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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES**

12 CRISTIAN MONTOYA, on behalf of the
13 State of California, the Labor & Workforce
14 Development Agency, as a private attorney
15 general, and on behalf of all aggrieved
16 employees,

Plaintiff,

v.

17 GRECO ENTERTAINMENT GROUP,
18 INC., a California corporation; 2454
19 WILSHIRE RESTAURANT, LLC, a
20 California limited liability company; 2460
21 WILSHIRE RESTAURANT LLC, a
22 California limited liability company; and
23 DOES 1-100, inclusive

Defendants

Case No.: 23STCV00656

Assigned for All Purposes to:
Hon. Mel Red Recana
Dept. 45

**DECLARATION OF NIKKI TRENNER IN
SUPPORT OF MOTION FOR APPROVAL
OF SETTLEMENT UNDER PRIVATE
ATTORNEYS GENERAL ACT**

[Filed Concurrently with Notice of Motion and
Motion; Memorandum of Points & Authorities;
Declarations of Cristian Montoya and Michael
Moore; [Proposed] Order]

Date: July 17, 2024
Time: 8:30 a.m.
Dept. 45

Reservation ID: 683678529442

1 **DECLARATION OF NIKKI TRENNER**

2 I, NIKKI TRENNER, Declare:

3 1. I am an attorney duly licensed to practice in California and before this Court, and I
4 am associated with Crosner Legal, PC, counsel of record for plaintiff Cristian Montoya. I make
5 this declaration in support of Plaintiff's Motion for Approval of Settlement under the Private
6 Attorneys General Act. If called to testify as to the within facts, I would and could competently do
7 so.

8 2. Attached hereto as Exhibit 1 is a true and correct, fully-executed copy of the
9 Parties' PAGA Settlement Agreement (the "Settlement Agreement"). Attached hereto as Exhibit
10 2 is a redline of the Settlement Agreement showing the changes made from the LASC model
11 agreement. Attached hereto as Exhibit 3 true and correct copy of the Notice letter the Parties
12 propose to send to the Aggrieved Employees along with their settlement check. Attached hereto as
13 Exhibit 4 is a true and correct copy of Plaintiff's November 4, 2022 PAGA Notice letter and proof
14 of submission to the Labor & Workforce Development Agency's ("LWDA"). Attached hereto as
15 Exhibit 5 is a true and correct copy of the LWDA's acknowledgement of receipt of the complaint.
16 Attached hereto as Exhibit 6 is a true and correct copy of the LWDA's acknowledgment of receipt
17 of the proposed settlement.

18 3. I am unaware of any other pending cases that would overlap with the claims alleged
19 in this case or that would impact the claims of the Aggrieved Employees in this case.

20 **BACKGROUND**

21 4. Defendants are a Los Angeles based restaurant group operating as Fia Restaurant in
22 Santa Monica, and Dono restaurant, also in Santa Monica (which opened in June 2022 and later
23 closed operations in December 2022). Plaintiff has worked for Defendants as a non-exempt cook
24 since October 2021, and generally works 8-9 hours per day, 4-5 days per week.

25 5. Plaintiff contends Defendants violated California wage and hour laws in several
26 respects. First, he alleges Greco failed to pay all wages due by requiring "off the clock" work, as
27 employees frequently continued working after clocking out in order to completely finish the day's
28

1 work. He next contends he and other Aggrieved Employees did not receive all required meal and
2 rest periods, He further alleges employees were required to be available by phone to respond to calls
3 and texts from the restaurant but did not receive any reimbursement. Finally, he alleged Defendant
4 violated Labor Code section 351 by failing to properly distribute employee tips.

5 6. On November 4, 2022, Plaintiff filed a class action against Defendants on behalf of
6 himself and all other similarly situated non-exempt employees. Thereafter, the Parties met and
7 conferred regarding potentially applicable arbitration agreements and stipulated to submit Plaintiff's
8 individual claims to arbitration and stay the action pending the completion of arbitration. On January
9 12, 2022, Plaintiff filed a separate PAGA action on behalf of himself and all similarly aggrieved
10 non-exempt employees of Defendants in California.

11 7. Defendants have at all times denied Plaintiff's allegations and maintained they
12 complied with all relevant provisions of the Labor Code and Wage Orders. Specifically, Defendants
13 contend among other things that Plaintiff and all alleged aggrieved employees were timely paid for
14 all hours worked at the correct hourly rates in conformance with all applicable laws, that it
15 authorized and permitted Plaintiff and the alleged aggrieved employees to take all required breaks
16 on a fully compliant basis and in accordance with all applicable laws. Defendants further argued
17 they properly distributed all employee tips, and that any use of personal phones on the job was
18 unnecessary and therefore not reimbursable. Greco also strongly contends the case cannot be
19 maintained as a representative action because among other things Plaintiff's off the clock and
20 missed/interrupted/late/short meal and rest period allegations necessarily require detailed
21 individualized assessments and accordingly individualized issues predominate and a trial under
22 PAGA would be unmanageable.

23 8. After Plaintiff filed the initial PAGA complaint, the Parties then began engaging in
24 discovery and, upon discussing the merits of the case and holding several meet and confer sessions
25 regarding prospective law and motion and discovery issues, agreed to attempt mediation. The Parties
26 further agreed to a protocol for exchanging additional documents and information before the
27 mediation. Through this formal and informal discovery, Defendants provided Plaintiff with
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information including, inter alia, the number of potential alleged aggrieved employees, the number of aggregate pay periods, sample pay stubs, time records for over 45,000 employee shifts, employee handbooks and manuals, and relevant policy documents on Defendants' time keeping and reporting policies, etc. Plaintiff had that information reviewed by Berger Consulting Group to help evaluate potential violation rates, potential damages, etc.

9. The parties then attended a full day mediation before highly-regarded mediator Steven Pearl, Esq., who has extensive experience mediating wage and hour class and PAGA actions. Before and during the mediation, Plaintiff and counsel analyzed, researched, and investigated the potential issues, including matters related to the calculation of damages, trial, and appellate issues and risks. During mediation, the Parties vigorously debated the likelihood of Plaintiff's ability to proceed on a representative basis as to the PAGA claims, the legal grounds for Plaintiff's claims and Defendants' defenses, and the parties' data analyses and conclusions based on data provided by Defendants. After a contentious full day of negotiations, the Parties were able to reach agreement on all major issues. The Parties then formalized the tentative settlement in the settlement agreement now before the Court.

SUMMARY OF SETTLEMENT TERMS

10. Under the settlement, Defendant will pay a non-reversionary settlement amount of \$175,000 (the “Gross Settlement Amount” or “GSA”) in three payments (of \$125,000, \$25,000, and \$25,000) within four months of the Effective Date. The GSA is inclusive of payments to the LWDA and Aggrieved Employees, costs of settlement administration, Plaintiff’s service award, and reasonable attorney’s fees and costs. After payment of settlement administration costs, service award and reasonable attorney’s fees and costs from the GSA, the Parties presently estimate about \$82,166.67 will remain (the “Net Settlement Amount” or “NSA”). 75% of the NSA (about \$61,625.00) will go to the LWDA, and the remaining 25% (about \$20,541.67) will be distributed to the Aggrieved Employees in proportion to the total number of Eligible Pay Periods each individual worked during the PAGA Period. The average award currently is estimated at about \$67.

11. The Parties propose using Phoenix Settlement Administrators (“Phoenix”) as the Settlement Administrator. Phoenix has extensive experience administering PAGA settlements, and has agreed to cap its fees at \$4,500.00. As noted, within 120 calendar days of the Settlement’s Effective Date, Defendant will fund the settlement in three installment payments (of \$125,000, \$25,000, and \$25,000) and thereafter, within 14 days of full funding, Phoenix will mail a Notice and settlement check to all PAGA Members via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in Defendant’s records. Recipients need not submit claim forms and will automatically receive a Notice and settlement check. Settlement checks will be negotiable for 180 days, after which time any unclaimed residual funds will be forwarded to the State Controller’s Unclaimed Property Fund.

12. The release in the Settlement Agreement narrowly releases only civil penalty claims brought under PAGA, as asserted in Plaintiff's PAGA notice to the LWDA and the operative Complaint. While Plaintiff is entering into a general release of any and all claims against Defendants, the Settlement Agreement protects the rights of the alleged aggrieved employees to bring their own individual claims should they wish. For these reasons, the Parties contend the release narrowly applies only to the PAGA claims alleged or that could have been alleged, based on the factual and legal allegations pled in the operative complaint.

The Settlement Meets the Moniz/Kullar Factors and is Fair, Reasonable and Adequate

13. Plaintiff alleges claims for civil penalties for unpaid wages, meal/rest break violations, tip violations, and failure to reimburse expenses, as well as derivative wage statement and waiting time penalty claims. First, Plaintiff contends Defendants failed to pay employees all wages due because of “off the clock” work. Here, Plaintiff alleges Defendants’ policies required employees to clock out no later than 5 minutes after the scheduled end of a shift, while simultaneously requiring them to complete all of their work, such as ensuring the restaurant was completely cleaned, cleaning and putting away all equipment and supplies, etc., such that employees had to continue working after clocking out.

1 14. Plaintiff also contends Defendants failed to provide proper meal and rest breaks, and
2 that review of the time records provided shows numerous “de facto” violations where meal breaks
3 were not provided at all (especially as to second meal periods), or otherwise non-compliant. On the
4 rest break claims, Plaintiff claims many breaks were not a net 10 minutes, and further that Greco
5 did not provide a suitable area for employees to take their breaks.

6 15. Plaintiff next alleges he and other aggrieved employees regularly received work-
7 related phone calls and texts on their personal cell phones, but did not get any reimbursement for
8 using the personal phones. Plaintiff also alleged Defendants improperly distributed employee tips
9 to pay managers and other non-service employees, and to pay other overhead costs, all in violation
10 of Labor Code section 351.

11 16. Lastly, Plaintiff also brings derivative claims for inaccurate wage statements and
12 failure to pay all wages due and owing upon separation of employment under Labor Code §§ 201-
13 203, based on the above-described alleged wage violations.

14 17. Defendants estimate that, as of the date of this Settlement Agreement, there are
15 approximately 307 Aggrieved Employees who worked approximately 6,550 Pay Periods during
16 the PAGA Period .Based on the data and information provided by Defendants, and with his
17 expert’s assistance and analysis, Plaintiff estimated Defendants’ theoretical maximum PAGA
18 exposure at about \$2,744,200. Plaintiff, however, substantially discounted that number to account
19 for Defendants’ procedural and merits defenses, of which there are many.

20 18. We estimated these amounts as follows:

21 **Unpaid Wage/Rounding violations:**

22 6,550 pay periods * 100% violation rate * \$100/violation = \$655,000

23 **Meal period violations:**

24 6,550 pay periods * 66% violation rate * \$100/violation = \$432,300

25 **Rest period violations:**

26 6,550 pay periods * 100% violation rate * \$100/violation = \$655,000

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1 **Wage Statement violations:**

2 6,550 pay periods * 100% violation rate * \$100/violation = \$655,000

3 **Tip Violations**

4 6,550 pay periods * 50% violation rate * \$100/violation = \$327,500

5 **Final Pay violations**

6 194 former employees (est.) * 1 violation per employee * \$100/violation = \$19,400

7 19. In response to Plaintiff's off the clock claims, Defendants emphasized they
8 accurately tracked employee time and paid the allegedly aggrieved employees for all hours worked
9 at the correct rates consistent with their compliant policies. They further argued employees regularly
10 received supervisor approval to work beyond the scheduled end of a shift when necessary to
11 complete their job duties, and further that any alleged "off the clock" would have been against
12 company policy and done without Defendants' actual or constructive knowledge.

13 20. For the meal and rest break claims, Defendants offered multiple defenses. First,
14 Defendants emphasized that the written meal and rest break policy generally was compliant, that
15 they authorized and permitted all necessary breaks, and that alleged aggrieved employees received
16 full 30 minute lunch periods without interruption as reflected in the time records. Defendants also
17 argued that even to the extent missed/non-compliant breaks occurred, it was in violation of company
18 policy and would require significant individual inquiries to determine the reasons underlying any
19 such alleged violations and whether it was by employee choice or some other reason. Thus, per
20 Defendants, any trial would be unmanageable on a representative basis because of these
21 individualized issues.

22 21. As with meal breaks, Defendants argued the applicable rest break policies complied
23 with California law and authorized and permitted employees to take all required breaks. Defendants
24 further contended that, in light of the fact that recording rest periods is not required, any evidence
25 of failure to authorize rest periods and/or discouragement from taking rest periods would be purely
26 anecdotal and individual issues would predominate on liability. Defendants also contended that they
27 are only liable if Plaintiff can prove, on a shift-by-shift basis, that each alleged aggrieved employee

1 actually did not receive a fully-compliant rest break. This arguably would once again make a trial
2 unmanageable since the instances an employee missed a rest break would have to be tested on a
3 case by case basis to determine compliance.

4 22. For the expense reimbursement claim, Defendants argued there would be no
5 conceivable need for employees to use their phones for work while at the restaurant and, to the extent
6 they did it was purely for personal convenience and therefore neither required nor reasonable. Thus, per
7 Greco it owed no reimbursement for cell phone use. On the tip claims, Defendants argued that all tips
8 were properly distributed only to those employees entitled to receive them, and that its written tip
9 pooling policy specified that no supervisors were eligible to receive any part of employee tips.

10 23. On the wage statement and waiting time waiting time penalty claims, Defendants
11 emphasized that, to the extent they are derivative then they rise or fall along with the primary claims,
12 in addition to being subject to “good faith” and other defenses available to Defendants. Accordingly,
13 Plaintiff had to discount the value of these claims significantly in light of these multiple potential
14 defenses. Defendants also contended a substantial discount should be applied to the civil penalties
15 for these derivative (i.e., “stacked”) violations, as it would be unfair to penalize Defendants multiple
16 times for the same violation.

17 24. Defendants also emphasized PAGA gives the Court wide latitude to reduce the
18 amount of civil penalties “based on the facts and circumstances of a particular case” if “to do
19 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” This is
20 particularly true here where the claims essentially are premised on “de facto” violations and that
21 could prove difficult to establish on a representative basis, and in light of many cases that have
22 imposed substantial discounts on PAGA penalties awarded after trial. Additionally, no information
23 came to light suggesting that any violations were knowing and willful by Defendants and thus
24 Plaintiff believes there is a high likelihood the Court would find imposition of significantly more in
25 penalties would be “unjust, arbitrary, or confiscatory.”

26 25. Defendants raised various and multi-layered procedural and merits defenses to
27 Plaintiff’s claims, any one of which, if successful, could have decimated Plaintiff’s case. And
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Defendants vowed to raise all these defenses at trial. Accordingly, Plaintiff faced risky issues going forward with this litigation, and it could have taken years to realize any recovery in this action along with the possibility of post-trial appeals. In addition to its merits defenses and arguing trial would be unmanageable, Defendants also intended to raise additional defenses on damages, including the proper measure of civil penalties and the appropriate discount to place on any assessment of such penalties.

26. Although Plaintiff and I believe we could have prevailed, there was no such guarantee. When the risks of overcoming a manageability defense, prevailing at trial on the merits on all claims, and securing maximum civil penalties all are factored into the equation, the settlement value is reasonable and supported. Indeed, to recover maximum penalties Plaintiff would have to shoot the moon and win on liability as to all claims and all pay periods, and convince the Court to award full penalties, which outcome is highly unlikely. Given Defendants' procedural and merits defenses, as well as the substantial penalty reductions ordered in the cases above – which occurred after trial – the proposed settlement is eminently reasonable.

SUBMISSION TO THE LWDA

27. My office timely served the LWDA with the Settlement Agreement and this Motion, and notified the LWDA of this approval hearing. Accordingly, the LWDA will be able to weigh in as necessary and, importantly, many courts find it persuasive of approval if the LWDA ultimately declines to offer any comment or objection to a proposed PAGA settlement.

PLAINTIFF'S ENHANCEMENT AWARD

28. Pursuant to the terms of the settlement, Plaintiff seeks a modest incentive award of \$10,000 for his service in bringing these claims on behalf of the LWDA and Aggrieved Employees. The request is reasonable given the risks he undertook on behalf of the Class Members, and given he is entering into a full general release of all claims. By contacting and retaining counsel to pursue these claims, Plaintiff helped make this settlement possible for the State and other employees, while shouldering the risk of being liable for Defendants' litigation costs. Plaintiff also exposed himself to unwanted notoriety related to filing a public lawsuit

1 (discoverable even through a simple google search) for the benefit of other employees, placing
2 himself at risk of discrimination by future prospective employers. As set forth in more detail in his
3 declaration submitted herewith, among taking many other actions assisting in the successful
4 litigation of this case, Plaintiff provided substantial factual information and documents to counsel,
5 attended numerous meetings/phone conferences with counsel to discuss the case, and kept abreast
6 of all significant developments.

7 **THE REQUESTED ATTORNEY'S FEES AND COSTS ARE FAIR AND REASONABLE**

8 29. Under the terms of the Settlement Agreement, I respectfully request an award of
9 attorney's fees to Crosner Legal equal to 1/3 of the total settlement amount, or \$58,333.33. A one-
10 third common fund attorney fee award is consistent with what courts have awarded Plaintiff's
11 counsel in other representative actions. Awarding attorney's fees of one-third of a gross
12 settlement amount is favored by California courts when a fund established for the common benefit
13 of others is involved, such as here.

14 30. There are several additional factors why I believe that the Court should award one-
15 third of the common fund as a reasonable attorney's fee. First, our efforts resulted in a common
16 fund settlement amount of \$175,000.00, which for the reasons explained, is fair and reasonable in
17 light of the risks/defenses Defendants raised in litigation and threatened to raise at trial and in
18 post-trial appeals. Further, this is a significant sum that furthers the purposes underlying PAGA
19 such as augmenting the state's enforcement capabilities, encouraging compliance with Labor Code
20 provisions, and deterring future non-compliance. Moreover, this result was achieved by the work
21 and success of this office, who negotiated the settlement after extensive preparation, informal
22 discovery, and an adversarial mediation.

23 31. Second, Plaintiff faced significant risks going forward with the litigation. As
24 discussed above, Defendants raised various defenses to her claims, anyone of which, if successful,
25 could have decimated Plaintiff's case. Plaintiff faced risky legal issues going forward with this
26 litigation, and it would have taken several more years to realize any recovery in this action along
27 with the possibility of post-trial appeals,

32. Third, we are experienced class and representative action litigators, and have achieved several approved PAGA settlements. This experience and expertise, combined with the high quality of work performed, resulted in the settlement achieved in this case.

33, I graduated from Trinity Law School in 2017 and joined Mara Law Firm, PC (formerly The Turley and Mara Law Firm, APLC) that same year. I later joined Crosner Legal in 2020 and am currently employed as a senior associate in the wage and hour department. I have solely handled wage and hour class actions and PAGA lawsuits for six (6) years. I routinely write and oppose motions, draft complaints, appear before the Court at law and motion and settlement hearings, engage in the discovery process, including drafting Belaire-West notices and meet and confer letters. I have obtained class certification in the following matters:

Hernandez v. Aviation Port Services, LLC, Kern County Superior Court Case No. BCV-18-100141. I have also assisted in obtaining millions of dollars for employees in the following court-approved class action and/or representative PAGA settlements: *Michael Campbell, et al. v. Symons Emergency Specialities, Inc.*, San Bernardino County Superior Court Case No. CIVDS1903158; *Amber Collins v. Danbarb, Inc., et al.*, Los Angeles County Superior Court Case No. 20STCV44190; *Michael Elridge v. LA Downtown Medical Center, LLC, et al.*, Los Angeles County Superior Court Case No. 20STCV05951; *Anthony Leon, et al. v. Sierra Aluminum Company, et al.*, San Bernardino County Superior Court Case No. CIVDS2010856; *Elaine Moyal v. Cabinets To Go, LLC*, Los Angeles County Superior Court Case No. 20STCV32477; *Genevieve Rangel v. Bassett Direct NC, LLC*, Orange County Superior Court Case No. 30-2018-01040101-CU-OE-CXC; *Jacob Buys v. Sizewise Rentals, Inc., et al.*, Sacramento County Superior Court Case No. 34-2018-00225848-CU-OE-GDS; *Alejandro Valencia v. VM Tree Service, Inc., et al.*, Riverside County Superior Court Case No. RIC1819395; *Joshua Rael v. Intercontinental Hotels Group Resources, Inc.*, Los Angeles County Superior Court Case No. 19STCV16010; *Angel Cervantez v. Valley Pallet, Inc.*, Sacramento County Superior Court Case No. 34-2018-00234334-CU-OE-GDS; *Tonja Edwards-Bloodsaw v. Sandburst Convalescent Group, LTD, et al.*, Los Angeles Superior Court Case No.

1 19STCV15797; *Moriah Holtegaard, et al. v. Howroyd-Wright Employment Agency, Inc. dba*
2 *AppleOne Corporation Services, et al.*, Central District Court of California, Eastern Division,
3 Case No. 5:20-cv-00509 JGB (KKx); *Jade Findley, et al. v. Avenue5 Residential, LLC, et al.*,
4 Los Angeles County Superior Court Case No. 20STCV34633; *Keivan Keyhanzad v. Ryan Cars,*
5 *LLC dba Pomona Kia, et al.*, Riverside County Superior Court Case No. RIC1905276; *Luis*
6 *Bolanos v. FSC Corporation dba Il Pastaio Restaurant, et al.*, Los Angeles County Superior
7 Court Case No. BC722758; *Loretta Cannon v. Pasadena Hospital Association, LTD dba*
8 *Huntington Hospital*, Los Angeles County Superior Court Case No. 19STCV14554; *Nathan*
9 *Kapusta v. Cardinale Motors SLO, Inc., et al.*, Kern County Superior Court Case No. BCV-20-
10 101593; and *Jesse McCauley v. Mullahey Ford, Inc., et al.*, San Luis Obispo County Superior
11 Court Case No. 21CV0001.

12 34. Zach Crosner is a 2010 graduate of University San Diego School of Law, and has
13 some 13 years of experience as a practicing attorney, all of which have focused on litigation of
14 employment, labor law, consumer, and class action claims. Following graduation, he
15 immediately began working for a nationally recognized plaintiff's complex litigation firm,
16 CaseyGerry, where I had the fortune of working directly with past presidents of the consumer
17 attorneys and recipients of trial attorneys of the year awards. He also worked for former
18 CAALA and CLAY trial attorney of the year recipient, attorney Conal Doyle, as his sole
19 associate attorney. During his tenure at these firms, he focused on advocating for the rights of
20 consumers and employees in class action litigation, civil rights and employment litigation,
21 catastrophic injuries, insurance bad faith and appellate litigation.

22 35. In 2013, Mr. Crosner founded the law firm of Crosner Legal, P.C. which since its
23 inception has focused almost exclusively on wage and hour class actions and other labor and
24 employment law cases representing plaintiffs. Currently, over ninety percent (90%) of his
25 practice is dedicated exclusively to the prosecution of wage and hour class actions, and Crosner
26 Legal is currently responsible as lead counsel or co-lead counsel for prosecuting well over fifty
27 (50) wage and hour class actions and/or PAGA representative actions in both federal and state
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1 courts throughout California.

2 36. Mr. Crosner currently is an executive board member of the Wage and Hour
3 Committee and the Legislative Committee for the California Employment Lawyers Association;
4 a member of the Grassroots Advocacy Team for the National Employment Lawyers Association;
5 Wage and Hour Committee member and Class Action Committee member for the National Trial
6 Lawyers; a member of the American Association for Justice; and member of the Pound Civil
7 Justice Institute. He was selected for 2018-20 by Super Lawyers as a “Southern California
8 Rising Star” for employment and labor law.

9 37. Jamie Serb is a partner with Crosner Legal and head of the firm’s Wage & Hour
10 Department. She graduated from the University of California, San Diego in 2004, graduated
11 from California Western School of Law in 2013, and has been a member of the California Bar
12 since 2013. She gained extensive experience in wage and hour litigation, beginning work as a
13 class action attorney in 2015 at the Mara Law Firm, PC (previously Turley & Mara Law Firm,
14 APLC; Turley Law Firm, APLC). She joined Crosner Legal on January 4, 2021 as an associate
15 attorney. She has handled wage and hour class actions and PAGA lawsuits for over eight years
16 and has assisted in obtaining millions of dollars for employees during her years of practice.

17 38. Kiara Bramasco joined Crosner Legal in 2021, and is head of the firm’s
18 Prelitigation Department. She received her undergraduate degree, magna cum laude, from
19 Loyola Marymount University in Political Science, and then received her JD from Loyola Law
20 School in 2018. She then spent several years with well-known plaintiff’s firm Moss Bollinger,
21 first as a law clerk and then as an associate, where her practice focused on employment law,
22 particularly wage and hour class action and PAGA litigation.

23 39. Branden Hamilton obtained her undergraduate degree from UCLA in 2004, and her
24 law degree from George Washington University in 2007. She has been affiliated with my firm since
25 2017 and became Of Counsel with Crosner Legal in 2019, and her practice focuses almost
26 exclusively on wage and hour class and representative actions. She has spent her entire career
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1 representing plaintiffs in employment litigation, including several years as an associate at well-
2 known plaintiff's firm Carlin & Buchsbaum.

3 40. Crosner Legal has obtained several multi-million dollar wage and hour class action
4 settlements while serving as lead class counsel in recent years, including but not limited to a \$1.9
5 million wage and hour class action settlement in 2015 (*Smith v. Lux Retail North America, Inc.*,
6 Case No. 3:13-cv-01579-WHA (N.D. Cal.)); a \$4.1 million wage and hour class action settlement
7 in 2016 (*Aguirre v. Mariani Nut Company, Inc. et al.*, Case No. 34- 2016-00190252 (Sacramento
8 Cty. Super Ct.)); a \$1.35 million wage and hour class action settlement in 2017 (*Montelone v.*
9 *Ocean Cities Pizza, Inc.*, Case No. 56-2014-00458249 (Ventura Cty. Super. Ct.)), a \$1.8 million
10 wage and hour class action settlement in 2018 (*Latham v. K.W.P.H. Enterprises, Inc. dba*
11 *American Ambulance*, Case No. 17C-0162 (Kings Cty. Super Ct.)), a \$1.3 million wage and hour
12 class action settlement in 2019 (*Means, et al. v. AirGas USA, LLC*, Case No. 17-CV-2160 JGB
13 (C.D. Cal.)), a \$1.5 million wage and hour settlement in 2020 (*Babouchian, et al. v. Wyndham*
14 *Vacation Ownership, et al.*, Case No. CV18-14601 (San Diego Cty. Super. Ct.)), a \$1.15 million
15 wage and hour class action settlement in 2020 (*Buford v. Medical Solutions LLC*, Case No. 4:18-
16 CV-04864-YGR (N.D.Cal.)); a \$2.2 million wage and hour class action settlement in 2021
17 (*Ghorchian, et al. v. West Hills Hospital, et al.*, Case No. LS029737 (Los Angeles Cty. Super.
18 Ct.)); a \$2.85 million dollar wage and hour settlement in 2021 (*Valencia v. The Original*
19 *Mowbray's Tree Service, Inc.*, Case No. CIVDS1825518 (San Bernardino Cty. Super. Ct.)); a \$1
20 million wage and hour class action settlement in 2022 (*Duong v. Loan Factory, Inc.*, Case No.
21 21CV382467 (Santa Clara Cty. Super. Ct.)), a \$1.4 million wage and hour class action settlement
22 in 2023 in *Correa, et al. v. FedEx Supply Chain, Inc.*, Case No. CIVDS2023369 (San Bernardino
23 Cty. Super. Ct.), and a \$2.38 million wage and hour class action settlement in 2023 in *Michel, et*
24 *al. v. Valley Thrift Store, Inc.*, Case No. 21STCV00925 (Los Angeles Cty. Super. Ct.)

25 41. Based upon the qualifications and experience set forth above, the following hourly
26 rates are reasonable for attorneys practicing in this area of the law in California: Zachary M.

1 Crosner \$800/hour, Jamie K. Serb, \$750/hour, and Nikki Trenner \$700/hour, and Kiara Bramasco
2 \$650/hour.

3 42. I request the Court apply the above hourly billing rates in this case, as it reasonable
4 in the California legal market for attorneys handling wage and hour class and PAGA actions. I
5 have personal knowledge of the hourly rates charged by a number of plaintiff-side wage and hour
6 class action firms in major California legal markets for partner-level attorneys with experience
7 comparable to mine. These rates have ranged from \$750 to \$900 per hour for calendar years
8 2018-2023. Some examples include attorney Ron Makarem of Makarem & Associates in Los
9 Angeles, with 28 years of experience, \$900/hour (2023), Matthew Matern of Matern Law Group
10 in Los Angeles, with approximately 26 years of experience \$850/hour (2018); Craig Ackermann
11 of Ackermann & Tilajef, PC in Los Angeles with approximately 25 years of experience \$850/hour
12 (2021), Michael Singer and Isam Khoury of Cohelan Khoury & Singer in San Diego, 35 years and
13 45 years of experience respectively, both \$825/hour (2018), Zachary Crosner of Crosner Legal PC
14 in Los Angeles, 13 years of experience \$750/hour (2022), and James Kawahito of Kawahito Law
15 Group in Los Angeles, with approximately 16 years of experience \$750/hour (2020).

16 43. The requested rates also comport with the adjusted Laffey Matrix, which provides
17 that reasonable hourly rates for attorneys with 10+ years of experience, such as Mr. Crosner and
18 Ms. Serb, are over \$800/hour. The adjusted Laffey Matrix may be found at
19 <http://www.laffeymatrix.com/see.html>.

20 44. Fourth, my office has been representing Plaintiff (and the State of California) in
21 this matter on a strictly contingent basis and as such, had to forego other financial opportunities to
22 litigate other cases, incurred the risk of non-recovery after a substantial investment of time,
23 money, and resources, and have done so since the inception of this case without any payment or
24 compensation. This is not an easy burden for a small firm. If, despite these hardships and risks, the
25 best this office could hope for is merely to be paid our customary hourly rate multiplied by the
26 number of hours worked on the case, then we would not be compensated for the hardships and
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1 serious risks it faced litigating this contingency case, and would not be incentivized to take on
2 similar private attorney general cases in the future.

3 45. Fifth, the request for attorney's fees in the amount of one-third of the common fund
4 falls well within the norms accepted by state and federal courts in California in comparable wage
5 and hour actions actually handled by this office. Moreover, the award of a one-third fee recovery
6 under the common fund doctrine was recently approved by the California Supreme Court in
7 Laffitte v. Robert Half Int'l, Inc. (2016) 1 Cal.5th 480. For all of the above reasons, a common
8 fund fee award here in the amount of one-third of the \$175,000 common fund, or \$58,333.333, is
9 fair and reasonable.

10 46. Attached as Exhibit 7 is a true and correct summary of work performed and hours
11 expended on this matter, which total 142.1 attorney hours. Accordingly, Crosner Legal's lodestar
12 totals approximately \$99,400.00, exclusive of time for attending the hearing on the approval
13 motion, time to implement and administer the settlement. On a lodestar basis, the requested fees
14 are lower than the base lodestar and accordingly there is no request to apply an upward modifier.

15 47. As noted, Crosner Legal has represented Plaintiff for close to eighteen months with
16 respect to this matter and has expended a significant amount of time and resources in that
17 representation. The firm agreed to litigate this case on a purely contingent basis and in so doing
18 assumed considerable risk of non-payment for its fees and costs, as discussed above, and as is the
19 case with these matters in general. Under all relevant factors (as outlined herein and in the
20 accompanying memorandum), I respectfully request the Court award the requested fees of
21 \$58,333.33 based on the common fund theory with a corresponding lodestar cross-check no
22 lodestar enhancement.

23 48. I also request reimbursement of Crosner Legal's actual out-of-pocket expenses
24 incurred to prosecute this action. These expenses were incidental and necessary to the effective
25 representation of the employees.

26 49. Crosner Legal's costs are \$25,750.42, including court filing/service of process fees,
27 mediation fees, expert witness fees, and postage. The requested costs are reasonable and
28

1 uncontested and should be approved up to the \$20,000 cap provided for in the Settlement
2 Agreement. A true and correct itemization of the costs and expenses incurred is set forth below:

Expense Category	Amount
Court Filing Fees/Service of Process/Attorney Service	\$5,449.73
Mediation Fees	\$8,750.00
PAGA Filing Fee	\$75.00
Expert Witness Fees	\$10,840.00
Case Anywhere	\$405.00
Postage	\$230.68
Total Costs and Expenses	\$25,750.42

14 50. For the foregoing reasons, it is respectfully requested that the Court approve the
15 settlement.

16 I declare under penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct. Executed on May 14, 2024, at San Diego, California.

18
19 

20 Declarant

EXHIBIT

1

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff Christian Montoya (“Plaintiff”) and Defendants Greco Entertainment Group, Inc., 2454 Wilshire Restaurant, LLC, and 2460 Wilshire Restaurant LLC (“Defendants”). The Agreement refers to Plaintiff and Defendants collectively as “Parties,” or individually as “Party.”

1. **DEFINITIONS.**

- 1.1. “Action” means the Plaintiff’s PAGA lawsuit alleging wage and hour violations against Defendants captioned Montoya v. Greco Entertainment Group et al, Los Angeles Superior Court Case No. 23STCV00656 initiated on January 12, 2023 and pending in Superior Court of the State of California, County of Los Angeles.
- 1.2. “Administrator” means Phoenix Class Action Administration Solutions (“Phoenix”), the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “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.
- 1.4. “Aggrieved Employee” means all current and former persons employed by Defendant 2454 Wilshire Restaurant LLC as non-exempt employees in California during the PAGA Period.
- 1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in Defendants’ possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.
- 1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.
- 1.7. "Approval Order" means the proposed Court Order Granting Approval of PAGA Settlement.
- 1.8. “Court” means the Superior Court of California, County of Los Angeles.
- 1.9. “Defendants” means named Defendants Greco Entertainment Group, Inc., 2454 Wilshire Restaurant, LLC, and 2460 Wilshire Restaurant LLC.
- 1.10. “Defense Counsel” means Joshua Carlon and Robert Walker of Atkinson, Andelson, Loya, Ruud & Romo.
- 1.11. “Effective Date” means the date when the Court enters a Judgment on its Order

Approving the PAGA Settlement.

- 1.12. “Gross Settlement Amount” means \$175,000.00 which is the total amount Defendants agree to pay under the Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, PAGA Representative Payment, and the Administrator’s Expenses Payment.
- 1.13. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.
- 1.14. “Judgment” means the judgment entered by the Court based upon the Court’s approval of the Settlement.
- 1.15. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.16. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.17. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, PAGA Representative Payment, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.
- 1.18. “Notice of PAGA Settlement” means the letter, substantially similar to the form attached hereto as **Exhibit A**, explaining the Settlement to the Aggrieved Employees, which will accompany each settlement check.
- 1.19. “Operative Complaint” means Plaintiff’s Complaint for Enforcement under the PAGA, filed with the Court on January 12, 2023, in the Action.
- 1.20. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.21. “PAGA Counsel” means Nikki Trenner, Jamie Serb, and Zachary Crosner of Crosner Legal, PC, the attorneys representing the Plaintiff in the Action.
- 1.22. “PAGA Counsel Fees Payment” means the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys’ fees incurred to prosecute the Action.
- 1.23. “PAGA Counsel Litigation Expenses Payment” means the amount allocated to PAGA Counsel for reimbursement of reasonable expenses incurred to prosecute the Action.
- 1.24. “PAGA Notice” means Plaintiff’s November 4, 2022 letter to Defendants and the

LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

- 1.25. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendants in California for at least one day during the PAGA Period.
- 1.26. "PAGA Period" means the period from November 4, 2022 to March 25, 2024.
- 1.27. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Net Settlement Amount, allocated 25% to the Aggrieved Employees and the 75% to LWDA in settlement of PAGA claims.
- 1.28. "PAGA Representative" means the named Plaintiff in the Operative Complaint in the Action.
- 1.29. "PAGA Representative Payment" means the payment to the PAGA Representative for initiating the Action and providing services in support of the Action.
- 1.30. "Plaintiff" means Christian Montoya, the named plaintiff in the Action.
- 1.31. "Released PAGA Claims" means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.
- 1.32. "Released Parties" means: Defendants and each of its former and present related entities, subsidiaries, parents, affiliates, predecessors, insurers, agents, employees, successors, assigns, owners, officers, officials, directors, attorneys, partners, members, personal representatives, executors, investors, and shareholders, including their respective pension, profit sharing, savings, health, and other employee benefits plans of any nature, the successors of such plans, and those plans' respective current or former trustees and administrators, agents, employees, and fiduciaries., ,.
- 1.33. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

2. RECITALS.

- 2.1. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendants and the LWDA by sending the PAGA Notice on November 4, 2022.
- 2.2. On January 12, 2023, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendants for alleged civil penalties pursuant to the PAGA predicated on alleged violations of the Labor Code sections 201-203, 204, 216, 221-223, 226, 226.7, 245-248.5, 351-353, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5. The Complaint is the operative complaint in the Action (the "Operative Complaint."). Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in in the Operative Complaint and deny any and all liability for the causes of action alleged.

- 2.3. On January 25, 2024, the Parties participated in an all-day mediation presided over by Steve Pearl, which led to this Agreement to settle the Action.
- 2.4. Prior to mediation, Plaintiff obtained, through informal discovery relevant documents and data from Defendants including (1) Plaintiff's personnel file, (2) Plaintiff's time and payroll records, (3) the employee handbooks in effect during the PAGA Period, (4) Defendant's additional policies and operating procedures regarding the (a) payment of wages, (b) the provision of meal and rest breaks, (c) timekeeping policies (including recording hours), (d) issuance of wage statements, and (e) termination wages, and (5) a 75% sampling of the payroll and time records for the Aggrieved Employees, among other documents.
- 2.5. 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.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Defendants promise to pay \$175,000.00 and no more as the Gross Settlement Amount. Defendants have no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.3 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.
- 3.2. Payments from the Gross Settlement Amount. 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:
 - 3.2.1. To Plaintiff: A PAGA Representative Payment to Plaintiff of not more than \$10,000.00 (in addition to any Individual PAGA Payment the Plaintiff is entitled to as an Aggrieved Employee). Defendants will not oppose Plaintiff's request for a PAGA Representative Payment that does not exceed this amount. As part of the Settlement approval motion, Plaintiff and/or PAGA Counsel will request approval for PAGA Representative Payment. If the Court approves a PAGA Representative Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the PAGA Representative Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the PAGA Representative Payment.
 - 3.2.2. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than one-third of the Gross Settlement Amount which is currently estimated to be \$58,333.33

and PAGA Counsel Litigation Expenses Payment of not more than \$20,000.00. Defendants will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. As part of the Settlement approval motion, Plaintiff and/or PAGA Counsel will request approval for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$5,000 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$5,000, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To the LWDA and Aggrieved Employees: PAGA Penalties to be paid from the Net Settlement Amount, with 75% allocated to the LWDA PAGA Payment and 25% allocated to the Individual PAGA Payments.

3.2.4.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.4.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendants estimate there are approximately 307 Aggrieved Employees who worked a total of approximately 6,550 PAGA Pay Periods.

- 4.2. Aggrieved Employee Data. Within 15 days of the execution of this Agreement, 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 have a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Defendants must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.
- 4.3. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator as follows: Defendants will fund \$125,000 within thirty days after the effective date, an additional \$25,000 forty-five days after the first payment, and the final \$25,000 forty-five days after the second payment/ninety days after the first payment.
- 4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendants fund the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Representative Payment, the PAGA Counsel Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.
- 4.4.1. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
- 4.4.2. The distribution of Individual PAGA Payments shall be accompanied by the Notice of PAGA Settlement.
- 4.4.3. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved

Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

4.4.4. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

4.4.5. The payment of Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS. Effective on the date when Defendants fully fund the entire Gross Settlement Amount Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:

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

5.1.1 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.

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 the PAGA Notice including PAGA claims predicated on alleged violations of the California Labor Code sections 201-203, 204, 216, 221-223, 226, 226.7, 245-248.5, 351-353, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and the applicable California Industrial Welfare Commission Wage Orders.

6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT. The Parties agree to jointly prepare and file an application or motion for approval of this Settlement.

- 6.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (iv) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (v) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.
- 6.2 Responsibilities of PAGA Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement no later than 30 days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's Order Granting Approval of PAGA Settlement to the Administrator.
- 6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

- 7.1 Selection of Administrator. The Parties have jointly selected Phoenix to serve as the Administrator and verified that, as a condition of appointment, Phoenix agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.
- 7.4 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8. AGGRIEVED EMPLOYEE SIZE ESTIMATES AND ESCALATOR CLAUSE

- 8.1 Based on its records, Defendants estimate that, as of the date of this Settlement Agreement, there are approximately 307 Aggrieved Employees who worked approximately 6,550 Pay Periods during the PAGA Period.
- 8.2 The Gross Settlement Amount was agreed upon based on Defendants’ representations of the total number of Pay Periods in the PAGA Period. If the number of Pay Periods during the PAGA Period exceeds 6,550 by more than ten percent (10%), the Gross Settlement Amount shall be increased on a pro rata basis per Pay Period exceeding the 10% increase (i.e. if the number increases by 11%, the Gross Settlement Amount shall be increased by 1%).

9. CONTINUING JURISDICTION OF THE COURT. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

- 9.1 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties, their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties’ obligations to perform under this Agreement will be suspended

until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

9.2 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Aggrieved Employees), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain approval of the Settlement and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the PAGA Representative Payment or any payments to PAGA Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

10. ADDITIONAL PROVISIONS.

- 10.1 No Admission of Liability or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Defendants reserve all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendants defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).
- 10.2 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 10.3 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 10.4 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties

are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

- 10.5 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 10.6 No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendants, nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 10.7 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 10.8 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 10.9 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 10.10 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 10.11 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 10.12 Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from Defendants unless, prior to the Administrator's payment of all Settlement Funds, Defendants make a written request to PAGA Counsel for the return, rather than the destructions, of Aggrieved Employee Data.
- 10.13 Headings. The descriptive heading of any section or paragraph of this Agreement is

inserted for convenience of reference only and does not constitute a part of this Agreement.

- 10.14 Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 10.15 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Zachary Crosner
zach@crosnerlegal.com
Jamie Serb
jamie@crosnerlegal.com
Nikki Trenner
nikki@crosnerlegal.com
CROSNER LEGAL, PC
9440 Santa Monica Blvd., Suite 301
Beverly Hills, CA 90210

To Defendants:

Joshua Carlon
joshua.carlon@aalrr.com
Robert R. Walker
robert.walker@aalrr.com
ATKINSON ANDELSON LOYA RUUD ROMO
251 S. Lake Ave., Suite 360
Pasadena, CA 91101

- 10.16 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 10.17 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Dated: 04 / 17 / 2024



Plaintiff Christian Montoya

Dated: _____

Michael Greco
Michael Greco (May 8, 2024 17:57 PDT)

Michael Greco, For Defendants

Dated: 04/19/2024

CROSNER LEGAL, PC



Zachary Crosner

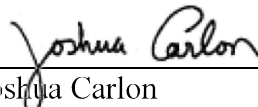
Jamie Serb

Nikki Trenner

Attorneys for Plaintiff Christian Montoya

Dated: April 24, 2024

**ATKINSON ANDELSON LOYA RUUD
ROMO**



Joshua Carlon

Attorneys for Defendants GRECO ENTERTAINMENT
GROUP, INC., 2454 WILSHIRE RESTAURANT, LLC,
AND 2460 WILSHIRE RESTAURANT LLC

EXHIBIT “A”

Christian Montoya v. Greco Entertainment Group, Inc., et al.
Superior Court of the State of California for the County of Los Angeles
Case No. 23STCV00656

[INSERT DATE OF MAILING]

[INSERT FIRST & LAST NAME]
[INSERT ADDRESS – LINE 1]
[INSERT ADDRESS – LINE 2]

Dear [INSERT FIRST & LAST NAME],

Pursuant to the Order of Honorable Mel Red Recana of the Superior Court of the State of California for the County of Los Angeles dated [INSERT DATE OF SETTLEMENT APPROVAL], enclosed is your payment from the settlement of the California Private Attorneys General Act of 2004 (“PAGA”) claims in the lawsuit entitled *Christian Montoya v. Greco Entertainment Group, Inc., et al.*, Superior Court of the State of California for the County of Los Angeles, Case No. 23STCV00656 (the “Action”).

The Action alleges a single claim for penalties under the PAGA Defendants Greco Entertainment Group, Inc., 2454 Wilshire Restaurant, LLC, and 2460 Wilshire Restaurant LLC (“Defendants”), for failure to pay minimum wage for all hours worked; failure to pay overtime; failure to pay statutory wages; failure to authorize and permit meal periods; failure to provide rest periods; failure to reimburse business expenses; failure to produce personnel files upon written request; failure to provide suitable resting facilities; failure to provide suitable seating; failure to provide paid sick leave; failure to pay employees all gratuities; unlawful criminal inquiries; unlawful financial inquiries; failure to keep accurate business records; failure to provide accurate itemized wage statements; and failure to timely pay wages upon termination.

Plaintiff seeks civil penalties on behalf of the California Labor and Workforce Development Agency (“LWDA”) and all current and former non-exempt employees who worked for Defendant 2454 Wilshire Restaurant, LLC in California during the PAGA Period from November 2, 2022 through March 25, 2024 (“Aggrieved Employees”). You have been identified as an eligible Aggrieved Employee in this time period.

Defendants deny Plaintiff’s claims in their entirety and believe that their wage and hour policies and practices fully comply with California law. However, in an effort to avoid the expense and business disruption associated with protracted litigation, Defendants agreed to resolve the Action. The Court has not made any determination about Plaintiff’s allegations. This Notice is not to be understood as an expression of any opinion by the Court as to the merits of the claims.

Honorable Mel Red Recana of the Superior Court of the State of California for the County of Los Angeles approved the settlement on [INSERT DATE OF SETTLEMENT APPROVAL]. Pursuant to the PAGA, 75% of PAGA penalties are paid to the State of California, and the remaining 25% of the PAGA penalties are paid directly to the Aggrieved Employees who worked during the PAGA Period from November 2, 2022 through March 25, 2024. Each Individual PAGA Payment was calculated on a pro rata basis (i.e., proportional) based on the number of pay periods worked by each Aggrieved Employee. To determine an Aggrieved Employee’s pro rata share of the Settlement, the settlement administrator will divide the amount of the Aggrieved Employees’ 25% share of the Net Settlement Amount by the total number of pay periods worked by all Aggrieved Employees during the PAGA Period and multiply the resulting amount by the number of pay periods worked by that Aggrieved Employee. You worked [INSERT PAY PERIODS WORKED] pay periods during the PAGA Period from September 29, 2018 through January 25, 2020 (“PAGA Period”).

The enclosed check is your portion of the PAGA settlement. Settlement checks will be null and void

180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall direct all unclaimed funds to the California State Controller's Unclaimed Property Fund in the name of the Aggrieved Employee whose checks were not delivered or cashed. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

You will receive an IRS 1099 Form for the check for this payment amount. You should seek the advice of a tax professional for any tax issues or questions related to this payment. Defendants will not retaliate against, or take any other negative action against, any employee who cashes the settlement check.

In exchange for the Individual PAGA Payments, Plaintiff and 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, Defendants and each of its former and present related entities, subsidiaries, parents, affiliates, predecessors, insurers, agents, employees, successors, assigns, owners, officers, officials, directors, attorneys, partners, members, personal representatives, executors, investors, and shareholders, including their respective pension, profit sharing, savings, health, and other employee benefits plans of any nature, the successors of such plans, and those plans' respective current or former trustees and administrators, agents, employees, and fiduciaries (the "Released Parties") 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 the PAGA Notice including PAGA claims predicated on alleged violations of the California Labor Code sections 201-203, 204, 216, 221-223, 226, 226.7, 245-248.5, 351-353, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and the applicable California Industrial Welfare Commission Wage Orders ("Released Claims"). The settlement does not resolve any claims for unpaid or underpaid wages or otherwise preclude you from bringing an action for wages against the Defendants or other Released Parties.

The pleadings and other records in this litigation, including the Settlement Agreement, may be examined online for a fee through the Superior Court of the State of California for the County of Los Angeles Court Docket website, <http://www.lacourt.org/casesummary/ui/index.aspx> and entering the Case Number for the Action, Case No. 23STCV00656. You may also contact Phoenix Class Action Administration Solutions ("Phoenix") toll free at **[INSERT ADMINISTRATOR PHONE NUMBER]** or you may contact the attorneys listed below with any questions:

Counsel for Plaintiff:	Counsel for Defendant:
Zachary Crosner, Esq. zach@crosnerlegal.com Jamie Serb, Esq. jamie@crosnerlegal.com Nikki Trenner, Esq. nikki@crosnerlegal.com CROSNER LEGAL, PC 9440 Santa Monica Blvd., Suite 301 Beverly Hills, CA 90210 Telephone: (866) 276-7637	Joshua Carlon joshua.carlon@aalrr.com Robert R. Walker robert.walker@aalrr.com ATKINSON ANDELSON LOYA RUUD ROMO 251 S. Lake Ave., Suite 360 Pasadena, CA 91101 Telephone: (626) 583-8600

PLEASE DO NOT CONTACT THE COURT OR THE JUDGE WITH ANY QUESTIONS ABOUT THE ACTION OR THE SETTLEMENT.

EXHIBIT

2

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff Christian Montoya (“Plaintiff”) and Defendants Greco Entertainment Group, Inc., 2454 Wilshire Restaurant, LLC, and 2460 Wilshire Restaurant LLC (“Defendants”). The Agreement refers to Plaintiff and Defendants collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s PAGA lawsuit alleging wage and hour violations against Defendants captioned [*Montoya v. Greco Entertainment Group et al, Los Angeles Superior Court Case No. 23STCV00656*](#) initiated on [January 12, 2023](#) and pending in Superior Court of the State of California, County of Los Angeles.
- 1.2. “Administrator” means [Phoenix Class Action Administration Solutions \(“Phoenix”\)](#), the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “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.
- 1.4. “Aggrieved Employee” means [all current and former persons employed by Defendant 2454 Wilshire Restaurant LLC as non-exempt employees in California](#) during the PAGA Period.
- 1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in Defendants’ possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.
- 1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.
- [1.7.](#) “Approval Order” means the proposed Court Order Granting Approval of PAGA Settlement.
- [1.7.1.8.](#) “Court” means the Superior Court of California, County of Los Angeles.
- [1.8.1.9.](#) “Defendants” means named Defendants Greco Entertainment Group, Inc., 2454 Wilshire Restaurant, LLC, and 2460 Wilshire Restaurant LLC.
- [1.9.1.10.](#) “Defense Counsel” means [Joshua Carlon and Robert Walker of Atkinson, Andelson, Loya, Ruud & Romo.](#)

~~1.10.1.11.~~ “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.~~

~~1.11.1.12.~~ “Gross Settlement Amount” means \$175,000.00 which is the total amount
Defendants agrees to pay under the Settlement except as provided in Paragraph 9-8
below. The Gross Settlement Amount will be used to pay Individual PAGA Payments,
the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation
Expenses Payment, PAGA Representative Payment, and the Administrator’s Expenses
Payment.

~~1.12.1.13.~~ “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share
of 25% of the PAGA Penalties calculated according to the number of Pay Periods the
Aggrieved Employee worked during the PAGA Period.

~~1.13.1.14.~~ “Judgment” means the judgment entered by the Court based upon the Court’s
the Final Approval of the Settlement.

~~1.14.1.15.~~ “LWDA” means the California Labor and Workforce Development Agency, the
agency entitled, under Labor Code section 2699, subd. (i).

~~1.15.1.16.~~ “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the
LWDA under Labor Code section 2699, subd. (i).

~~1.16.1.17.~~ “Net Settlement Amount” means the Gross Settlement Amount, less the
following payments in the amounts approved by the Court: Individual PAGA
Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel
Litigation Expenses Payment, PAGA Representative Payment, and the Administration
Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual
PAGA Payments.

1.18. “Notice of PAGA Settlement” means the letter, substantially similar to the form
attached hereto as Exhibit A, explaining the Settlement to the Aggrieved Employees,
which will accompany each settlement check.

1.19. “Operative Complaint” means Plaintiff’s Complaint for Enforcement under the PAGA,
filed with the Court on January 12, 2023, in the Action.

~~1.17.1.20.~~ “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et
seq.).

~~1.18.1.21.~~ “PAGA Counsel” means Nikki Trenner, Jamie Serb, and Zachary Crosner of
Crosner Legal, PC, the attorneys representing the Plaintiff in the Action.

~~1.19.1.22.~~ “PAGA Counsel Fees Payment” ~~and “PAGA Counsel Litigation Expenses~~
~~Payment”~~ means the amounts allocated to PAGA Counsel for reimbursement of

reasonable attorneys' fees ~~and expenses, respectively,~~ incurred to prosecute the Action.

1.23. "PAGA Counsel Litigation Expenses Payment" means the amount allocated to PAGA Counsel for reimbursement of reasonable expenses incurred to prosecute the Action.

~~1.20.~~1.24. "PAGA Notice" means Plaintiff's November 4, 2022 letter to Defendants and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

~~1.21.~~1.25. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendants in California for at least one day during the PAGA Period.

~~1.22.~~1.26. "PAGA Period" means the period from November 4, 2022 to March 25, 2024.

~~1.23.~~1.27. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the ~~Gross-Net~~ Settlement Amount, allocated 25% to the Aggrieved Employees and the 75% to LWDA in settlement of PAGA claims.

~~1.24.~~1.28. "PAGA Representative" means the named Plaintiff in the Operative Complaint in the Action.

~~1.25.~~1.29. "PAGA Representative Payment" means the payment to the PAGA Representative for initiating the Action and providing services in support of the Action.

~~1.26.~~1.30. "Plaintiff" means Christian Montoya, the named plaintiff in the Action.

~~1.27.~~1.31. "Released PAGA Claims" means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.

~~1.28.~~1.32. "Released Parties" means: Defendants and each of its former and present related entities, subsidiaries, parents, affiliates, predecessors, insurers, agents, employees, successors, assigns, owners, officers, officials, directors, attorneys, partners, members, personal representatives, executors, investors, and officers, shareholders, including their respective pension, profit sharing, savings, health, and other employee benefits plans of any nature, the successors of such plans, and those plans' respective current or former trustees and administrators, agents, employees, and fiduciaries. ~~owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, affiliates.~~

~~1.29.~~1.33. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

2. RECITALS.

2.1. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendants and the LWDA by sending the PAGA Notice on November 4, 2022.

~~2.1.2.2.~~ On January 12, 2023, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendants for alleged civil penalties pursuant to the PAGA predicated on alleged violations of the Labor Code sections 201-203, 204, 216, 221-223, 226, 226.7, 245-248.5, 351-353, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 11954, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5. The Complaint is the operative complaint in the Action (the “Operative Complaint.”). Defendants denyies the allegations in the Operative Complaint, denyies any failure to comply with the laws identified in in the Operative Complaint and denyies any and all liability for the causes of action alleged.

~~2.2.1.1. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendants and the LWDA by sending the PAGA Notice on November 4, 2022.~~

2.3. On January 25, 2024, the Parties participated in an all-day mediation presided over by Steve Pearl, which led to this Agreement to settle the Action.

2.4. Prior to mediation, Plaintiff obtained, through informal discovery relevant documents and data from Defendants including (1) Plaintiff’s personnel file, (2) Plaintiff’s time and payroll records, (3) the employee handbooks in effect during the PAGA Period, (4) Defendant’s additional policies and operating procedures regarding the (a) payment of wages, (b) the provision of meal and rest breaks, (c) timekeeping policies (including recording hours), (d) issuance of wage statements, and (e) termination wages, and (5) a 75% sampling of the payroll and time records for the Aggrieved Employees, among other documents.

2.5. 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.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9-8 below, Defendants promises to pay \$175,000.00 and no more as the Gross Settlement Amount. Defendants haves no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.14.3 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.

3.2. Payments from the Gross Settlement Amount. 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:

3.2.1. To Plaintiff: A PAGA Representative Payment to Plaintiff of not more than \$10,000.00 (in addition to any Individual PAGA Payment the Plaintiff is entitled to as an Aggrieved Employee). Defendants will not oppose Plaintiff’s request

for a PAGA Representative Payment that does not exceed this amount. As part of the Settlement approval motion, Plaintiff and/or PAGA Counsel will request approval for PAGA Representative Payment. If the Court approves a PAGA Representative Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the PAGA Representative Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the PAGA Representative Payment.

- 3.2.2. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than one-third of the Gross Settlement Amount which is currently estimated to be \$58,333.33 and PAGA Counsel Litigation Expenses Payment of not more than \$20,000.00. Defendants will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. As part of the Settlement approval motion, —Plaintiff and/or PAGA Counsel will ~~file an application or motion request approval~~ for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments.
- 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$5,000 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$5,000, the Administrator will retain the remainder in the Net Settlement Amount.
- 3.2.4. To the LWDA and Aggrieved Employees: PAGA Penalties ~~in the amount of~~ to be paid from the Gross-Net Settlement Amount, with 75% allocated to the LWDA PAGA Payment and 25% allocated to the Individual PAGA Payments.
- 3.2.4.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.4.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1. Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendants estimates there are approximately 307 Aggrieved Employees who worked a total of approximately 6,550 ~~of~~ PAGA Pay Periods.
- 4.2. Aggrieved Employee Data. Within 15 days of the execution of this Agreement, 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 haves a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Defendants must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.
- 4.3. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator ~~no later than 14 30 days after the Effective Date as follows:~~ Defendants will fund \$125,000 within thirty days after the effective date, an additional \$25,000 forty-five days after the first payment, and the final \$25,000 forty-five days after the second payment/ninety days after the first payment.
- 4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendants fund the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Representative Payment, the PAGA Counsel Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.
 - 4.4.1. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.1.4.4.2. The distribution of Individual PAGA Payments shall be accompanied by the Notice of PAGA Settlement.

4.4.2.4.4.3. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within [7] days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

4.4.3.4.4.4. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

4.4.4.4.4.5. The payment of Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS. Effective on the date when Defendants fully fund the entire Gross Settlement Amount Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:

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

5.1.1 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.

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 the PAGA Notice including PAGA claims predicated on alleged violations of the California Labor Code sections 201-203, 204, 216, 221-223, 226, 226.7, 245-248.5, 351-353, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and the applicable California Industrial Welfare Commission Wage Orders.

5.2 Release by PAGA Counsel:

5.3

~~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.~~

6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT. The Parties agree to jointly prepare and file an application or motion for approval of this Settlement.

- 6.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (iv) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (v) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

- 6.2 Responsibilities of PAGA Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement no later than ~~[30]~~ days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's Preliminary Order Granting Approval of PAGA Settlement to the Administrator.
- 6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

- 7.1 Selection of Administrator. The Parties have jointly selected Phoenix to serve as the Administrator and verified that, as a condition of appointment, Phoenix agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 7.4 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8. AGGRIEVED EMPLOYEE SIZE ESTIMATES AND ESCALATOR CLAUSE

- 8.1 Based on its records, Defendants estimates that, as of the date of this Settlement Agreement, ~~(1)~~ there are approximately 307 Aggrieved Employees who worked approximately 6,550 Pay Periods during the PAGA Period.

~~8.18.2~~ The Gross Settlement Amount was agreed upon based on Defendants' representations of the total number of Pay Periods in the PAGA Period. If the number of Pay Periods during the PAGA Period exceeds 6,550 by more than ten percent (10%), the

Gross Settlement Amount shall be increased on a pro rata basis per Pay Period exceeding the 10% increase (i.e. if the number increases by 11%, the Gross Settlement Amount shall be increased by 1%).^{iv}

9. **CONTINUING JURISDICTION OF THE COURT.** The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

9.1 9.1—Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties, their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

9.19.2 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Aggrieved Employees), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain approval of the Settlement and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the PAGA Representative Payment or any payments to PAGA Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

10. **ADDITIONAL PROVISIONS.**

- 10.1 No Admission of Liability or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Defendants reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendants defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this

Agreement).

- 10.2 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 10.3 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 10.4 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 10.5 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 10.6 No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendants, nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 10.7 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 10.8 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 10.9 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 10.10 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

- 10.11 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 10.12 Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from Defendants unless, prior to the Administrator's payment of all Settlement Funds, Defendants makes a written request to PAGA Counsel for the return, rather than the destructions, of Aggrieved Employee Data.
- 10.13 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 10.14 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 10.15 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

[Zachary Crosner](mailto:zach@crosnerlegal.com)
zach@crosnerlegal.com
[Jamie Serb](mailto:jamie@crosnerlegal.com)
jamie@crosnerlegal.com
[Nikki Trenner](mailto:nikki@crosnerlegal.com)
nikki@crosnerlegal.com
[CROSNER LEGAL, PC](#)
[9440 Santa Monica Blvd., Suite 301](#)
[Beverly Hills, CA 90210](#)

To Defendants:

[Joshua Carlon](mailto:joshua.carlon@aalrr.com)
joshua.carlon@aalrr.com

Robert R. Walker
robert.walker@aalrr.com
ATKINSON ANDELSON LOYA RUUD ROMO
251 S. Lake Ave., Suite 360
Pasadena, CA 91101

- 10.16 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 10.17 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Dated: _____

Plaintiff Christian Montoya

Dated: _____

Print Name: _____
For Defendant 2454 Wilshire Restaurant, LLC

Dated: _____

Print Name: _____
For Defendant 2460 Wilshire Restaurant, LLC

Dated: _____

CROSNER LEGAL, PC

Zachary Crosner
Jamie Serb
Nikki Trenner
Attorneys for Plaintiff Christian Montoya

Dated: _____

ATKINSON ANDELSON LOYA RUUD

ROMO

Joshua Carlon

Attorneys for Defendants GRECO ENTERTAINMENT
GROUP, INC., 2454 WILSHIRE RESTAURANT, LLC,
AND 2460 WILSHIRE RESTAURANT LLC

EXHIBIT “A”

Christian Montoya v. Greco Entertainment Group, Inc., et al.
Superior Court of the State of California for the County of Los Angeles
Case No. 23STCV00656

[INSERT DATE OF MAILING]

[INSERT FIRST & LAST NAME]

[INSERT ADDRESS – LINE 1]

[INSERT ADDRESS – LINE 2]

Dear [INSERT FIRST & LAST NAME],

Pursuant to the Order of Honorable Mel Red Recana of the Superior Court of the State of California for the County of Los Angeles dated [INSERT DATE OF SETTLEMENT APPROVAL], enclosed is your payment from the settlement of the California Private Attorneys General Act of 2004 (“PAGA”) claims in the lawsuit entitled *Christian Montoya v. Greco Entertainment Group, Inc., et al.*, Superior Court of the State of California for the County of Los Angeles, Case No. 23STCV00656 (the “Action”).

The Action alleges a single claim for penalties under the PAGA Defendants Greco Entertainment Group, Inc., 2454 Wilshire Restaurant, LLC, and 2460 Wilshire Restaurant LLC (“Defendants”), for failure to pay minimum wage for all hours worked; failure to pay overtime; failure to pay statutory wages; failure to authorize and permit meal periods; failure to provide rest periods; failure to reimburse business expenses; failure to produce personnel files upon written request; failure to provide suitable resting facilities; failure to provide suitable seating; failure to provide paid sick leave; failure to pay employees all gratuities; unlawful criminal inquiries; unlawful financial inquiries; failure to keep accurate business records; failure to provide accurate itemized wage statements; and failure to timely pay wages upon termination.

Plaintiff seeks civil penalties on behalf of the California Labor and Workforce Development Agency (“LWDA”) and all current and former non-exempt employees who worked for Defendant 2454 Wilshire Restaurant, LLC in California during the PAGA Period from November 2, 2022 through March 25, 2024 (“Aggrieved Employees”). You have been identified as an eligible Aggrieved Employee in this time period.

Defendants deny Plaintiff’s claims in their entirety and believe that their wage and hour policies and practices fully comply with California law. However, in an effort to avoid the expense and business disruption associated with protracted litigation, Defendants agreed to resolve the Action. The Court has not made any determination about Plaintiff’s allegations. This Notice is not to be understood as an expression of any opinion by the Court as to the merits of the claims.

Honorable Mel Red Recana of the Superior Court of the State of California for the County of Los Angeles approved the settlement on [INSERT DATE OF SETTLEMENT APPROVAL]. Pursuant to the PAGA, 75% of PAGA penalties are paid to the State of California, and the remaining 25% of the PAGA penalties are paid directly to the Aggrieved Employees who worked during the PAGA Period from November 2, 2022 through March 25, 2024. Each Individual PAGA Payment was calculated on a pro rata basis (i.e., proportional) based on the number of pay periods worked by each Aggrieved Employee. To determine an Aggrieved Employee’s pro rata share of the Settlement, the settlement administrator will divide the amount of the Aggrieved Employees’ 25% share of the Net Settlement Amount by the total number of pay periods worked by all Aggrieved Employees during the PAGA Period and multiply the resulting amount by the number of pay periods worked by that Aggrieved Employee. You worked [INSERT PAY PERIODS WORKED] pay periods during the PAGA Period from September 29, 2018 through January 25, 2020 (“PAGA Period”).

The enclosed check is your portion of the PAGA settlement. Settlement checks will be null and void

180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall direct all unclaimed funds to the California State Controller's Unclaimed Property Fund in the name of the Aggrieved Employee whose checks were not delivered or cashed. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

You will receive an IRS 1099 Form for the check for this payment amount. You should seek the advice of a tax professional for any tax issues or questions related to this payment. Defendants will not retaliate against, or take any other negative action against, any employee who cashes the settlement check.

In exchange for the Individual PAGA Payments, Plaintiff and 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, Defendants and each of its former and present related entities, subsidiaries, parents, affiliates, predecessors, insurers, agents, employees, successors, assigns, owners, officers, officials, directors, attorneys, partners, members, personal representatives, executors, investors, and shareholders, including their respective pension, profit sharing, savings, health, and other employee benefits plans of any nature, the successors of such plans, and those plans' respective current or former trustees and administrators, agents, employees, and fiduciaries (the "Released Parties") 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 the PAGA Notice including PAGA claims predicated on alleged violations of the California Labor Code sections 201-203, 204, 216, 221-223, 226, 226.7, 245-248.5, 351-353, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and the applicable California Industrial Welfare Commission Wage Orders ("Released Claims"). The settlement does not resolve any claims for unpaid or underpaid wages or otherwise preclude you from bringing an action for wages against the Defendants or other Released Parties.

The pleadings and other records in this litigation, including the Settlement Agreement, may be examined online for a fee through the Superior Court of the State of California for the County of Los Angeles Court Docket website, <http://www.lacourt.org/casesummary/ui/index.aspx> and entering the Case Number for the Action, Case No. 23STCV00656. You may also contact Phoenix Class Action Administration Solutions ("Phoenix") toll free at **[INSERT ADMINISTRATOR PHONE NUMBER]** or you may contact the attorneys listed below with any questions:

<u>Counsel for Plaintiff:</u>	<u>Counsel for Defendant:</u>
<u>Zachary Crosner, Esq.</u> <u>zach@crosnerlegal.com</u> <u>Jamie Serb, Esq.</u> <u>jamie@crosnerlegal.com</u> <u>Nikki Trenner, Esq.</u> <u>nikki@crosnerlegal.com</u> <u>CROSNER LEGAL, PC</u> <u>9440 Santa Monica Blvd., Suite 301</u> <u>Beverly Hills, CA 90210</u> <u>Telephone: (866) 276-7637</u>	<u>Joshua Carlon</u> <u>joshua.carlon@aalrr.com</u> <u>Robert R. Walker</u> <u>robert.walker@aalrr.com</u> <u>ATKINSON ANDELSON LOYA RUUD</u> <u>ROMO</u> <u>251 S. Lake Ave., Suite 360</u> <u>Pasadena, CA 91101</u> <u>Telephone: (626) 583-8600</u>

PLEASE DO NOT CONTACT THE COURT OR THE JUDGE WITH ANY QUESTIONS ABOUT THE ACTION OR THE SETTLEMENT.

EXHIBIT

3

Christian Montoya v. Greco Entertainment Group, Inc., et al.
Superior Court of the State of California for the County of Los Angeles
Case No. 23STCV00656

[INSERT DATE OF MAILING]

[INSERT FIRST & LAST NAME]
[INSERT ADDRESS – LINE 1]
[INSERT ADDRESS – LINE 2]

Dear [INSERT FIRST & LAST NAME],

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180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall direct all unclaimed funds to the California State Controller's Unclaimed Property Fund in the name of the Aggrieved Employee whose checks were not delivered or cashed. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

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In exchange for the Individual PAGA Payments, Plaintiff and 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, Defendants and each of its former and present related entities, subsidiaries, parents, affiliates, predecessors, insurers, agents, employees, successors, assigns, owners, officers, officials, directors, attorneys, partners, members, personal representatives, executors, investors, and shareholders, including their respective pension, profit sharing, savings, health, and other employee benefits plans of any nature, the successors of such plans, and those plans' respective current or former trustees and administrators, agents, employees, and fiduciaries (the "Released Parties") 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 the PAGA Notice including PAGA claims predicated on alleged violations of the California Labor Code sections 201-203, 204, 216, 221-223, 226, 226.7, 245-248.5, 351-353, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and the applicable California Industrial Welfare Commission Wage Orders ("Released Claims"). The settlement does not resolve any claims for unpaid or underpaid wages or otherwise preclude you from bringing an action for wages against the Defendants or other Released Parties.

The pleadings and other records in this litigation, including the Settlement Agreement, may be examined online for a fee through the Superior Court of the State of California for the County of Los Angeles Court Docket website, <http://www.lacourt.org/casesummary/ui/index.aspx> and entering the Case Number for the Action, Case No. 23STCV00656. You may also contact Phoenix Class Action Administration Solutions ("Phoenix") toll free at **[INSERT ADMINISTRATOR PHONE NUMBER]** or you may contact the attorneys listed below with any questions:

Counsel for Plaintiff:	Counsel for Defendant:
Zachary Crosner, Esq. zach@crosnerlegal.com Jamie Serb, Esq. jamie@crosnerlegal.com Nikki Trenner, Esq. nikki@crosnerlegal.com CROSNER LEGAL, PC 9440 Santa Monica Blvd., Suite 301 Beverly Hills, CA 90210 Telephone: (866) 276-7637	Joshua Carlon joshua.carlon@aalrr.com Robert R. Walker robert.walker@aalrr.com ATKINSON ANDELSON LOYA RUUD ROMO 251 S. Lake Ave., Suite 360 Pasadena, CA 91101 Telephone: (626) 583-8600

PLEASE DO NOT CONTACT THE COURT OR THE JUDGE WITH ANY QUESTIONS ABOUT THE ACTION OR THE SETTLEMENT.

EXHIBIT

4



Los Angeles Office
9440 Santa Monica Blvd.
Beverly Hills, CA 90210

Kiara Bramasco, Esq.
kiara@crosnerlegal.com
direct: (424) 335-5236
office: (310) 496-5818
fax: (310) 510-6429

November 4, 2022

VIA PAGA ONLINE FILING ONLY:

California Labor & Workforce
Development Agency
ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
PAGAFilings@dir.ca.gov

VIA U.S. CERTIFIED MAIL:

Charles Lew
Agent for Service of Process for:
Greco Entertainment Group, Inc.
9440 Santa Monica Blvd. Ste. 301
Beverly Hills, CA 90210

Greco Entertainment Group, Inc.
Attn: Human Resources/ Legal Department
9440 Santa Monica Blvd. Ste. 301
Beverly Hills, CA 90210

Charles Lew,
Agent for Service of Process for:
2460 Wilshire Restaurant LLC
9440 Santa Monica Blvd. Ste. 301
Beverly Hills, CA 90210

2460 Wilshire Restaurant LLC
Attn: Human Resources / Legal Department
2460 Wilshire Blvd.
Santa Monica, CA 90403

Charles Lew,
Agent for Service of Process for:
2454 Wilshire Restaurant, LLC
9440 Santa Monica Blvd. Ste.
301
Beverly Hills, CA 90210

2454 Wilshire Restaurant, LLC
Attn: Human Resources / Legal
Department
2454 Wilshire Blvd.
Santa Monica, CA 90403

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; Greco Entertainment Group, Inc.; 2454 Wilshire Restaurant, LLC; and 2460 Wilshire Restaurant LLC;
Date: November 4, 2022
Subject: *Christian Montoya v. Greco Entertainment Group, Inc. et. al.*

Introduction

This office represents COMPLAINANT, Christian Montoya (hereinafter “COMPLAINANT”) in connection with COMPLAINANT’s claims under the California Labor Code. COMPLAINANT was, at all relevant times herein mentioned, an employee of the following entities and individual managing agents of said entities: Greco Entertainment Group, Inc.; 2454 Wilshire Restaurant, LLC; and 2460 Wilshire Restaurant LLC (hereinafter, these entities and their managing agents are collectively referred to as “EMPLOYER”). EMPLOYER may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, COMPLAINANT, on behalf of COMPLAINANT, and on behalf of all current and former non-exempt employees employed by EMPLOYER in California within one year of the date of this notice (“NON-EXEMPT AGGRIEVED EMPLOYEES”) and on behalf of all current and former exempt employees employed by EMPLOYER in California within one year of the date of this notice (“EXEMPT AGGRIEVED EMPLOYEES”), hereby gives written notice (“NOTICE”) of COMPLAINANT’s claims against EMPLOYER. This NOTICE is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and EMPLOYER via certified mail to its Agent(s) for Service of Process and/or entity mailing address as provided to the California Secretary of State.

This NOTICE also serves to demonstrate COMPLAINANT’s reasonable attempt at settlement with EMPLOYER. If EMPLOYER is interested in settling this matter before a lawsuit is filed, EMPLOYER may contact Crosner Legal, P.C., at the address listed at the close of this NOTICE. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

This NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This NOTICE further reserves any and all rights by COMPLAINANT to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—COMPLAINANT reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this NOTICE.

Consequently, EMPLOYER is on notice that COMPLAINANT continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. For violations that are curable under § 2699.3(c) and that EMPLOYER intends to cure within the statutory time period set forth in §§ 2699 and 2699.3(c), the EMPLOYER shall provide notice including a description of the actions taken to cure. If the alleged violation is not cured within the statutory time period, COMPLAINANT will commence a civil action pursuant to section 2699. For all other violations that are not curable, an action pursuant to section 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

Based on the following summary of facts and theories upon which COMPLAINANT will base COMPLAINANT's claims, COMPLAINANT requests that the LWDA regard this NOTICE as written notice of COMPLAINANT's intent to seek civil penalties against EMPLOYER.

COMPLAINANT, on behalf of COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES, alleges that the specific provisions of California law that EMPLOYER has violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 204, 216, 221-223, 226, 226.7, 245-248.5, 351-353, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all applicable Wage Orders.

The Named Entities Are Joint Employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES

California courts have recognized that the definition of “employer” for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California's labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

COMPLAINANT is informed and believes and thereon alleges that at all relevant times EMPLOYER and unknown entities operated as a single integrated enterprise with common ownership and centralized human resources as set forth herein. Under California law, in determining whether two defendant entities are liable as an integrated enterprise, courts consider four factors: (1) centralized control of labor relations; (2) interrelation of operations; (3) common management; and (4) common ownership or financial control. *Laird v. Capital Cities/Abc, Inc.* (1998) 68 Cal.App.4th 727, 737 (overruled on other grounds, *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512 (2010).)

COMPLAINANT believes and hereon asserts that EMPLOYER and unknown entities must be classified as joint employers of COMPLAINANT for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted COMPLAINANT to

perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of COMPLAINANT at all relevant times herein, so as to be considered the joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES. By reason of their status as joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, they are each liable for civil penalties for violations of the California Labor Code and applicable Wage Orders as to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code § 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. EMPLOYER, at all relevant times, was an employer or person acting on behalf of employer(s) who violated COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' rights by violating various sections of the California Labor Code. The California Legislature defines "other person acting on behalf of an employer" as "*a natural person who is an owner, director, officer, or managing agent of the employer.*" The "managing agent" definition mirrors that found in California's punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, "managing agents" are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, any above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code §§ 203, 226, 226.7, and 1194 as further described in detail below.

COMPLAINANT intends to further name any unknown individuals responsible for violations arising under Labor Code sections 558 and 558.1 after further discovery. COMPLAINANT will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the date of filing of these charges. COMPLAINANT asks and demands that EMPLOYER put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, COMPLAINANT also offers to EMPLOYER to place those individuals on notice if EMPLOYER voluntarily provides their contact information.

General Information

EMPLOYER owns, operates or otherwise manages several restaurants, venues, facilities, and/or locations in California, including but not limited to at three restaurants in Santa Monica operating under the following names: Fia Restaurant, Fia Steak and Dono.¹ Although EMPLOYER may operate successful companies or have a noble mission, EMPLOYER does not comply with California's labor laws.

¹ See <https://grecoentertainmentgroup.com/about-us>. Last visited on November 4, 2022.

COMPLAINANT is currently employed by EMPLOYER as a non-exempt employee. COMPLAINANT worked for EMPLOYER as a cook and/or similar title from on or around October 15, 2021 through the present. COMPLAINANT worked for EMPLOYER out of one of EMPLOYER's restaurants located in Santa Monica, California, that operated/operates under the name Fia. COMPLAINANT regularly worked at least eight (8)-nine (9) hours per day, at least (5) days per week. EMPLOYER paid COMPLAINANT an hourly rate for time counted by EMPLOYER as hours worked.

Among other things, EMPLOYER (1) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (4) failed and continues to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (5) failed and continues to fail to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with proper meal and/or rest breaks, and/or compensate COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium pay at the regular rate of compensation for missed/improper meal and/or rest periods; (6) refused and continues to refuse to make and/or falsely denied the amount of payments due to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (7) failed and continues to fail to place COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (8) failed and continues to fail to provide legally compliant wage statements to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES; (9) made unlawful deductions from COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' paychecks; (10) failed and continues to fail to timely pay wages to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES during employment and/or upon separation of employment; (11) failed and continues to fail to reimburse COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses incurred on behalf of EMPLOYER; (12) conducted and continues to conduct illegal criminal and/or financial background checks as a condition of COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' hire and continued employment; (13) required and continues to require COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer of employment and/or otherwise impermissibly inquired and continues to inquire into COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES', and/or EXPEMPT AGGRIEVED EMPLOYEES' criminal history on their employment applications and sign off on same as a condition of employment; (14) failed and continues to fail to provide suitable seating and suitable resting facilities; and (15) required and continues to require COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED

EMPLOYEES to agree in writing to a term or condition that violates the law as a condition of employment. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep “accurate and complete” payroll records showing, among other things, the hours worked daily by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES. All applicable IWC Wage Orders, section 7 similarly requires employers to keep accurate time records reflecting the times during which all owed meal periods were provided each day.

Based on information and belief, EMPLOYER failed, and continues to fail, to keep accurate and complete payroll records as required by law, including but not limited to the following records: total daily hours worked, applicable rates of pay, time records showing when COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES began and ended each work period, time records of meal periods, and accurate itemized wage statements.

Based on information and belief, EMPLOYER failed and continues to fail to keep accurate and complete records showing total hours worked by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES by virtue of EMPLOYER’s time rounding and/or auto deduction policies and practices and/or other off-the-clock work policies and practices.

EMPLOYER failed and continues to fail to keep accurate and complete records showing total hours worked by virtue of EMPLOYER’s failure to relieve COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER’s control for unpaid meal periods, resulting in unpaid hours worked.

Based on information and belief, EMPLOYER further failed, and continues to fail, to record the true start and end times of COMPLAINANT’s and NON-EXEMPT AGGRIEVED EMPLOYEES’ meal periods.

Based on further information and belief, EMPLOYER further failed and continues to fail, to record the true start and end times of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES’ work shifts.

Additionally, EMPLOYER failed, and continues to fail to keep accurate records and issue accurate wage statements by not documenting accrued sick time for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES.

EMPLOYER’s failure to keep “accurate and complete” payroll records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor

Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.²

Violations of Labor Code Sections 226(b)-(c), 1198.5, and 432:

Time and Pay Records

Labor Code section 226 and all applicable IWC Wage Orders, section 7 require that employers keep the following information on file for each employee for a minimum of three years: The employee's dates of employment; the employee's hourly rates and the corresponding number of hours worked by the employee at each hourly rate, when the employee begins and ends each work period (including meal periods) and split intervals; total hours worked by the employee; all deductions; gross wages earned; and net wages earned.

Section (b) of Labor Code section 226 further requires employers to "afford current and former employees the right to inspect or receive a copy of records pertaining to their employment upon reasonable request to the employer." Section (c) of Labor Code section 226 provides that, "an employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction." An employer's failure to comply within this timeframe entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 226(f).

Personnel Records

In addition to their right to time and pay records, employees, and their representatives, have the right to inspect and receive a copy of their personnel files pursuant to Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code section 432 further specifies that employers must furnish copies of all employment records bearing the employee's signature.

Labor Code section 1198.5 also requires that the file be made available for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days from the date the employer receives a written request." An employer's failure to comply within this timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 1198.5(k).

Based on information and belief, EMPLOYER fails to timely produce or make available a current or former employee's personnel records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, on December 29, 2021, COMPLAINANT, through counsel, sent a written request for time, payroll and personnel records to EMPLOYER. On February 16, 2022, COMPLAINANT, through counsel, sent a second written request for time, pay and personnel records. Yet, EMPLOYER failed to timely produce any records at all within the time periods delineated by California labor law. To this day, EMPLOYER has not produced COMPLAINANT's requested records. Based on information and

² See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

belief, EMPLOYER failed and continues to fail to timely produce complete time, payroll and personnel records when requested by other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES.

These violations subject EMPLOYER to penalties under Labor Code sections 226, 1198.5, and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Ibid.* Upon information and belief, COMPLAINANT did not sign a valid meal period waiver throughout COMPLAINANT's employment by EMPLOYER.

Employers covered by any and all applicable IWC Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), and (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3) ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing section 7(A)(3) ("If an employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided").

Employers must pay employees an additional hour of wages at the employees' regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted meal period, first meal period provided after five (5) hours, second meal period provided after 10 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) ("If an employer fails to provide an employee a meal period in accordance with the applicable provision of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided"); *Brinker, supra*, 53 Cal.4th 1004.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES consistently worked shifts of five and a one-half (5 ½) hours or more, entitling to at least one meal period.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal breaks or skip meal breaks completely. For example, COMPLAINANT was consistently required to work through his owed meal periods completely due to the need to assist customers, complete orders, cook/prep food and/or complete other work tasks, yet EMPLOYER would deduct at least thirty minutes per shift as though a thirty-minute off-duty meal period had been taken when it had not. Based on information and belief, EMPLOYER had and continues to have a uniform policy and practice of clocking out other NON-EXEMPT AGGRIEVED EMPLOYEES and/or requiring other NON-EXEMPT AGGRIEVED EMPLOYEES to clock out for meal periods that were not taken, worked through and/or on duty, resulting in violations of California's meal periods laws as well as consistent off-the-clock work and the underpayment of minimum and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES, among other violations of the labor code described herein.

Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods interrupted, cut short, restricted to EMPLOYER's premises and/or otherwise on duty due to commentary from supervisors, understaffing, the nature and constraints of their job duties, and/or the need to meet EMPLOYER's goals and expectations.

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during unpaid meal periods.

Based on information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES to complete off-the-clock work prior to their scheduled shift time which EMPLOYER failed to take into account when scheduling meal periods for NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which were free of EMPLOYER's control owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

Based on information and belief, per EMPLOYER's uniform policy and practice, NON-EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute second meal break.

Based on information and belief, despite EMPLOYER's failure to provide lawful meal periods, EMPLOYER implemented a policy and/or practice of rounding the start and end times of COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods and/or automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal periods (including meal periods restricted to EMPLOYER's premises), despite having actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES did not receive lawful meal periods.

Moreover, based on information and belief, EMPLOYER failed to keep accurate records of the true start and end times of COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods. Based on information and belief, to the extent meal period were recorded, EMPLOYER illegally rounded the start and end times of purported meal periods resulting in COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES not being paid for all time worked as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

Based on information and belief, EMPLOYER failed to instruct COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES as to the timing and duty-free nature of meal periods. Based on further information and belief, EMPLOYER did not have a compliant written meal break policy, nor did EMPLOYER have any sort of compliant policy in practice. Liability for the NON-EXEMPT AGGRIEVED EMPLOYEES can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable Wage Order requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

COMPLAINANT is further informed and believes and thereon alleges that EMPLOYER had actual and/or constructive knowledge that its time-rounding and/or auto-deduction policies and practices resulted in the denial of lawful meal periods owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of compensation for each workday a lawful meal period was not provided. EMPLOYER either failed to pay a meal period premium at all for each workday a lawful meal period was not provided and/or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or compensation for purposes of calculating the owed meal period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-

EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.³ EMPLOYER's failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. See applicable IWC Wage Order, §12(A). In *Brinker v. Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3 ½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

EMPLOYER did not properly authorize and provide COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES with legally compliant rest periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work period, as required by law.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Based on information and belief, EMPLOYER had no policy in place nor instruction as to the taking of duty-free rest periods. Based on information and belief, EMPLOYER did not have a compliant written rest period policy, nor did EMPLOYER have any sort of compliant rest period policy in practice. For example, COMPLAINANT was consistently required to work through his owed rest periods due to the need to assist customers, complete orders, cook/prep food and/or complete other work tasks. Oftentimes, COMPLAINANT was only able to take a single rest period per shift and that single rest period was usually not a full net ten minutes, was on duty, or otherwise noncompliant with California rest period law.

³ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "i>n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES' rest periods were interrupted, cut short, on duty, restricted to premises and/or late due to understaffing, the nature and constraints of their job duties, and/or due to commentary from supervisors/ managers pressuring NON-EXEMPT AGGRIEVED EMPLOYEES to skip rest breaks completely or otherwise take non-compliant rest periods.

Moreover, based on information and belief, EMPLOYER failed to provide any form of a third rest period on shifts lasting longer than ten hours. For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES who work shifts lasting longer than ten (10) hours do not receive any version of a third rest period on those shifts lasting more than ten hours.

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during rest periods.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were pressured to complete their work duties according to a designated schedule such that rest breaks were only taken once tasks were completed, and/or as time permitted.

Furthermore, EMPLOYER failed to pay a rest period premium for each day in which NON-EXEMPT AGGRIEVED EMPLOYEES experienced a missed or otherwise unlawful rest period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872. EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of pay for each workday a proper rest period was not provided. EMPLOYER either failed to pay a rest period premium at all for each workday a lawful rest period was not provided and/or failed to pay the proper rest period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the regular rate of compensation for purposes of calculating the owed rest period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

⁴ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); and All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

Minimum Wage Violations: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys’ fees, and costs of suit.” Labor Code section 1194.

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Pursuant to section 4 of the applicable Wage Order, “Every employer shall pay to each employee not less than the applicable minimum wage for all hours worked in the payroll period...” The applicable Wage Order defines “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” See §2 of all applicable Wage Orders. Therefore, employers are required to pay employees for all time spent subject to the control of the employer and all time the employee is suffered or permitted to work. An employer’s failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, “in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon...” *Cal. Lab. Code* § 1194.2.

EMPLOYER failed to compensate COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked by virtue of EMPLOYER’s automatic deduction and time rounding policies, and failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or improper meal periods as explained above.

Based on information and belief, EMPLOYER implemented a policy and/or practice of rounding meal period start and end times and/or automatically deducting at least thirty minutes per shift for meal periods, despite having actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were subject to EMPLOYER’s control during purported meal periods and/or were otherwise not afforded with lawful meal periods, depriving COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all wages owed.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were not paid for all hours worked due to EMPLOYER’s policy and/or practice of paying according to scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices. For example, as explained above, COMPLAINANT was consistently required to work through his purported meal periods completely due to the need to assist customers, complete orders, cook/prep food and/or complete other work tasks, yet EMPLOYER deducted at least thirty

minutes per shift as though a thirty-minute off-duty meal period had been taken when it had not, resulting in at least several hours of off-the-clock work per week and the significant underpayment of wages owed to COMPLAINANT. Based on information and belief, EMPLOYER had and continues to have a uniform policy and practice of clocking out other NON-EXEMPT AGGRIEVED EMPLOYEES and/or requiring other NON-EXEMPT AGGRIEVED EMPLOYEES to clock out for meal periods that were not taken, worked through and/or on duty, resulting in consistent off-the-clock work and the underpayment of minimum wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES, among other violations of the labor code described herein.

Based on information and belief, EMPLOYER did not compensate NON-EXEMPT AGGRIEVED EMPLOYEES for time spent donning and doffing personal protective equipment and/or uniforms/work clothing (e.g., gloves, protective eyewear, hairnets, hats, and/or face masks) during meal periods, before the start of a scheduled shift, and/or after completing a scheduled shift, resulting in off-the-clock work and the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Additionally, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to perform other off-the-clock work for which they were not compensated. For example, at times, EMPLOYER's electronic/computer employee time-keeping system malfunctioned such that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to either reinitiate and/or otherwise troubleshoot the system prior to being able to clock in and/or were unable to clock in at all for the start of their shifts and/or clock back in from meal periods, resulting in off-the-clock work and the underpayment of wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES experienced the same issues when clocking out for shifts and/or back in for meal periods. This time spent under EMPLOYER's control was not recorded and not compensated and resulted in unpaid minimum wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were also pressured to complete at least some of their work tasks off-the-clock in order to meet EMPLOYER's goals and expectations. For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were also required to complete off-the-clock work outside of scheduled shifts due to work-related phone calls and/or messages they received to their personal phones and were required to respond to, including but not limited to, communications from supervisors regarding scheduling and/or other work tasks, resulting in the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES. Moreover, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES who opened their work locations were required to first unlock the doors, turn on all the lights in the restaurant/facility and/or deactivate the alarm before clocking in for work, resulting in pre-shift off-the-clock work and the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES. Based on further information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES in charge of closing their location(s) were required to first clock out for their shifts before enabling the alarm, turning off all

the lights in the facility and/or locking the doors. This resulted in additional off-the-clock post-shift work that was not compensated and the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, EMPLOYER failed to pay NON-EXEMPT AGGRIEVED EMPLOYEES for time they were required to spend completing orientation, policy questionnaires, and/or time spent completing the onboarding process including but not limited to reviewing various documents and policies provided by EMPLOYER. Based on information and belief, this work time was completed off-the-clock and was not compensated.

Based on further information and belief, EMPLOYER implemented a time-rounding system that as applied systematically deprived COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of compensable time because the time-rounding system implemented by EMPLOYER would almost always, if not always, result in understating actual compensable work time. EMPLOYER's failure to pay for all time worked by virtue of its time-rounding practices resulted in the underpayment of minimum wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

EMPLOYER's failure to pay for all time worked by virtue of its time rounding, auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of minimum wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to provide lawful meal periods and/or other off-the-clock work resulted in the underpayment of minimum wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's minimum wage laws.

These violations subject EMPLOYER, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

⁵ See Lab. Code §1197.1(a) (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code §510; IWC Wage Order All applicable IWC Wage Orders §3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in a work week. *Ibid.*

Based on information and belief, EMPLOYER violated California's overtime laws by, among other things, failing to correctly calculate, or record, the total number of hours worked by COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and not paying proper overtime rates for overtime worked by virtue of same.

Namely, EMPLOYER's automatic deduction and time rounding policies and practices for meal periods, payment according to scheduled hours worked rather than actual time worked, off-the-clock/unpaid work completed during meal periods and/or time spent restricted to EMPLOYER's premises and/or subject to EMPLOYER's control during off-the-clock meal periods (described above), and/or other off-the-clock work resulted in the failure to account for all hours worked and thus the denial of minimum wages as well as overtime wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty (40) hours in a week.

Based on information and belief, EMPLOYER failed and continues to fail to pay premium wage rate for all hours worked beyond eight (8) hours in a day or beyond forty (40) hours in a week.

Based on information and belief, EMPLOYER failed and continues to fail to pay twice NON-EXEMPT AGGRIEVED EMPLOYEES' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation of California's overtime laws.

Based on information and belief, EMPLOYER failed to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonus pay, and/or other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁶

⁶ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable Wage Orders, §20 (establishing that "in addition to any other civil

Violation of California Labor Code §§ 245-248.5: Throughout the relevant time period, EMPLOYER failed to provide proper paid sick leave to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES. EMPLOYER either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES by failing to base the accrued sick leave hours on the correct number of hours worked (as a result of the rounding/automatic deduction policies and practices for meal periods and/or shift start and end times/other required off-the-clock work including but not limited to unpaid meal periods that were restricted to EMPLOYER's premises) and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary bonuses, shift differential pay, commission and/or piece-rate compensation and/or other non-discretionary compensation into the sick leave pay rate calculation.

Based on information and belief, EMPLOYER further failed to provide notice of the correct sick leave amount balance available to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES on their wage statements or other written statement.

Based on information and belief, EMPLOYER failed to put NON-EXEMPT AGGRIEVED on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code section 2810.5 notice. In addition, EMPLOYER failed to maintain accurate records of used sick leave and the balance of paid sick leave left to the NON-EXEMPT AGGRIEVED EMPLOYEE throughout the relevant time period.

Based on information and belief, throughout the relevant period, EMPLOYER failed to provide notice of sick leave amount balance left for COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, thus affecting their intelligent exercise of their paid sick leave. But for this failure, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would have used their paid sick leave at least prior to their respective separations, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

This illegal retention of paid sick leave is unlawful, and COMPLAINANT seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES.

In violation of Labor Code section 247.5, EMPLOYER failed to maintain records documenting the hours worked and paid sick days accrued and used by COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES, permitting the presumption that COMPLAINANT and

penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

all NON-EXEMPT AGGRIEVED EMPLOYEES were entitled to the maximum number of hours accruable under this article.

Upon information and belief, EMPLOYER further failed and continues to fail to comply with Labor Code section 246, by failing to provide COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES with a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages.

EMPLOYER unlawfully retained and continues to retain paid sick leave that should have been paid but was not, as a result of EMPLOYER's failure to properly institute a paid sick leave program.

On information and belief, COMPLAINANT alleges that all of these practices were experienced and continue to be experienced by other NON-EXEMPT AGGRIEVED EMPLOYEES.

COMPLAINANT requests all appropriate relief under the PAGA and these statutes, including but not limited to the restitution of earned paid sick leave that could have been used, but was not due to EMPLOYER's sole failure to institute such a paid sick leave entitlement or paid sick leave bank as required by California law.

Accordingly, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as permitted by law. COMPLAINANT requests all relief pursuant to the aforementioned code provisions, including but not limited to Labor Code sections 233 and 234, which incorporates the paid sick leave requirements.

Failure To Provide Supplemental Paid Sick Leave: Labor Code section 248.2 provides that all employers with 26 or more employees are required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related. Based on information and belief, EMPLOYER violated Labor Code section 248.2 by not providing NON-EXEMPT AGGRIEVED EMPLOYEES with required 2021 COVID-19 Supplemental Paid Sick Leave.

Refusal to Make Payment: Labor Code section 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

EMPLOYER violated and continues to violate Labor Code section 216 by failing to pay COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked at the proper wage rate and by failing to pay COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for each meal and/or rest period not provided or that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

These violations subject EMPLOYER to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute's provisions were violated.⁷

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his or her employees with an accurate itemized wage statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Cal. Lab. Code. section 226(a).

As EMPLOYER failed to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with meal and rest periods that complied with Labor Code section 226.7, the wage statements EMPLOYER issued to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES failed and continue to fail to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

EMPLOYER's wage statements that it provided to COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES also failed to indicate the earned gross and net wages earned during the pay period, the correct applicable rates of pay for all hours worked, and the "total hours worked" by COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES (by virtue of rounded time entries, automatic deduction for meal periods/failure to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and employer control during unpaid meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or other off-the-clock work policies and practices described above), which results in a violation of Labor Code section 226(a). Failure to list all hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

Based on information and belief, wage statements issued by DEFENDANTS failed to list the inclusive dates of the pay period for which the NON-EXEMPT AGGRIEVED EMPLOYEE or EXEMPT AGGRIEVED EMPLOYEE is being paid.

⁷ Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

EMPLOYER's failure to accurately list all hours worked on all wage statements caused confusion to COMPLAINANT and caused and continues to cause confusion to the NON-EXEMPT AGGRIEVED EMPLOYEES over whether they received all wages owed to them. COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were injured by EMPLOYER's failure to provide accurate wage statements.

In addition, because of the violations detailed above, including but not limited to, not paying regular and overtime wages for all hours worked, not paying all sick leave wages at the proper rates, and failing to provide meal and rest break premiums, EMPLOYER has violated California Labor Code § 226 by willfully failing to furnish COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES with accurate, itemized wage statements. As described herein, based on information and belief, EMPLOYER also failed to incorporate all forms of non-discretionary compensation earned during the pay period into the overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour of overtime worked by COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Moreover, based on information and belief, EMPLOYER issued wage statements to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES that further violate Labor Code section 226(a), by among other things, failing to list the correct name and/or address of the legal entity that is the employer.

As a result, the wage statements provided to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not accurate and did not include all of the statutorily required information.

These violations subject EMPLOYER to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.⁸

Semimonthly Payment Violations: Labor Code section 204 requires that all earned wages must be paid to employees twice during each calendar month. EMPLOYER violated this section by, including but not limited to, failing to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for meal and rest periods not provided and/or otherwise unlawful, by failing to compensate employees for all hours worked, and by failing to pay proper premium wage rates for all hours worked. These violations subject EMPLOYER to civil penalties under Labor Code section 210. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute's provisions were violated.

⁸ See Lab. Code §226.3 (establishing that the civil penalty is "per employee per violation").

Violation of Labor Code section 351 and 352: Labor Code Section 351 prohibits employers and their agents from sharing in or keeping any portion of a gratuity left for or given to one or more employees by a patron. Furthermore, it is illegal for employers to make wage deductions from gratuities, or from using gratuities as direct or indirect credits against an employee's wages. Labor Code Section 353 mandates employers keep accurate records of all gratuities received.

Based on information and belief, EMPLOYER failed to ensure that NON-EXEMPT AGGRIEVED EMPLOYEES fully received the gratuities left for them by patrons, in that EMPLOYER and its agents would collect and/or take a portion of the gratuities for themselves, in violation of Labor Code Section 351. Based on further information and belief, EMPLOYER also failed/fails to keep accurate records of all tips received, in violation of Labor Code Section 353.

Pursuant to PAGA, EMPLOYER is liable for penalties of \$100 per pay period payable to each NON-EXEMPT AGGRIEVED EMPLOYEE for the first violation of Labor Code Section 351 and 353 they experienced within the statutory period, and \$200 per pay period for each additional violation.

Failure to Provide Suitable Resting Facilities: Per Section 13 of all applicable IWC Wage Orders, employees shall be provided with suitable resting facilities. Section 13(B) of the Wage Orders provides: "Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours."

EMPLOYER's restaurants/locations are generally similar in layout and design, and there was, and continues to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. EMPLOYER could have provided COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with a resting facility within the restaurant with reasonable or no modification, but instead denied and continues to deny, employees with suitable areas to rest (e.g. a breakroom). As a result, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were forced to adjust to areas not conducive to resting, including but not limited to leaning up against the restaurant wall.

EMPLOYER did not provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with suitable resting facilities during their hours of work, particularly during meal and/or rest periods. Based on information and belief, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not allowed to sit in the restaurant during working hours, including but not limited to, during rest periods, nor were they provided with a break room. Moreover, EMPLOYER did not inform COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of their rights to suitable resting facilities under California law.

EMPLOYER's failure to provide suitable resting facilities to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES violated and continues to violate the applicable Wage Order, including but not limited to IWC Wage Order 5-2001, section 13(B) and the California Labor Code, including but not limited to section 1198.

Seating Violations: Per section 14(A-B) of all applicable IWC Wage Orders, employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats and when they are not actively engaged in the work duties that would not permit them to be seated.

All applicable IWC Wage Orders, Section 14(A-B) provides:

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

Suitable seating is one of the worker protections covered by California's Wage Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

Based on information and belief, EMPLOYER failed to provide NON-EXEMPT AGGRIEVED EMPLOYEES with suitable seating, and when such employees were not engaged in duties which required them to stand, no seating was placed in reasonable proximity to their workstations.

Moreover, based on information and belief, the nature of the work reasonably permitted the use of seats for at least part of the time that NON-EXEMPT AGGRIEVED EMPLOYEES were working. Lastly, based on information and belief, there were periods of time when NON-EXEMPT AGGRIEVED EMPLOYEES were not engaged in active duties of their employment, yet there were no suitable seats in reasonable proximity to the work area and use of seats would not interfere with the performance of their duties.

EMPLOYER's NON-EXEMPT AGGRIEVED EMPLOYEES worked in various positions, such as, but not limited to, cooks, prep cooks, servers, bussers, food runners, dish washers, and/or other similar titles. The nature of COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' work reasonably permitted the use of seats. However, EMPLOYER failed to provide suitable seating in reasonable proximity to NON-EXEMPT AGGRIEVED EMPLOYEES' work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting EMPLOYER to civil penalties under Labor Code sections 1199 and 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.⁹

⁹ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

Standard Conditions of Labor Violations: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission.

Therefore, EMPLOYER's violations, including but not limited to, with respect to meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, suitable seating, suitable resting facilities, and business expenses, result in separate violations of sections 1198 and 1199, which subject EMPLOYER to civil penalties under Labor Code sections 1197.1 and 2699.

Statutory Wage Violations: Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

As described above, EMPLOYER willfully and systematically denied COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of minimum and overtime wage compensation for all hours worked which resulted in the payment of less than statutorily required wages owed to them. EMPLOYER acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, EMPLOYER paid COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES were properly paid. As such, COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

Failure to Pay Vested Vacation/Paid Time Off:

California Labor Code section 227.3 provides that when an employer policy provides for paid vacations and/or paid time off, and an employee is terminated without having taken off his, her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the employee's final rate in accordance with such contract of employment or employer policy respecting eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time off upon termination. Based on information and belief, EMPLOYER had and continues to have a uniform policy and practice of failing to allow NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to use their earned vacation/paid time off during their employment and failing to pay all vested, accrued paid time off to NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES upon separation of employment, in violation of California law, including but not limited to, Labor Code section 227.3.

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. California Labor Code section 201(a) provides, in relevant part, that "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." California Labor Code section

202(a) provides, in relevant part, that “[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

Based on information and belief, EMPLOYER failed to timely pay NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES all wages that were due and owing upon termination or resignation. Based on information and belief, EMPLOYER untimely provides final wages to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES without regard to the timing requirements of Labor Code sections 201-202.

Upon separation of employment, NON-EXEMPT AGGRIEVED EMPLOYEES’ and EXEMPT AGGRIEVED EMPLOYEES’ final paychecks were not timely provided and/or were not timely provided with all owed vacation pay and/or paid time off. Moreover, NON-EXEMPT AGGRIEVED EMPLOYEES’ final paychecks, once provided, did not include all wages owed as they were devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates.

These violations subject EMPLOYER to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each EXEMPT AGGRIEVED EMPLOYEE and each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.¹⁰

Business Expense Violations: California law requires employers to indemnify their employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of their duties or of their obedience to the directions of the employer. See Cal. Lab. Code § 2802(a) and all applicable Wage Orders, § 9 (b). Furthermore, “for purposes of [section 2802], the term ‘necessary expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees incurred by the employee enforcing the rights granted by this section.”

Among other things, under California law, when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and

¹⁰ (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee”).

equipment customarily required by the trade or craft. See applicable IWC Wage Order, § 9 (b).

Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. See *Cochran v. Schwan's Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear and tear on the vehicle. See *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554. Further, "any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State." See Cal. Lab. Code § 2804.

Based on information and belief, COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to provide and maintain work tools that are supposed to be the responsibility of the employer.

Based on information and belief, EMPLOYER shifted its costs of doing business onto NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for its business expenses, including but not limited to, uniforms and/or the use of NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' personal mobile phone and data usage for work related purposes including but not limited to receiving and responding to work related messages and/or phone calls. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of using their personal phone for work related purposes and/or the cost of purchasing and/or maintaining work uniforms/clothing/safety/protective equipment. For example, based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES received calls/messages to their personal cell phones/mobile devices from supervisors regarding scheduling and/or other work tasks but were not provided any reimbursement from EMPLOYER for this personal cell phone use. Additionally, COMPLAINANT was required to purchase and/or maintain his own work clothing/uniforms and/or work shoes, such as, but not limited to, pants and shirts, without being provided any reimbursement from EMPLOYER for the expenses he incurred in connection therewith.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of EMPLOYER.

As a pattern and practice, EMPLOYER regularly failed to reimburse and indemnify NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses. Pursuant to California Labor Code section 2802, COMPLAINANT, NON-EXEMPT

AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were entitled to be reimbursed for all reasonable expenses associated with carrying out EMPLOYER's orders and/or carrying out the duties assigned by EMPLOYER.

As described herein, EMPLOYER regularly failed to reimburse and indemnify COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for all reasonable expenses associated with carrying out their job duties. EMPLOYER's failure to provide COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with carrying out their duties required that COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

Unlawful Agreements/ Unlawful Criminal History Inquiries:

Unlawful Agreements

Labor Code section 432.5 provides that "no employer...shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer...to be prohibited by law." Based on information and belief, EMPLOYER required COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful conditions of employment including but not limited to unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

The California Labor Code places certain procedural and substantive limits on employers' ability to conduct employee background checks and on how employers can use the information they obtain through those background checks. Labor Code section 1024.5 states that employers, except for financial institutions, may order a credit check only if the individual works (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions, and certain government positions). Additionally, the Investigative Consumer Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee background check, including but not limited to identifying an appropriate reason for the background check, a separate consent form with required disclosures and certain formatting requirements, additional forms such as a summary of rights, a way by which to request a copy of the report, as well as proper notice of adverse actions taken, among other statutory requirements.

Based on information and belief, EMPLOYER ordered unlawful financial credit checks on NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, in violation of Labor Code section 1024.5, and required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to provide ongoing written consent to the unlawful credit checks as a condition of employment, in violation of California and Federal law, which results in a further violation of Labor Code section 432.5.

Based on information and belief, EMPLOYER also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to submit and/or agree to submit in writing to unlawful criminal background checks as a condition of obtaining and/or holding employment in violation of the ICRAA and the FCRA.

Based on information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a background check which failed to abide by the requirements set forth in CA Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by failing to provide a clear and conspicuous disclosure (and/or failing to provide any disclosure at all), failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for the background check, failing to provide a summary of rights under the ICRAA and/or the FCRA, failing to provide a way by which the individual could request a copy of the report, failing to disclose the name, address, and telephone number of the third party preparing the report, and failing to properly obtain authorization or consent to such a background check, and thus was an unlawful background check.

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful criminal and/or financial checks not in conformance with the applicable laws, EMPLOYER violated Labor Code section 432.5.

Based on information and belief, EMPLOYER also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to provide ongoing consent to EMPLOYER to conduct background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by requiring applicants and employees to agree to an unlawful provision as a condition of employment.

Based on further information and belief, EMPLOYER knew that requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree to unlawful criminal and/or financial background checks as a condition of obtaining and/or holding employment was unlawful.

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES agree in writing to unlawful provisions as a condition of employment, EMPLOYER violated Labor Code section 432.5.

Unlawful Inquires into Criminal History

Labor Code section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on information and belief, EMPLOYER asked NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES about arrests not resulting in convictions on its employment application, in violation of California law.

Upon information and belief, EMPLOYER, in violation of California law, including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act (“FEHA”), asked

NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about convictions prior to extending an offer of employment and/or otherwise impermissibly inquired into criminal history on its employment application in violation of California law.

By asking about arrests not resulting in convictions, EMPLOYER violated Labor Code section 432.7. By asking about convictions at the application phase or prior to extending an employment offer, EMPLOYER violated California's Fair Chance Act, and thereby violated Labor Code section 432.5 by unlawfully requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to disclose arrests and/or convictions as a condition of employment.

As such, COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES continue to be subject to various unlawful provisions as a condition of employment.

Conclusion

EMPLOYER has violated the above-referenced California Labor Code provisions, the applicable IWC Wage Order, including but not limited to all applicable Wage Orders, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys' fees, and costs. The civil penalties COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Labor Code § 2699.3 requires that a claimant send a certified letter (i.e. this NOTICE) to the employer in question and file an online claim to the LWDA setting forth the claims and the basis for the claims, thereby giving the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this NOTICE is to satisfy the requirements created by Labor Code §§ 2699, 2699.3(a), 2699.3(b), 2699.3(c), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the LWDA intends to take any action in reference to these claims. We kindly ask that you respond to this NOTICE according to the time frame contemplated by the code.

If the LWDA elects not to take any action with respect to any of the foregoing claims, COMPLAINANT will seek these penalties in a civil action, on behalf of COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES of EMPLOYER within one year of the date of this letter as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty-five days of the date of this NOTICE to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Kiara Bramasco
Crosner Legal, PC
9440 Santa Monica Blvd., Ste. 301
Beverly Hills, CA 90210
Main: 310.496.5818
Fax: 310.510.6429
Email: kiara@crosnerlegal.com

Thank you for your attention to this matter.

Best Regards,

A handwritten signature in cursive script that reads "Kiara Bramasco".

Kiara Bramasco, Esq.
CROSNER LEGAL, PC



Alberto Villavicencio <alberto@crosnerlegal.com>

Thank you for submission of your PAGA Case.

1 message

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
To: "alberto@crosnerlegal.com" <alberto@crosnerlegal.com>

Fri, Nov 4, 2022 at 1:40 PM

11/4/2022

LWDA Case No. LWDA-CM-917860-22
Law Firm : Crosner Legal
Plaintiff Name : Christian Montoya
Employer: Greco Entertainment Group, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT

5

Thank you for your Court Complaint Submission.

1 message

DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
To: mathew@crosnerlegal.com

Mon, May 13, 2024 at 3:50 PM

05/13/2024 03:50:21 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Court Complaint

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT

6

EXHIBIT

7

**Cristian Montoya v. Greco Entertainment Group, Inc.
(Los Angeles County Case No. 23STCV00656)**

Crosner Legal Time Report

Tasks	Zachary Crosner	Jamie Serb	Nikki Trenner	Kiara Bramasco	Branden Hamilton
Pre-filing Case Investigation	7.2	0.0	0.0	3.1	6.7
Pleadings and Law and Motion	5.1	0.0	0.0	1.3	15.2
Discovery and Post-Filing Investigation	2.3	0.0	14.4	0.0	0.0
Court Appearances	0.0	0.0	3.6	0.0	0.0
Case Management; Litigation Strategy & Analysis	4.5	33.4	7.8	0.0	0.0
Mediation and Settlement	6.7	8.6	22.2	0.0	0.0
Total Hours	25.8	42	48	4.4	21.9
Hourly Rate	\$800	\$750	\$650	\$650	\$600
Lodestar	\$20,640	\$31,500	\$31,200	\$2,860	\$13,140

Total Hours: 142.1
Total Lodestar: 99,400.00