 17, 2022.

1.2 **Approval and Fairness Hearing.** “Approval and Fairness Hearing” shall mean the hearing held to ascertain the fairness, reasonableness, and adequacy of the PAGA Settlement. At this hearing, the Court will consider PAGA Counsel’s application for Attorneys’ Fees and Expenses, the PAGA Representative Incentive Award, the Administration Expenses, and approval of the PAGA Payment. The proposed Order Granting Approval and Entering Judgment is attached, in substantial form, as **Exhibit B**.

1.3 **Approval Date.** “Approval Date” shall mean the date upon which the Court enters an order granting approval of the PAGA Settlement and enters Judgment.

1.4 **Claims.** “Claims” shall mean the claims and theories asserted and causes of action alleged in the Action, or that could have been alleged in the Action, including the PAGA penalties alleged in the Action.

1.5 **Court.** “Court” shall mean the Superior Court of California, County of Los Angeles.

1.6 **Defendants.** “Defendants” shall mean Culinart of California Inc. and Culinart Group Inc., and includes any of their officers, directors, executives, partners, managers, owners, shareholders, members, employees, agents, attorneys, any of their former and present parents, subsidiaries, successors, assigns and affiliates, and their officers, directors, managers, owners, executives, partners, employees, shareholders, agents, attorneys, and any other successors, assigns, or legal representatives.

1.7 **Defense Counsel.** “Defense Counsel” shall mean Lonnie D. Giamela of Fisher and Phillips LLP, 444 South Flower Street, Suite 1500 Los Angeles, California 90071.

1.8 **Effective Date.** “Effective Date” shall be the later of the time when: (i) the date of final affirmance of the Judgment on an appeal of the Judgment, the expiration of the time for, or the denial of, a petition to review the Judgment, or if review is granted, the date of final affirmance of the Judgment following review pursuant to that grant, (ii) the date of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding to review the Judgment, provided that the Judgment is affirmed and/or not reversed in any part, (iii) the final resolution (or withdrawal) of any filed appeal in a way that affirms the Final Approval Order and Judgment in a form substantially identical to the form of the Final Approval Order entered by the Court, and the time to petition for review with respect to any appellate decision affirming the Final Approval Order has expired; or (iv) if no appeal is filed, the sixty-first (61st) day after the Court enters final approval of the settlement and the Judgment approving this Agreement.

1.9 Enhancement Award to Plaintiff: Enhancement Award in the amount of \$10,000 to Plaintiff for his services his general release, subject to Court approval.

1.10 **Gross Settlement Amount.** “Gross Settlement Amount” means the agreed upon settlement amount totaling \$145,000.00, to be paid by Defendants in full settlement of the Released Claims asserted in this case, which includes the Attorneys’ Fees and Costs, Settlement Administration Fees, Enhancement Award to Plaintiff (if any), and the LWDA Payment, and Individual Settlement Payments. In no event shall Defendants be required to pay more than the

1 Gross Settlement Amount.

2 1.11 **Individual Settlement Payment.** “Individual Settlement Payment(s)” shall
3 mean the proportionate share of the Net Settlement Amount to be distributed to each PAGA
4 Member based on the number of his or her Pay Periods worked in the PAGA Period in relation to
5 the aggregate number of Pay Periods worked by the Settlement Group during the PAGA Period.

6 1.12 **Net Settlement Amount.** “Net Settlement Amount” or “NSA” shall mean the
7 Gross Settlement Amount, minus the Court-approved amounts awarded for the Attorneys’ Fees and
8 Costs, Settlement Administration Fees, Enhancement Award to Plaintiff (if any), and the LWDA
9 Payment. The Parties intend that the NSA shall be sufficient to pay all valid claims of Settlement
10 Group Members. Accordingly, if for any reason the total value of Individual Settlement Payments
11 to Settlement Group Members exceeds this amount, then payment to each Settlement Group
12 Member will be adjusted on a pro-rated basis so that the total payout to Settlement Group Members
13 does not exceed the NSA.

14 1.13 **PAGA:** “PAGA” refers to the Labor Code Private Attorneys General Act of
15 2004, Labor Code sections 2699, *et seq.*

16 1.14 **PAGA List:** “PAGA List” shall mean the information for each PAGA Member
17 which Defendants shall compile from their business records and provide to the Administrator for
18 purposes of providing notice of the Settlement to the PAGA Group. The PAGA List shall be in a
19 readable, ready to use, MS Excel spreadsheet, which will provide for each Settlement Class
20 Member, the following information: (a) full name; (b) last-known mailing address; (c) telephone
21 numbers; (d) Social Security number; (e) dates of employment; and (f) number of pay periods
22 employed as a PAGA Member during the PAGA Period. The PAGA List will be provided to the
23 Settlement Administrator within 21 days of Defendants receiving written notification that the Court
24 granted approval of the Settlement.

25 1.15 **PAGA Counsel:** “PAGA Counsel” refers to James Hawkins APLC, 9880
26 Research Drive, Suite 200, Irvine, CA 92618.

27 1.16 **PAGA Counsel’s Attorneys’ Fees and Expenses:** “PAGA Counsel’s
28 Attorneys’ Fees and Expenses” shall mean PAGA Counsel’s attorneys’ fees and expenses

to be requested and subject to approval by the Court at the time of the Approval Hearing in an amount not to exceed \$50,750.00 for attorneys' fees and in an amount not to exceed \$20,000.00 for expenses.

1.17 **PAGA Member(s)**: "PAGA Member(s)", "The Aggrieved Employees" and "Settlement Group Members" shall mean all persons who worked for Defendants as non-exempt, hourly employees in the State of California at any time from October 17, 2021 through December 31, 2023.

1.18 **PAGA Period**. "PAGA Period" means the period from October 17, 2021 through December 31, 2023.

1.19 **PAGA Release**. See Released Claims.

1.20 **Parties**. "Parties" shall mean Plaintiff (as defined below) and Defendants.

1.21 **Pay Periods**. "Pay Periods" means the number of pay periods a PAGA Member was employed during the PAGA Period.

1.22 **Plaintiff**. "Plaintiff" and "PAGA Representative" shall mean Plaintiff DANIEL ALVAREZ.

1.23 **Released Claims**. "Released Claims" shall mean all PAGA claims and theories that were set forth, or that could have been set forth based on the facts alleged in the Action during the PAGA Period for PAGA claims for civil penalties under the California Labor Code including, but not limited to, under California Labor Code sections 201-203, 510, 512, 558, 226, 226.3, 226.7, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2802 and related IWC Wage Orders, based on the various theories of liability, including, but not limited to, Defendants' alleged failure to: pay all wages earned and owed upon separation, provide accurate written wage statements, and reimburse business expenses. This release is intended only to release aggrieved employees' PAGA claims.

1.24 **Released Parties**. "Released Parties" shall mean Culinary of California Inc. and Culinary Group Inc., and includes any of their officers, directors, executives, partners, managers, owners, shareholders, members, employees, agents, attorneys, any of their former and present parents, subsidiaries, successors, assigns and affiliates, and their officers, directors, managers, owners, executives, partners, employees, shareholders, agents, attorneys, related entities (including,

Compass Group USA, Inc.) and any other successors, assigns, or legal representatives.

1.25 **Settlement**. “Settlement” shall mean the settlement between Parties, which is memorialized in this Agreement, including any attached exhibits, and subject to Court approval.

1.26 **Settlement Administrator**. “Settlement Administrator” or “Administrator” shall mean APEX Class Action Administration the third-party settlement administrator selected by the Parties and to be approved by the Court, which the Parties have agreed will be responsible for administration of the Settlement and related matters. The Administrator’s fees and expenses are estimated to not exceed \$10,000.00. The current estimated cost of The Administrator’s fees is \$3,990.00.

1.27 **Settlement Group**. “Settlement Group” or “Settlement Group Members” shall mean all PAGA Members.

1.28 **Settlement Letter**. “Settlement Letter” shall mean the letter accompanying the Individual Settlement Payments attached, in substantial form, as **Exhibit A**.

2. **FACTUAL AND PROCEDURAL BACKGROUND OF ACTION**

2.1 On December 22, 2022, Plaintiff filed the Action in Los Angeles Superior Court.

2.2 The Parties agreed to mediate with Kelly A. Knight, Esq., and Plaintiff requested, and received, informal discovery to evaluate the claims and theories alleged. With the continued assistance of the mediator, they were able to resolve the matter, the terms of which were memorialized in a Memorandum of Understanding executed by the Parties.

2.3 The Parties and their respective counsel believe this Agreement reflects a fair, adequate, and reasonable settlement of the Action and have arrived at this Agreement as a result of arms’-length negotiations, facilitated by an experienced and neutral mediator, taking into account all relevant factors, present and potential.

3. **ALLEGATIONS OF THE PAGA REPRESENTATIVE AND BENEFITS OF THE SETTLEMENT**

3.1 The investigation and extensive exchange of information and informal discovery conducted in this matter, as well as discussions between counsel have been adequate to give and PAGA Counsel an understanding of the merits of the Parties’ respective positions and to evaluate

1 the worth of the claims of the Settlement Group. The information and data exchanged by the
2 Parties prior to and during mediation and settlement negotiations are sufficient to reliably assess the
3 merits of the Parties' respective positions and to compromise the issues on a fair and equitable
4 basis.

5 3.2 The Parties recognize and acknowledge the expense and delay of continued
6 lengthy proceedings necessary to prosecute the Action against Defendants through trial and through
7 appeals. PAGA Counsel has considered the uncertain outcome of the litigation, the risk of
8 continued litigation in complex actions such as this, as well as difficulties and delays inherent in
9 such litigation, as well as trying the claims of the Settlement Group. PAGA Counsel believes that
10 the Settlement set forth in this Agreement confers substantial benefits upon Plaintiff and the
11 Settlement Group Members and that an independent review of this Agreement by the Court in the
12 approval process will confirm this conclusion. Based on their own independent investigation and
13 evaluation, PAGA Counsel has determined that the Settlement set forth in the Agreement is in the
14 best interests of Plaintiff and the Settlement Class Members.

15 4. **NO ADMISSION OF ANY LIABILITY**

16 4.1 This Agreement represents a compromise and settlement of highly disputed
17 claims. This Agreement does not constitute, is not intended to constitute, and will not be deemed
18 to constitute, an admission of liability by Defendants as to the merits, validity, or accuracy of any
19 of the allegations or claims made against Defendants in the Action. Defendants deny each and all
20 of Plaintiff's allegations in their entirety.

21 4.2 Nothing in this Agreement, the Memorandum of Understanding nor any action
22 taken or made in implementation thereof, nor any statements, discussions, or communications, nor
23 any materials prepared, exchanged, issued, or used during the course of the negotiations leading to
24 the Agreement, is intended by the Parties to, nor will any of the foregoing constitute, be introduced,
25 be used, or be admissible in any way in this case or any other judicial, arbitral, administrative,
26 investigative or other forum or proceeding as evidence of any violation of any federal, state, or
27 local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or
28 in equity. Notwithstanding the foregoing, the Agreement may be used in any proceeding in the

1 Court that has as its purpose the interpretation, implementation, or enforcement of the Agreement
2 or any orders or judgments of the Court entered into in connection therewith.

3 4.3 The Parties agree that Plaintiff's motion for approval of the Settlement and
4 Defendants' agreement thereto is for purposes of the Settlement only. If, for any reason, the
5 Settlement is not approved, this Agreement will not be admissible in this or any other proceeding
6 as evidence that (i) the Action should proceed forward, or (ii) Defendants are liable to Plaintiff or
7 the Settlement Group Members as Plaintiff alleged. In the event that this Agreement is not
8 approved by the Court or any appellate court, is terminated, or otherwise fails to be enforceable,
9 Defendants will not be deemed to have waived, limited, or affected in any way any of their
10 objections or defenses in the Action, including, but not limited to, their ability to move to compel
11 arbitration, raise defenses in opposition to the Action, contest the merits of the claims and theories
12 alleged, etc.

13 5. **SETTLEMENT CONSIDERATION**

14 5.1 **Gross Settlement and Net Settlement Amounts and Distribution.** The Gross
15 Settlement Amount and other actions and forbearances taken by Defendants shall constitute
16 adequate consideration for the Settlement and will be made in full and final settlement of: (a) the
17 Released Claims, (b) PAGA Counsel's Attorneys' Fees and Expenses, (c) Administration
18 Expenses, (d) LWDA Payment, (e) Enhancement Award to Plaintiff (if any) and (d) the Individual
19 Settlement Payments to Settlement Group Members, and any other obligation of Defendants under
20 this Agreement.

21 5.2 **Payments to Settlement Group Members.** Each Settlement Group Member
22 shall be eligible to receive an Individual Settlement Payment. The Parties understand that
23 Settlement Group Members who receive an Individual Settlement Payment pursuant to this
24 Agreement shall be solely responsible for any and all other individual tax obligations associated
25 with the payment.

26 5.3 **No Effect on Employee Benefits.** Neither the Settlement nor any amounts paid
27 under the Settlement will modify any previously credited hours, days, or weeks or service under
28 any employee benefit plan, policy or bonus program sponsored by Defendants (or their affiliates,

1 parents or successors). Such amounts will not form the basis for additional contributions to, benefit
2 under, or any other monetary entitlement under Defendants' sponsored benefit plans, policies or
3 bonus programs, if any. The payments made under the terms of this Settlement shall not be applied
4 retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other form
5 of compensation for the purposes of any of Defendants' benefit plans, policies or bonus programs,
6 if any. Defendants retain the right to modify the language of their benefits plans, policies and
7 bonus programs to effect this intent and to make clear that any amounts paid pursuant to this
8 Agreement are not for "weeks worked," "weeks paid," "weeks of service," or any similar
9 measuring term as defined by applicable plans, policies and bonus programs for purpose of
10 eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or
11 benefits are not required by this Agreement. Defendants do not consider the Individual Settlement
12 Payments "compensation" for purposes of determining eligibility for, or benefit accrual within, any
13 benefits plan, policy, or bonus program, or any other plan or program sponsored by Defendants (or
14 their affiliates, parents or successors), if any.

15 5.4 **PAGA Counsel Attorneys' Fees and Expenses.** As part of the motion for
16 approval of the Settlement, PAGA Counsel may submit an application for an award of Attorneys'
17 Fees and Expenses. Defendants agree not to object to any such fee, cost or expense application in
18 line with this Agreement and in an amount not to exceed 35% of the Gross Settlement Amount for
19 attorneys' fees and \$20,000 for costs. As a condition of this Settlement, PAGA Counsel has agreed
20 to pursue fees and costs only in the manner reflected by this Agreement. Any PAGA Counsel
21 Attorneys' Fee and Expenses awarded by the Court shall be paid from the Gross Settlement
22 Amount. If the PAGA Counsel voluntarily reduces the request for Attorneys' Fees and Expenses
23 or the Court's award is less than set forth above, the difference shall remain with the Net
24 Settlement Amount.

25 The Attorneys' Fees and Expenses approved by the Court shall encompass: (a) all work
26 performed and costs and expenses incurred by, or at the direction of, any attorney purporting to
27 represent the Settlement Group through the date of this Agreement; (b) all work to be performed
28 and costs to be incurred in connection with approval by the Court of the Settlement set forth in this

Agreement; (c) all work to be performed and costs and expenses, if any, incurred in connection with administering the Class Settlement through the Effective Date; and (d) may be based on the Catalyst Theory and/or Common Fund Doctrine.

5.5 **Payment of PAGA Counsel Attorneys' Fees and Expenses.** PAGA Counsel Attorneys' Fees and Expenses as awarded by the Court shall be paid by the Settlement Administrator within thirty (30) days of the Effective Date.

5.6 Enhancement Award to Plaintiff: Plaintiff shall be paid \$10,000 as part of his individual settlement and subject to Court approval.

5.7 **Size of the Settlement Group.** There are approximately 110 PAGA settlement group members who worked approximately 5,400 Pay Periods during the PAGA Period up until the date of mediation, October 27, 2023 ("Pay Period Total"). If the number of Pay Periods increases by 10% beyond the Pay Period Total, the Settlement Period will end on the last day before the 10% threshold is exceeded.

6. **ADMINISTRATION COSTS AND EXPENSES**

6.1 **The Settlement Administrator's Costs and Expenses.** All costs and expenses due to the Settlement Administrator in connection with its administration of the Settlement described in the Agreement, including, but not limited to, formatting and mailing the Settlement Letter and Individual Settlement Payments, performing a National Change of Address database search to update Settlement Group Members addresses prior to the mailing, performing skip-traces to locate and update Settlement Group Members' addresses, calculating, and distributing Individual Settlement Payments, and any other tasks requested by the Parties or by the Court, among other tasks as reflected within this Agreement, will be paid through the Gross Settlement Amount.

7. **FUNDING AND DISTRIBUTION**

7.1 **Funding of the Gross Settlement Amount.** The Settlement Administrator will provide Defendants with its bank wire instructions to establish the Qualified Settlement Fund (QSF).

Within five (5) days of the Effective Date, Defendants shall transmit the Gross Settlement Amount to the Settlement Administrator.

7.2 **Distribution of the Gross Settlement Amount.** Within 30 calendar days of the Effective Date, the Administrator will pay to Settlement Group Members, their Individual Settlement Payments via first-class regular U.S. Mail; to PAGA Counsel, the Court-awarded Attorneys' Fees and Litigation Expenses Payment; to the LWDA, the Court-approved LWDA Payment; Enhancement Award to Plaintiff (if any); and to the Administrator, the Court-awarded Administration Fees and Expenses.

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

8. **NULLIFICATION OF THIS AGREEMENT**

8.1 **Non-Approval of the Agreement.** If (a) the Court should for any reason fail to approve this Agreement in the form agreed to by the Parties, or (b) the Court should for any reason fail to enter a judgment on this Action, or (c) the approval of the Settlement and judgment is reversed, modified or declared or rendered void, then the Settlement shall be considered null and void, and neither the Settlement nor any of the related negotiations or proceedings shall be of any force or effect, and all Parties to the Settlement shall stand in the same position, without prejudice, as if the Settlement has been neither entered into nor filed with the Court. Notwithstanding the foregoing, the Parties may attempt in good faith to cure any perceived defects in the Agreement to facilitate approval. In the event the Court awards less than the requested amounts for Administration Fees, PAGA Counsel's Attorneys' Fees and Expenses, Enhancement Award to Plaintiff (if any), or the PAGA Payment, the difference shall become part of the Net Settlement Amount.

8.2 **Invalidation.** Invalidation of any material portion of the Settlement shall invalidate the Settlement in its entirety, unless the Parties shall subsequently agree in writing that the remaining provisions of the Settlement are to remain in full force and effect.

8.3 **Stay Upon Appeal.** In the event of a timely appeal from the approval of the

Settlement and Judgment, the Judgment shall be stayed, and Defendants shall not be obligated to fund the Gross Settlement Amount or take any other actions required by this Agreement until all appeal rights have been exhausted by operation of law.

9. **MOTION OR STIPULATION FOR COURT APPROVAL**

9.1 **Approval.** PAGA Counsel will submit this Agreement to the Court along with a Motion or Stipulation for an Order Granting Approval of the Settlement.

10. **RELEASES AND WAIVERS**

10.1 **Settlement Group Members' Release.** Upon the Effective Date, Plaintiff, the Settlement Group Members, and the State of California vis-à-vis the LWDA shall hereby release the Released Parties for the Released Claims for the PAGA Period.

11. **DUTIES OF THE PARTIES**

11.1 **Mutual Full Cooperation.** The Parties agree to cooperate fully with one another to accomplish and implement the terms of this Agreement. Such cooperation shall include, but not be limited to, execution of such other documents and the taking of such other actions as may reasonably be necessary to fulfill the terms of this Settlement. The Parties shall use their best efforts, including all effects contemplated by this Agreement and any other efforts that may become necessary by Court order or otherwise, to effectuate the terms of this Agreement. As soon as practicable after execution of this Agreement, PAGA Counsel, with the cooperation of Defendants and Defense Counsel, shall take all necessary and reasonable steps to secure the Court's final approval of this Agreement.

11.2 **Duty to Support and Defend the Settlement.** The Parties agree to abide by all of the terms of the Settlement in good faith and to support the Settlement fully and to use their best efforts to defend this Settlement from any legal challenge, whether by appeal or collateral attack.

12. **MISCELLANEOUS PROVISIONS**

12.1 **Different Facts.** The Parties hereto, and each of them, acknowledge that, except for matters expressly represented herein, the facts in relation to the dispute and all claims released by the terms of this Agreement may turn out to be other than or different from the facts now known by each party and/or their counsel, or believed by such Party or counsel to be true, and each Party

1 therefore expressly assumes the risk of the existence of different or presently unknown facts, and
2 agrees that this Agreement shall be in all respects effective and binding despite such difference.

3
4 12.2 **No Prior Assignments.** The Parties represent, covenant, and warrant that they
5 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
6 encumber to any person or entity any portion of any liability, claim, demand, action, cause of
7 action, or right herein released and discharged except as set forth herein.

8 12.3 **Non-Admission.** Nothing in this Agreement shall be construed as or deemed to
9 be an admission by any Party of any liability, culpability, negligence, or wrongdoing toward any
10 other Party, or any other person, and the Parties specifically disclaim any culpability, negligence, or
11 wrongdoing toward each other or any other person. Each of the Parties has entered into this
12 Agreement with the intention to avoid further disputes and litigation with the attendant
13 inconvenience, expenses, and contingencies. Nothing herein shall constitute any admissions by
14 Defendants of wrongdoing or liability, or of the truth of any factual allegations in the Action.
15 Nothing herein shall constitute any admission by Defendants regarding the merits of the Claims in
16 this Action. Nothing herein shall constitute an admission by Defendants that the Action was
17 properly brought as a representative action other than for settlement purposes. To the contrary,
18 Defendants have denied and continue to deny each and every material factual allegation and all
19 Claims. To this end, the Settlement of the Action, the negotiation and execution of this Agreement,
20 and all acts performed or documents executed pursuant to or in furtherance of this Agreement or
21 the Settlement are not, shall not be deemed to be, and may not be used as, an admission or evidence
22 of any wrongdoing or liability on the part of Defendants or of the truth of any of the factual
23 allegations in the Action; and are not, shall not be deemed to be, and may not be used as, an
24 admission or evidence of any fault or omission on the part of Defendants in any civil, criminal or
25 administrative proceeding in any court, administrative agency or other tribunal.

26 12.4 **Media or Press.** Plaintiff and Defendants, and their respective counsel, agree to
27 limit public comment on this Settlement, the Action, and claims in the Action, stating that the
28 matter has been resolved to the satisfaction of the Parties. Plaintiff and Defendants, and their

1 respective counsel shall not initiate public comment and/or discuss with or present to the media or
2 press.

3 12.5 **Construction.** The Parties hereto agree that the terms and conditions of this
4 Agreement are the result of lengthy, intensive, arms-length non-collusive negotiations between the
5 Parties and that this Agreement is not to be construed in favor of or against any party by reason of
6 the extent to which any Party or their counsel participated in the drafting of this Agreement. If any
7 of the dates in the Agreement fall on a weekend, bank or court holiday, the time to act shall be
8 extended to the next business day.

9 12.6 **Governing Law.** This Agreement is intended to and shall be governed by the
10 laws of the State of California, without regard to conflict of law principles, in all respects,
11 including execution, interpretation, performance, and enforcement.

12 12.7 **Captions and Interpretations.** Section titles or captions contained herein are
13 inserted as a matter of convenience and for reference only and in no way define, limit, extend, or
14 describe the scope of this Agreement or any provision thereof.

15 12.8 **Modification.** This Agreement may not be changed, altered, or modified,
16 except in writing signed by the Parties and approved by the Court. This Agreement may not be
17 discharged except by performance in accordance with its terms or by a writing signed by the
18 Parties.

19 12.9 **Integration Clause.** This Agreement contains the entire agreement between the
20 Parties relating to the Settlement of the Action and the transactions contemplated thereby (with the
21 exception of Plaintiff's individual settlement agreement), and all prior or contemporaneous
22 agreements, understandings, representations, and statements, whether oral or written, and whether
23 by a party or such party's legal counsel, are hereby superseded (with the exception of Plaintiff's
24 individual agreement). No rights under this Agreement may be waived except in writing as
25 provided above.

26 12.10 **Successors and Assigns.** This Agreement shall be binding upon and inure to
27 the benefit of the Parties and Settlement Group Members and their respective present and former
28 heirs, trustees, executors, administrators, representatives, officers, directors, shareholders, agents,

employees, insurers, attorneys, accountants, auditors, advisors, consultants, pension and welfare benefit plans, fiduciaries, parent companies, subsidiaries, affiliates, related companies, joint ventures, predecessors, successors, and assigns.

12.11 **Corporate Signatories.** Any person executing this Agreement or any such related document on behalf of a corporate signatory or on behalf of a partnership hereby warrants and promises, for the benefit of all Parties hereto, that such person has been duly authorized by such corporation or partnership to execute this Agreement or any such related document.

12.12 **Execution in Counterparts.** This Agreement shall become effective upon its execution by all of the undersigned. The Parties may execute this Agreement in counterparts, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument.

12.13 **Attorneys' Fees, Costs and Expenses.** Except as otherwise specifically provided for herein, each Party shall bear their or its own attorneys' fees, costs and expenses, taxable or otherwise, incurred by them in or arising out of the Action and shall not seek reimbursement thereof from any other Party to this Agreement.

IN WITNESS WHEREOF, the Parties and their counsel have executed this Agreement on the date below their signatures of their representatives. The date of the Agreement shall be the date of the latest signature.

Dated: February __, 2024
2/2/2024

Plaintiff

By:

DocuSigned by:

CA131E9586FF453...

DANIEL ALVAREZ

1 Dated: February 2, 2024

JAMES HAWKINS, APLC

2
3 By: 

James R. Hawkins
Gregory Mauro

4
5 Attorneys for Plaintiff
DANIEL ALVAREZ

6 Dated: February __, 2024

Defendant CULINART OF CALIFORNIA, INC.

7
8
9 By: _____

Jeff Henry, Senior Corporate Counsel

10
11 Dated: February __, 2024

Defendant CULINART GROUP, INC.

12
13
14 By: _____

Jeff Henry, Senior Corporate Counsel

15
16 Dated: February __, 2024

FISHER & PHILLIPS LLP

17
18
19 By: _____

Lonnie D. Giamela

20 Attorneys for Defendants
CULINART OF CALIFORNIA INC and CULINART
21 GROUP, INC.

1 Dated: February __, 2024

JAMES HAWKINS, APLC

2
3
4 By: _____

James R. Hawkins
Gregory Mauro

5 Attorneys for Plaintiff
6 DANIEL ALVAREZ

7 Dated: February 5 __, 2024

Defendant CULINART OF CALIFORNIA, INC.

8 DocuSigned by:

9 By:  _____
9E086C6CE879444...

Jeff Henry, Senior Corporate Counsel

10 Dated: February 5 __, 2024

Defendant CULINART GROUP, INC.

12 DocuSigned by:

13 By:  _____
9E086C6CE879444...

Jeff Henry, Senior Corporate Counsel

16 Dated: February 5, 2024

FISHER & PHILLIPS LLP

17
18 By:  _____

Lonnie D. Giamela

19 Attorneys for Defendants
20 CULINART OF CALIFORNIA INC and CULINART
21 GROUP, INC.

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

|

You are receiving this letter because you are entitled to money as a result of a court approved settlement in *Daniel Alvarez v. Culinart of California, Inc., et al.*, Superior Court of the State of California, County of Los Angeles, Case No. 22STCV39814 (the “**Lawsuit**”).

What is this case about?

In the Lawsuit, Plaintiff Daniel Alvarez asserted claims for civil penalties pursuant to the Private Attorneys General Act of 2004 (“**PAGA**”) Labor Code section 2698 *et seq.* against Defendants Culinart of California, Inc. and Culinart Group, Inc. (“**Culinart**”) on behalf of himself and all persons who worked for Culinart as non-exempt, hourly employees in the State of California at any time from October 17, 2021 through December 31, 2023. These persons are known as “**PAGA Member(s)**” and this period is known as the “**PAGA Period**”. These claims are based on Culinart’s alleged (1) failure to pay minimum wage; (2) failure to pay overtime; (3) failure to provide correct wage statements; (4) failure to pay all reimbursements; and (5) failure to pay all wages due at termination or quitting. Culinart denies each of these claims and contentions alleged by Plaintiff in the Lawsuit and contends that they complied with California law in all respects.

What are the terms of the Settlement?

Plaintiff and Culinart reached a settlement of \$145,000.00, which was reviewed and approved by the Court (“the Settlement”). By operation of the Settlement’s terms, all PAGA Members will release Culinart and other released parties from all PAGA claims and theories that were set forth, or that could have been set forth based on the facts alleged in the Action during the PAGA Period for PAGA claims for civil penalties under the California Labor Code including, but not limited to, under California Labor Code sections 201-203, 510, 512, 558, 226, 226.3, 226.7, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2802 and related IWC Wage Orders, based on the various theories of liability, including, but not limited to, Culinart’s alleged failure to pay all wages earned and owed upon separation, provide accurate written wage statements, and reimburse business expenses. The Settlement is intended only to release PAGA Members’ PAGA claims.

Upon entry of the order approving the Settlement, any PAGA Member covered by the Settlement will be barred from proceeding with any claim released by the Settlement.

Culinart’s records show that you are a PAGA Member. Accordingly, you are entitled to a share of the settlement based on your percentage share of pay periods during the PAGA Period.

What should I do now?

You are automatically included in this Settlement. You may immediately deposit your enclosed settlement check and need not take any further action at this time.

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Exhibit 2

Matter Billing Detail

Report Date:4/2/2024

Report Time:3:28PM

Page:1 of 2

User ID:R. Hawkins

JAMES HAWKINS APLC

Date Range:01/01/1900 to 04/02/2024

Client:CULINART - Daniel Alvarez Jr.

Matter:CULINARTINC. - Culinart, Inc.- Daniel Alvarez Jr. v. Culinart, Inc.

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
		Balance Forward:	\$0.00						
10/17/2022	FIL	Filing Fee - LWDA Filing Fee	\$75.00		Unbilled				
10/17/2022	FST	First Legal Network - E-Filing (2) - Complaint, Summons, Civil Case Cover, Proof of Personal Service, Proces Serve (2) - Class Complaint and Initial Docs In# 30216387	\$2,005.17		Unbilled				
11/04/2022	POS	Postage - Oct 17 2022 Mailing LWDA	\$16.60		Unbilled				
11/04/2022	FIL	Filing Fee - Oct 17 2022 LWDA	\$75.00		Unbilled				
12/16/2022	FST	First Legal Network - E-Filing - Joint Status Conference Report IN# 30222171	\$37.70		Unbilled				
01/03/2023	FST	First Legal Network - E-Filing - Notice Regarding Continuance of HEA IN# 30224217	\$39.95		Unbilled				
02/28/2023	FST	First Legal Network - E-Filing - Joint Status Conference Report IN# 30227367	\$39.95		Unbilled				
04/07/2023	FST	First Legal Network - E-Filing - Order Re: Request for Dis IN# 30233810	\$39.95		Unbilled				
07/12/2023	FST	First Legal Network - E-Filing - Proof of Service IN# 30244254	\$61.95		Unbilled				
10/03/2023	MED	Mediation Services- IN#596663- CHK# 11182	\$8,375.00		Unbilled				
11/07/2023	FST	First Legal Network - Filing - CM Statement In# 30260163	\$39.95		Unbilled				
11/21/2023	EXA	Expert Analysis IN#9938 CK#11294	\$4,815.00		Unbilled				
		Total:	\$15,621.22	\$0.00					
		Balance:	\$15,621.22						

Matter Billing Detail

JAMES HAWKINS APLC

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
Total Fees Billed- - - - -			\$0.00						
Total Fees Unbilled : - - - - -			\$0.00						
Total Fees Received : - - - - -			\$0.00						
Total Soft Cost Billed : - - - - -			\$0.00						
Total Soft Cost Unbilled : - - - - -			\$0.00						
Total Soft Cost Received : - - - - -			\$0.00						
Total Hard Cost Billed : - - - - -			\$0.00						
Total Hard Cost Unbilled : - - - - -			\$15,621.22						
Total Hard Cost Received : - - - - -			\$0.00						
Total Taxes Billed : - - - - -			\$0.00						
Total Taxes Unbilled : - - - - -			\$0.00						
Total Taxes Received : - - - - -			\$0.00						
Total Late Charges Billed : - - - - -			\$0.00						
Total Late Charges Unbilled: - - - - -			\$0.00						
Total Late Charges Received : - - - - -			\$0.00						
Trust Balance: - - - - -			\$0.00						

Matter Billing Detail

Report Date: 4/2/2024
Report Time: 3:29PM
Page: 1 of 2
User ID: R. Hawkins

JAMES HAWKINS APLC

Date Range: 01/01/1900 to 04/02/2024
Client: CULINART - Daniel Alvarez Jr.
Matter: CULINARTPAGA - Culinart, Inc.- PAGA Alvarez Jr. v. Culinart, Inc.

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
		Balance Forward:	\$0.00						
12/22/2022	FST	First Legal Network - E-Filing - Complaint, Summons, Civil Case Cover IN# 30222171	\$516.20		Unbilled				
04/05/2023	FST	First Legal Network - E-Filing - Notice of Continuance, Case Management Statement IN# 30233810	\$79.90		Unbilled				
07/05/2023	FST	First Legal Network - E-Filing - Notice of Errata re : Table of Contents IN# 30244254	\$79.90		Unbilled				
10/05/2023	ARB	Arbitration FEE- CHK# 11191- IN# 6867400	\$400.00		Unbilled				
02/07/2024	FST	First Legal Network - Filing - Notice of Settlement, Notice of Minute Order IN# 30271388	\$84.30		Unbilled				
		Total:	\$1,160.30	\$0.00					
		Balance:	\$1,160.30						

Matter Billing Detail

JAMES HAWKINS APLC

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
Total Fees Billed-----			\$0.00						
Total Fees Unbilled :-----			\$0.00						
Total Fees Received :-----			\$0.00						
Total Soft Cost Billed :-----			\$0.00						
Total Soft Cost Unbilled :-----			\$0.00						
Total Soft Cost Received :-----			\$0.00						
Total Hard Cost Billed :-----			\$0.00						
Total Hard Cost Unbilled :-----			\$1,160.30						
Total Hard Cost Received :-----			\$0.00						
Total Taxes Billed :-----			\$0.00						
Total Taxes Unbilled :-----			\$0.00						
Total Taxes Received :-----			\$0.00						
Total Late Charges Billed :-----			\$0.00						
Total Late Charges Unbilled:-----			\$0.00						
Total Late Charges Received :-----			\$0.00						
Trust Balance:-----			\$0.00						