MESSRELIAN LAW INC.
Harout Messrelian, Esq. (SBN 272020)
hm@messrelianlaw.com
101 N. Brand Blvd., Suite 1450
Glendale, California 91203
Telephone: (818) 484-6531
Facsimile: (818) 956-1983

Attorney for Plaintiff,
ARNULFO CONTRERAS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

(UNLIMITED JURISDICTION)

ARNULFO CONTRERAS,

Plaintiff,

vs.

SURF CITY TSP, LP; MICHAEL LINLEY, an individual; and DOES 1 to 25, inclusive,

Defendants.

Case No.: 30-2023-01326722-CU-OE-CXC

[Assigned for all purposes to Honorable Layne H. Melzer, Judge]

SUPPLEMENTAL DECLARATION OF HAROUT MESSRELIAN ADDRESSING THE COURT'S CONCERNS AND HOW THE PENDING ISSUES WERE RESOLVED

Hearing Date: May 7, 2026
Time: 2:00 pm
Department: CX102

Complaint Filed: May 18, 2023

SUPPLEMENTAL DECLARATION OF HAROUT MESSRELIAN

I, Harout Messrelian, declare as follows:

1. I am an attorney duly licensed to practice before all the Courts of the State of California. I am the managing attorney of Messrelian Law Inc. and the attorney of record for Plaintiff Arnulfo Contreras ("Plaintiff") in his lawsuit against Defendant Surf City TSP, LP (hereinafter "Surf City" or "Defendant").

2. Except as otherwise indicated, I have personal knowledge of all matters set forth herein and, if called as a witness, could and would competently testify thereto under oath.

3. This Supplemental Declaration is submitted in response to the Court's January 21, 2026, tentative ruling requesting additional information in support of Plaintiff's Motion for Approval of PAGA Settlement.

4. I can attest that I am not aware of any class, representative or other collective action in any other court that asserts claims similar to those asserted in this case.

5. I can attest that neither I nor Plaintiff have any conflict of interest with Defendant or the Aggrieved Employees.

6. I do not have any fee-splitting agreement or fee-sharing arrangement with any other counsel in connection with this matter.

7. A true and correct copy of the amended Joint Stipulation of Representative PAGA Action Settlement and Release of Claims ("Amended PAGA Settlement") signed by the Parties and their respective attorneys of record is attached hereto as **Exhibit 1**.

8. A true and correct copy of the redline changes made to the original Joint Stipulation of Representative PAGA Action Settlement and Release of Claims, which is attached as Exhibit "1" to the Declaration of Harout Messrelian (ROA #81), is attached hereto as **Exhibit 2**. Herein, **Exhibit 2** shall be referred to as the "Redlined PAGA Settlement."

9. A true and correct copy of the amended Notice of Court Approved PAGA Settlement letter ("Amended PAGA Notice") is attached as **Exhibit 3**.

10. A true and correct copy of the redline changes made to the original Notice of

Court Approved PAGA Settlement letter, which is attached as Exhibit "2" to the Declaration of Harout Messrelian (ROA #81), is attached as **Exhibit 4**. Herein, **Exhibit 4** shall be referred to as the "Redlined PAGA Notice."

11. A true and correct copy of the redline changes made to the original [Proposed] Order (ROA #78) is attached hereto as **Exhibit 5**. Herein, **Exhibit 5** shall be referred to as the "Redlined [Proposed] Order."

12. In its tentative ruling dated January 21, 2026, the Court had several concerns regarding the moving papers, settlement agreement, notice/cover letter, and [Proposed] Order. Each of the Court's comments are recited below in bold, followed by a discussion of my response to the comment and where compliance is documented.

Court's Issues with the Settlement Agreement

- **Plaintiff failed to provide the Court with text-searchable moving papers, including the Settlement and notice/cover letter to aggrieved employees, in compliance with CRC 2.256(b)(3).**

I will ensure that all moving papers, including the Amended PAGA Settlement, Redlined PAGA Settlement, Amended PAGA Notice, and Redlined PAGA Notice are text-searchable in compliance with CRC 2.256(b)(3).

- **Counsel represented that the parties are willing to provide a copy of the confidential individual settlement agreement between Plaintiff and Defendant Surf City TSP, LP for the Court's review *in camera*. (ROA #81 [Counsel Decl.], ¶ 26.) The Court needs to review this agreement as part of evaluating whether the instant PAGA settlement is fair, adequate, and reasonable. Counsel shall lodge a copy of the settlement agreement prior to or at the time of the hearing.**

As per Defendant's Counsel's and my representations, I will lodge a copy of the confidential individual settlement agreement at the time of the hearing for the Court to review.

- **There is an escalator clause in the Settlement. (Settlement, ¶ 12.) But this is a motion to have the Settlement fully approved, and so a specific GSA must be approved upon the granting of this motion. At this point, the parties should know or be able to determine the number of Aggrieved Employees and qualifying pay periods based on the PAGA Period.**

After meeting and conferring with Defendant's Counsel, we have agreed that the escalator clause in paragraph 12 of the original PAGA Settlement (Exhibit "1" to Declaration of Harout Messrelian ("Messrelian Decl."), ROA #81) has not been triggered. Even though the escalator clause is not triggered, it was not removed from the Amended PAGA Settlement. Therefore, the following changes have been made to address this issue:

(1) A portion of the last sentence of paragraph 11 has been deleted from the original PAGA Settlement (Exhibit "1" to Messrelian Decl., ROA #81). Specifically, the portion that states "…unless that amount is increased pursuant to paragraph 12 below." This portion was deleted because the $140,000 settlement amount will not increase since we know the number of Aggrieved Employees and qualifying pay periods based on the PAGA Period.

(see Redlined PAGA Settlement ¶ 11; Exhibit 2).

(2) Because the settlement amount will not be increasing, we also changed the term "Maximum Settlement Amount" to "Gross Settlement Amount." Every reference throughout the Amended PAGA Settlement to "Maximum Settlement Amount" now reflects this change.

(see Redlined PAGA Settlement ¶¶ 11, 13, 15, 27, 40, 48, 49, 49(a), 49(c), 50; Exhibit 2).

(3) We also added language at the end of paragraph 12 of the Amended PAGA Settlement which essentially states the number of Aggrieved Employees and confirms that the escalator provision has not been triggered. That language is as follows:

> "Defendant asserts that as of May 21, 2024, the number of pay periods worked by aggrieved employees during the PAGA period is 3,433 and thus this Escalator provision has not been triggered."

(see Redlined PAGA Settlement ¶ 12; **Exhibit 2**).

- **The effective date of the release is as of the date of the judgment. (Settlement, ¶ 51.) This predates Defendant's payment of settlement funds, which need not occur until up to 20 days after the judgment becomes final. (Settlement, ¶¶ 7, 40 [Defendants will fund GSA within 10 days after receiving notification of the Settlement Account and statement for the Settlement Account Deposit from the administrator, which shall occur within 10 days of the Effective Date, which is when the Judgment becomes final].) The release should not be effective before the settlement funds are paid.**

In paragraph 51 of the Amended PAGA Settlement we changed the date that the release of claims will become effective. Rather than the claims being released "[a]s of the date of the Judgment," as we previously had it in the original PAGA Settlement (Exhibit "1" to Messrelian Decl., ROA #81), the claims will now be released "[a]s of the date Defendant deposits the Gross Settlement Amount into the Settlement Account." (see Redlined PAGA Settlement ¶ 51; **Exhibit 2**).

- **The release as phrased in ¶ 51 of the Settlement states that Plaintiff and the Aggrieved Employees release the State of California from all claims for civil penalties, even though Plaintiff is suing Defendant for civil penalties on behalf of the LWDA.**

The release as to the State of California has been removed from the original PAGA Settlement (Exhibit "1" to Declaration of Harout Messrelian ("Messrelian Decl."), ROA #81). The Plaintiff and the Aggrieved Employees are only releasing the "Released Parties," which is defined in paragraph 51 of the Amended PAGA Settlement. (see Amended PAGA Settlement ¶ 51; **Exhibit 1**).

- **Additionally, ¶ 35 of the Settlement states that "[t]he entry of the Order and Judgment shall permanently bar all Aggrieved Employees from prosecuting against Defendant any claims for PAGA penalties through the Representative Period, which were or could have been brought in this Action, as well as all claims as set forth in the Release contained in Section V of this Agreement, whether known or unknown." While the Court typically does not conceptually object to a waiver by a named plaintiff of the protection of Civil Code section 1542, a section 1542 waiver by absent Aggrieved Employees is generally inappropriate in the PAGA context. (See this department's Guidelines for Approval of Class Action Settlements & PAGA Settlements for Department CX102, at Section III.12.) Therefore, the phrase "whether known or unknown" should be removed from this paragraph.**

Per the Court's instruction here, the "whether known or unknown" language has been removed from paragraph 36 of the original PAGA Settlement (Exhibit "1" to Messrelian Decl., ROA #81). (see Redlined PAGA Settlement ¶ 36; **Exhibit 2**). The Amended PAGA Agreement does not contain the "whether known or unknown" language in paragraph 36.

- **Paragraph 38 of the Settlement provides Plaintiff's counsel with the right to appeal a reduction by the Court of the requested PAGA Counsel Fees Payment, as well as the right to oppose appeals. But it does not specify**

- **who would pay the attorney's fees and costs incurred in such appellate proceedings-I.e., will these fees and costs be deducted from the GSA, decreasing the total amount available for penalties under PAGA?**

To address this issue, we added a sentence at the end of paragraph 38 of the original PAGA Settlement (Exhibit "1" to Messrelian Decl., ROA #81). Paragraph 38 of the Amended PAGA Settlement now states that "All fees and costs incurred as a result of an appeal shall be incurred by PAGA Counsel." (see Redlined PAGA Settlement ¶ 38; **Exhibit 2**).

- **Class Counsel must attest as to whether there is a fee-splitting agreement with any other counsel, or confirm there is none.**

As stated above herein in paragraph 6, I do not have any fee-splitting agreement or fee-sharing arrangement with any other counsel in connection with this matter.

- **The Settlement should specify that the Court's continuing jurisdiction is pursuant to California Code of Civil Procedure section 664.6.**

Paragraph 36 of the Amended PAGA Settlement now specifies that the Court's continuing jurisdiction is pursuant to California Code of Civil Procedure section 664.6. (see Redlined PAGA Settlement ¶ 36; **Exhibit 2**).

<u>**Court's Issues with the Notice/Cover Letter to Aggrieved Employees**</u>

- **The specific awards and disbursements should be revised to reflect the amounts set forth in this order.**

Under section 2, the Amended PAGA Notice now reflects the attorneys' fees amount to reflect what this Court ordered. The original PAGA Notice (Exhibit "2" to Messrelian Decl., ROA #81) had "$46,666.66 (33.33% of the Maximum Settlement Amount" and now, the Amended PAGA Notice states "$42,000.00 (30.00% of the Gross Settlement Amount)." (see Redlined PAGA Notice; **Exhibit 4**). I also changed the wording from "Maximum Settlement Amount" to "Gross Settlement Amount" to stay consistent with the Amended PAGA Settlement. *Id.*

Moreover, section 2 of the Amended PAGA Notice also reflects the Court's order because the Net Settlement Amount is now "$76,963.21" rather than "$72,296.55." Because the remainder increased, the percentages have also changed in the same portion of the

Amended PAGA Notice. Now, the 75% being distributed to the LWDA is "$57,722.41" compared to "$54,222.41" and the 25% being distributed to the Aggrieved Employees on a pro rata basis is "$19,240.80" rather than "$18,074.14."

- **The opening paragraph should specify that Surf City TSP, LP is also referred to as "Defendant."**

The opening paragraph of the Amended PAGA Notice now specifies that Surf City TSP LP is also referred to as "Defendant." (see Redlined PAGA Notice; **Exhibit 4**).

- **The notice/cover letter sometimes refers to "Defendants" in the plural, even though the notice/cover letter does not reference any defendant other than Surf City TSP, LP, and the Settlement also references only Surf City TSP, LP as the sole "Defendant."**

All references to "Defendants" in the plural has been corrected. The third to last paragraph of the original PAGA notice (Exhibit "2" to Messrelian Decl., ROA #81) had a single reference to "Defendants" in the plural. (see Redlined PAGA Notice; **Exhibit 4**). The Amended PAGA Notice in the third to last paragraph now has "Defendant" in the singular. *Id.* The last paragraph of the original PAGA notice (Exhibit "2" to Messrelian Decl., ROA #81) had three references to "Defendants" in the plural. *Id.* The Amended PAGA Notice now has "Defendant" in the singular. *Id.* In the last paragraph of the Amended PAGA Notice, the verb "have" was changed to "has" so that it is consistent with the changes to "Defendants" in the plural. *Id.*

- **The description of the release is ambiguous, misleading, and overly broad in that it begins by stating plainly that "all Aggrieved Employees will be barred from asserting PAGA claims against Defendants," without any qualification. This initial sentence should be modified to include the limitation that the release applies only to PAGA claims "based on the PAGA Period facts alleged in the Action and resolved by this Settlement," as explained in the following sentence.**

To address the Court's concern pertaining to the last paragraph of the original PAGA Notice (Exhibit "2" to Messrelian Decl., ROA #81), the portion that reads "all Aggrieved Employees will be barred from asserting PAGA claims against Defendant" has not been completely removed. (see Redlined PAGA Notice; **Exhibit 4**). The first sentence of the last paragraph of the Amended PAGA Notice now reads as follows:

> After the Court's judgment is final, and Defendant has paid the Gross Settlement, all Aggrieved Employees cannot sue, continue to sue, or participate in any other PAGA claim against Defendant or related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

(see Redlined PAGA Notice; **Exhibit 4**).

<u>Court's Issues with the [Proposed] Order</u>

- **The specific awards and disbursements should be revised to reflect the amounts set forth in this order.**

In paragraph 8b of the Redlined [Proposed] Order, the attorneys' fees amount now reflects what this Court ordered in its tentative ruling. Rather than $46,666.66, the amount on the Redlined [Proposed] Order is now $42,000.00. The words "total maximum" where also removed from the same paragraph so that it is consistent with the Amended Settlement Agreement. (**Exhibit 5**).

Moreover, paragraph 8d of the Redlined [Proposed] Order also reflects the Court's order because the estimated remainder is now "$76,963.21" rather than "$72,296.55." Because the remainder increased, the percentages have also changed in the same paragraph. Now, the 75% being distributed to the LWDA is "$57,722.41" compared to "$54,222.41" and the 25% being distributed to the Aggrieved Employees on a pro rata basis is "$19,240.80" rather than "$18,074.14."

Lastly, in paragraph 10 of the Redlined [Proposed] Order, the attorneys' fees amount now reflects what this Court ordered in its tentative ruling. Rather than $46,666.66, the amount on the Redlined [Proposed] Order is now $42,000.00. Moreover, the "1/3" fraction in the same paragraph now has "30%" to better reflect the Court's order.

- **The proposed order and judgment should identify the settlement agreement by its actual name.**

Per the Court's instructions, paragraph 1 of the Redlined [Proposed] Order now identifies the original PAGA Settlement (Exhibit "1" to Messrelian Decl., ROA #81) by its name: "Joint Stipulation of Representative PAGA Action Settlement and Release of Claims." (**Exhibit 5**). In the same paragraph, a reference to the Amended PAGA Settlement is also added. (**Exhibit 5**).

- **The proposed order and judgment should also reference by name and ROA number the declaration(s) to which the settlement agreement and any amendments thereto are attached.**

The Redlined [Proposed] Order, in paragraph 1, now has a reference by name and ROA number to the declaration to which the original PAGA Settlement (Exhibit "1" to Messrelian Decl., ROA #81) was attached to. The Redlined [Proposed] Order also has a reference by name and ROA number to this Supplemental Declaration to which the Amended PAGA Settlement is attached too. However, since the name and ROA number have not been assigned to this Supplemental Declaration, the reference to the name is marked as "[PENDING NAME]" and the ROA number is marked as "[Pending]." The Amended [Proposed] Order with the actual name and ROA number will be filed after the Court assigns a name and an ROA number to this Supplemental Declaration.

- **In ¶ 6, the name of the approved settlement administrator should match the name that appears in the settlement agreement-I.e., "Phoenix Class Action Administration Solutions."**

Paragraph 6 of the Redlined [Proposed] Order now has the name of the settlement administrator that also appears in the original PAGA Settlement (Exhibit "1" to Messrelian Decl., ROA #81) and Amended PAGA Settlement. The incorrect name of the settlement administrator, i.e., "Pheonix Settlement Administrators," was replaced with the correct name, i.e., "Phoenix Class Action Administration Solutions."

- **Paragraph 11 should be updated to reference by name and ROA number the declaration to which the revised notice is attached.**

The name and ROA number to this Supplemental Declaration have not been assigned. Therefore, the reference to the name of this Supplemental Declaration to which the Amended PAGA Notice is attached to is marked as "[PENDING NAME]" and the ROA number is marked as "[Pending]." The Amended [Proposed] Order with the actual name and ROA number will be filed after the Court assigns a name and an ROA number to this Supplemental Declaration.

- **Paragraph 12 states that "[t]his action is dismissed with prejudice." This provision does not comport with CCP section 664.6, subdivision (a), as the Settlement does not provide for such dismissal in the judgment. Moreover,**

if dismissal is sought pursuant to CCP section 664.6, subdivision (a), such dismissal should be without prejudice. Additionally, dismissal upon entry of judgment is inappropriate given that Defendant is not required to fund the settlement and the settlement funds will not have been distributed to the Aggrieved Employees until after entry of judgment. Further, upon entry of an order approving a PAGA settlement and judgment, the Court will set a Final Accounting hearing to ensure that the settlement funds will be distributed in accordance with the settlement terms. Notably, CRC 3.769(h), referencing class actions, provides that "[t]he court may not enter an order dismissing the action at the same time as, or after, entry of judgment." The Court finds this procedure appropriate in this similar PAGA representative action and finds a dismissal Inappropriate.

To address the Court's concern here regarding paragraph 12 of the original [Proposed] Order (ROA #78), the following language has been added to the first sentence of paragraph 36 of the Amended PAGA Settlement:

> The Parties agree that the Action shall be dismissed with prejudice at the time the Superior Court enters Judgment.

(see Redlined PAGA Settlement ¶ 36; **Exhibit 2**).

- **Counsel should not leave blank but should instead propose a realistic Final Accounting hearing date, taking into account the deadlines associated with funding the settlement, mailing distributions, allowing the check-cashing deadline to pass, and depositing uncashed check funds pursuant to the terms of the settlement agreement. The Court usually sets these hearings 9-10 months after final approval if the check-cashing deadline is 180 days. The parties must report to the Court the total amount that was actually paid to Aggrieved Employees and all others in accordance with the settlement agreement. All supporting papers must also be filed at least sixteen (16) court days before the Final Accounting hearing date.**

Based on the Court's instructions, paragraph 15 of the Redlined [Proposed] Order now sets the final accounting hearing for February 11, 2027, at 2:00 p.m., which is approximately 9-10 months from the current May 7, 2026, final approval hearing.

<u>Miscellaneous Formatting Changes</u>

13. In paragraph 52 of the original PAGA Settlement (Exhibit "1" to Messrelian Decl., ROA #81), the first sentence stated that the "[r]eleased Parties includes Defendant and it past, present and/or future…" Due to the grammatical errors identified here, the Amended PAGA Settlement now reads as follows: "Released Parties include Defendant and its past,

present and/or future…"

<u>Notice of Settlement to the LWDA</u>

14. Pursuant to California Labor Code section 2699(1)(2), my firm submitted a copy of the Amended PAGA Settlement (**Exhibit 1**) and this Supplemental Declaration with the LWDA at the same time supplemental papers are being filed with the Court. True and correct copies of this submission with the LWDA and the confirmation email are collectively attached herein as **Exhibit 6**. I also provided notice to the LWDA and filed a proof of service with the Court on January 28, 2026, (ROA #98), regarding the Court's January 21, 2026, tentative ruling.

I declare under the penalty of perjury of the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed on April 14, 2026 at Los Angeles, California.

Harout Messrelian,
Declarant

EXHIBIT 1

This Joint Stipulation of Representative PAGA Action Settlement and Release of Claims ("Settlement" or "Agreement") is made and entered into by and between Plaintiff Arnulfo Contreras ("Plaintiff" or "Representative Plaintiff"), individually and on behalf of all putative Aggrieved Employees, and Defendant Surf City TSP LP ("Defendant"). Plaintiff and Defendant are collectively referred to herein as "the Parties."

I. **DEFINITIONS**

The following definitions are applicable to this Settlement, in addition to other terms defined elsewhere in this Settlement:

1. "Action" shall mean the operative Complaint of the civil action initially commenced on May 18, 2023, filed and maintained by Plaintiff against Defendant in the Superior Court of California, County of Orange, Case No. 30-2023-01326722-CU-OE-CXC.

2. "Aggrieved Employees" shall mean all persons who, during the Representative Period, have previously been or currently are employed in California by Defendant, as a non-exempt employee. An "Aggrieved Employee" shall mean an individual who is a member of the Aggrieved Employees (or if any such person is incompetent, deceased, or unavailable due to military service, the person's legal representative or successor in interest evidenced by reasonable verification).

3. "Aggrieved Employee Notice" shall mean the Notice of Settlement and Approval, a sample of which is attached hereto as Exhibit "A". The Aggrieved Employee Notice shall further contain (i) an Aggrieved Employee's first and last name, (ii) last known address, (iii) the Aggrieved Employee's Individual Pay Periods, and (iv) the Aggrieved Employee's individual share of the Aggrieved Employees' Payment.

4. "Aggrieved Employee's Settlement Share" shall mean the value of each Aggrieved Employee's share of the Aggrieved Employees' Payment as provided by this Agreement.

5. "Aggrieved Employees' Payment" shall mean the remaining twenty-five percent (25%) of the Net Settlement Amount to be distributed on a *pro rata* basis based upon the number of Pay Periods worked by each Aggrieved Employee.

6. "Defense Counsel" shall mean the attorneys representing Defendant in the Action, Matthew C. Sgnilek, Esq., and Joanna Booker, Esq., of O'Hagan Meyer LLP.

7. "Effective Date" shall mean the date by which this Settlement is approved by the Superior Court by entry of the Judgment and the Judgment becomes Final. If no appeal is filed, the Effective Date shall occur 60 calendar days from entry of Judgment by the Court. If a timely appeal is filed, the Judgment shall become final on the date all appeals from the Judgment have been fully adjudicated. The occurrence of the Effective Date is a prerequisite to any obligation of Defendant to pay any funds into the Settlement Account.

8. "Individual Pay Periods" shall mean the number of Pay Periods for an individual Aggrieved Employee.

9. "Judgment" shall mean the Order of Final Judgment entered by the Superior Court that the Parties anticipate will be entered following an Approval Hearing on the Settlement in this Action.

10. "LWDA Payment" shall mean the payment to the California Labor and Workforce Development Agency ("LWDA") constituting seventy-five percent (75%) of the Net Settlement Amount.

11. "Gross Settlement Amount" shall mean the gross settlement amount of One Hundred Forty Thousand Dollars and Zero Cents ($140,000.00) payable by Defendant as provided by this Agreement.

12. Defendant represents that as of March 21, 2024 (the date of mediation) the number of pay periods worked by aggrieved employees during the PAGA Period is approximately 3,400. If it is determined that the pay periods through the PAGA Period exceeds 3,740 (3,400 plus 10% of 3,400), then Defendant shall have the option of either (i) increasing the PAGA Payment Amount by an amount determined by the following formula: Actual Number of Pay Periods ÷ 3,740 × PAGA Payment Amount; or (ii) changing the end date of the PAGA Period to a date for which there are no more than 3,740 pay periods. Defendant asserts that as of May 21, 2024, the number of pay periods worked by aggrieved employees during the PAGA period is 3,433 and thus this Escalator provision has not been triggered.

13. "Net Settlement Amount" shall mean the Gross Settlement Amount, less (i) the PAGA Counsel Fees Payment approved by the Superior Court; (ii) the PAGA Counsel Litigation Expenses Payment approved by the Superior Court; (iii) the Settlement Administrator Payment approved by the Superior Court; and (iv) any other fees or expenses (other than PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment) incurred in implementing the terms and conditions of this Agreement as approved by the Superior Court.

14. "PAGA Counsel" shall mean the attorneys representing Plaintiff in the Action, Harout Messrelian of Messrelian Law.

15. "PAGA Counsel's Fees Payment" shall mean one-third (1/3) of the Gross Settlement Amount (currently estimated to be Forty-Six Thousand, Six Hundred Sixty-Six Dollars, and Sixty-Six Cents ($46, 666.66) subject to approval by the Superior Court as PAGA Counsel's attorneys' fees incurred in connection with the Action, including fees incurred in pre-filing investigation, filing of the Action, and all related litigation activities, this Settlement, and all post-Settlement compliance procedures.

16. "PAGA Counsel's Litigation Expenses Payment" shall mean the actual litigation expenses and/or costs expended by PAGA Counsel subject to approval by the Superior Court incurred in connection with the Action, including pre-filing investigation, filing of the Action, and all related litigation activities, this Settlement, and all post-Settlement compliance procedures. PAGA Counsel's expenses are not to exceed Twenty Thousand Dollars ($20,000.00).

17. "Pay Period" shall mean any pay period in which an Aggrieved Employee actually received payment from Defendant as an hourly-paid, non-exempt employee.

18. "Representative Period" shall mean the period of time from March 14, 2022, through May 21, 2024.

19. "Individual Settlement Payment" shall mean the individual payment made to Plaintiff for his individual non-PAGA claims in lieu of a representative enhancement payment. This is subject to a separate agreement with a general release wherein the Plaintiff expressly waives and relinquishes all rights and benefits of § 1542 of the Civil Code of the State of California.

20. "Settlement Administrator" shall mean Phoenix Class Action Administration Solutions proposed by the Parties and appointed by the Superior Court to administer the Settlement.

21. "Settlement Administrator Payment" shall mean the payment to the Settlement Administrator for its fees and expenses in administering this Settlement.

22. "Superior Court" shall mean the Superior Court of California for the County of Orange County.

II. RECITALS

23. On December 21, 2022 PAGA Counsel, on behalf of Plaintiff and the Aggrieved Employees, gave written notice to the Labor Workforce and Development Agency ("LWDA") of the Labor Code violations Defendant is alleged to have violated. ("LWDA Exhaustion Letters").

24. On May 23, 2023 Plaintiff filed a Complaint against Defendant in the Orange County Superior Court, Case No. 30-2023-01326722-CU-OE-CXC. In his Complaint, Plaintiff pled a cause of action for Civil Penalties pursuant to the Private Attorneys' General Act ("PAGA").

25. Defendant denies and continues to deny all of Plaintiff's allegations inclusive of the representative manageability of the Action. Specifically, Defendant contends (1) it did not fail to pay Plaintiff or Aggrieved Employees the minimum, straight time, regular rate, and/or overtime wages; (2) it paid Plaintiff and Aggrieved Employees for all hours worked; (3) it provided Plaintiff and Aggrieved Employees with all meal periods according to law and/or paid accurate meal period premium wages; (4) it provided Plaintiff and Aggrieved Employees with all rest periods according to law and/or paid accurate rest period premium wages; (5) it did not fail to timely pay Plaintiff or Aggrieved Employees wages due and owing during employment and/or upon separation; (6) it provided Aggrieved Employees and Plaintiff with accurate itemized wage statements, consistent with Labor Code Section 226; (7) it properly maintained all payroll and personnel records; (8) it reimbursed employees including Plaintiff for all necessary business expenses; (9) Aggrieved Employees are not entitled to penalties under PAGA; and (10) it is not liable for damages, including civil penalties, attorneys' fees, or costs of litigation to Aggrieved Employees.

26. In connection with the Action, and in order to work toward a mediated resolution without the time and expense of formal discovery, the Parties produced voluminous documents and data (including, by Defendant, human resources documents and policies, time records, and payroll data during the Representative Period) which were reviewed, investigated, and analyzed by PAGA Counsel.

27. On March 21, 2024, the Parties in Action participated in a full day of mediation before an experienced employment and PAGA action mediator, Steven Rottman, Esq. (the "Mediation") and the Parties reached a settlement at the Gross Settlement Amount.

28. The Settlement described in this Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Settlement is intended or will be construed as an admission by Defendant that Plaintiff's claims in the Action have any merit or that Defendant has any liability to Plaintiff, the Aggrieved Employees or the State on those claims, or as an admission by Plaintiff that Defendant's defenses in the Action have any merit. This Settlement is intended to fully, finally, and forever compromise, release, resolve, discharge, and settle the released claims subject to the terms and conditions set forth in this Settlement.

29. Based on its own thorough, independent investigation and evaluation of this case, PAGA Counsel is of the opinion that the Settlement of this Action with Defendant for the consideration and on the terms set forth in this Settlement is fair, reasonable, adequate, and in the best interest of the LWDA and Aggrieved Employees in light of all known facts and circumstances, including the risk of significant costs and delay, the defenses asserted by Defendant including the risks of adverse determinations on the merits and numerous potential appellate issues. Although Defendant contends that it has no liability in the Action, Defense Counsel shares PAGA Counsel's belief that the Settlement represents a fair and adequate settlement given the respective risks associated with the case.

30. Based on the foregoing Recitals, the Parties agree as follows:

III. PROCEDURE FOR APPROVING SETTLEMENT

31. **Motion for Approval of Settlement by the Superior Court.** Plaintiff will move the Superior Court for an order granting Approval of the Settlement and approving the Aggrieved

Employee Notice (attached as Exhibit "A" to this Stipulation) ("Motion for Approval"). Any unresolved disagreement among the Parties concerning the Aggrieved Employee Notice or other documents necessary to implement the Settlement will be referred first to Steven Rottman, Esq., and if no resolution is reached, then to the Superior Court.

32. At the hearing on the Motion for Approval, the Parties anticipate that they will jointly appear, support the granting of the Motion for Approval, and obtain an order granting approval of the Settlement and granting approval of the Aggrieved Employee Notice.

33. Should the Superior Court require any amendments to this Agreement or the Motion for Approval, the Parties agree to work jointly to resolve any issues in order to secure the Superior Court's approval.

34. Should the Superior Court decline to approve any material aspects of the Settlement, the Settlement will be null and void and the Parties will have no further obligations under it. In such event, the Parties shall be returned to their respective positions as of the date and time immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects as if this Agreement had not been executed.

35. Upon approval of the Settlement by the Superior Court, the Parties will present for the Superior Court's approval and entry a Proposed Final Order and Judgment. The entry of the Order and Judgment shall permanently bar all Aggrieved Employees from prosecuting against Defendant any claims for PAGA penalties through the Representative Period, which were or could have been brought in this Action, as well as all claims as set forth in the Release contained in Section V of this Agreement.

36. The Parties agree that the Action shall be dismissed with prejudice at the time the Superior Court enters Judgment. After entry of the Judgment, the Superior Court will have continuing jurisdiction over the Action and the Settlement pursuant to California Code of Civil Procedure section 664.6 solely for purposes of (i) enforcing this Settlement, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.

37. **Aggrieved Employee Notice.** After the Superior Court enters its order granting Preliminary Approval, every Aggrieved Employee will be provided with the Aggrieved Employee Notice (in English and Spanish) which will include the Aggrieved Employee Notice completed to reflect the order granting Approval of the Settlement and the Aggrieved Employee's information as follows:

(a) Within twenty-one (21) days after the Motion for Approval is granted, Defendant will provide to the Settlement Administrator the "Aggrieved Employees' Data," which shall consist of an electronic database containing (i) each Aggrieved Employee's first and last name, (ii) last known mailing address, (iii) the Aggrieved Employee's Social Security number or Tax ID, and (iv) the Aggrieved Employee's total number of Individual Pay Periods. If any or all of the Aggrieved Employees' Data are unavailable to Defendant, Defendant will so inform PAGA Counsel prior to the date on which Defendant is required to submit the Aggrieved Employees' Data to the Settlement Administrator and the Parties will make their best efforts to reconstruct or otherwise agree upon the Aggrieved Employees' Data prior to when it must be submitted to the Settlement Administrator. This information will otherwise remain confidential and will not be disclosed to anyone, except as required to applicable taxing authorities, as required to carry out the reasonable efforts to identify Aggrieved Employee information as described in Paragraph 47, pursuant to Defendant's express written authorization, or by order of the Superior Court.

(b) If An Aggrieved Employee Notice is returned by the U.S. Postal Service because of an incorrect address, the Settlement Administrator will promptly, and not later than five (5) days from receipt of the returned packet, search for a more current address for the Aggrieved Employee and re-mail the Aggrieved Employee Notice to the Aggrieved Employee. The Settlement Administrator will use the Aggrieved Employees' Data and otherwise work with Defense Counsel or utilize its own resources such as skip traces to find a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, court orders, and fee, to trace the mailing address of any Aggrieved Employee for whom an Aggrieved Employee Notice is returned by the U.S. Postal Service. These reasonable steps shall include the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Aggrieved Employees for whom new addresses are found.

38. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Settlement, Plaintiff, Aggrieved Employees, Defendant, and its respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, a motion for new trial, a motion under Code of Civil Procedure Section 473, and any extraordinary writ, and the Judgment therefore will become non-appealable by them at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings, or post-judgment proceedings, or any waiver of the right to appeal a reduction by the Court of the requested PAGA Counsel Fees Payment. If an appeal is taken from the Judgment, the time for consummation of the Settlement (including making payments under the Settlement) will be suspended until such time as the appeal is finally resolved and the Judgment, consistent with the terms of this Settlement, becomes Final. All fees and costs incurred as a result of an appeal shall be incurred by PAGA Counsel.

39. **Vacating, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion, petition, writ, or application, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then either Party will have the right to void the Settlement, which the Party must do by giving written notice to the other Parties, the reviewing court, and the Superior Court, not later than fourteen (14) days after the reviewing court's decision vacating, reversing, or materially modifying the Judgment becomes final. A vacation, reversal, or modification of the Superior Court's award of the Individual Settlement Payment to Plaintiff, the PAGA Counsel Fees Payment, and/or PAGA Counsel Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of the Judgment within the meaning of this Paragraph.

40. **Establishment of Settlement Account.** The Settlement Administrator shall establish a Settlement Account within ten (10) days of the Effective Date and notify the Parties when the Settlement Account has been established. The Settlement Administrator shall also provide Defendant with an itemized statement for the total amount to be deposited into the Settlement Account, which shall equal the Gross Settlement Amount ("Settlement Account Deposit"). Within ten (10) days after receiving notification of the Settlement Account and statement for the Settlement Account Deposit, Defendant shall pay into the Settlement Account an amount equal to the Settlement Account Deposit. Defendant shall have no obligation to pay any additional funds into the Settlement Account.

41. **Payment of Aggrieved Employees' Settlement Shares.** The Settlement Administrator shall pay to each Aggrieved Employee his or her Aggrieved Employee's Settlement Share from the Settlement Account. The Settlement Administrator shall pay each Aggrieved Employee's Settlement Share by sending a check in the appropriate amount to the Aggrieved Employee at the address indicated in the Aggrieved Employees' Data. Such payment, with the Aggrieved Employees' Notice, shall be sent by the Settlement Administrator via U.S. Mail within ten (10) calendar days of its receipt of the Settlement Account Deposit from Defendant.

42. **Uncashed Aggrieved Employees' Settlement Share Checks.** Any checks paid to Aggrieved Employees shall be negotiable for one hundred and eighty (180) calendar days from the date of their issuance. An Aggrieved Employee must cash his or her Aggrieved Employee's Settlement Share check within one hundred and eighty (180) calendar days after it is mailed to him or her. If a check remains uncashed after one hundred and eighty (180) calendar days from the initial mailing, or if a check is returned to the Settlement Administrator as undeliverable during the one hundred eighty-day period, the Settlement Administrator shall take all reasonable efforts to identify the Aggrieved Employee's correct address, including the performance of a "skip-trace." If an updated address can be identified, the Settlement Administrator shall issue another check to the Aggrieved Employee and mail it to the Aggrieved Employee at his or her updated address. If an updated address for the Aggrieved Employee cannot be identified, if a reissued check is once again returned to the Settlement Administrator as undeliverable, or if the reissued check remains

uncashed after one hundred eighty (180) calendar days, the Settlement Administrator will keep an accounting of such funds and shall give notice to the Parties of the total balance of uncashed Aggrieved Employee's Settlement Shares. An Aggrieved Employee who fails to negotiate or receive their Settlement Share check despite the procedures described above shall nevertheless remain bound by the Settlement and the releases contained herein.

43. The funds represented by Aggrieved Employee's Settlement Share checks remaining uncashed for more than one hundred and eighty (180) calendar days after issuance shall be voided and then shall be transmitted to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code Section 1500, *et seq.*, in the names of those Aggrieved Employees who did not cash their checks until such time they claim their property. The Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out to Aggrieved Employees, whether or not they all cash their settlement checks.

44. **Payment of PAGA Counsel's Fees Payment and PAGA Counsel's Litigation Expenses Payment.** The Settlement Administrator shall pay to PAGA Counsel the PAGA Counsel's Fees Payment and PAGA Counsel's Litigation Expenses Payment from the Settlement Account. The Settlement Administrator shall pay the PAGA Counsel's Fees Payment and PAGA Counsel's Litigation Expenses Payment by sending a wire or check in the appropriate amount to PAGA Counsel at the address provided for in Paragraph 74. Such payment shall be sent by the Settlement Administrator within ten (10) calendar days of its receipt of the Settlement Account Deposit from Defendant.

45. **Final Report by Settlement Administrator to Superior Court.** Within ten (10) days after final disbursement of all funds from the Settlement Account, the Settlement Administrator will serve on the Parties and file with the Superior Court a declaration providing a final summary report on the disbursements of all funds from the Settlement Account. Within ten (10) days after transmission of any remaining unclaimed funds to Controller of the State of California the Settlement Administrator will serve on the Parties and file with the Superior Court a declaration providing a final summary report on the transmission of any remaining unclaimed

funds to Controller of the State of California as outlined in Paragraph 42.

IV. SETTLEMENT TERMS AND CONDITIONS

46. **Aggrieved Employee's Settlement Shares.** Subject to the terms and conditions of this Settlement, the Settlement Administrator will calculate the Aggrieved Employee's Settlement Shares for each Aggrieved Employee, including Plaintiff, within ten (10) days after Defendant provide the Settlement Administrator with the Aggrieved Employees' Data. The Aggrieved Employee's Settlement Share for each Aggrieved Employee will be calculated as follows, understanding that the formulas below do not constitute an admission by either Party, and are intended only to provide a practical means to simplify and administer the claims process:

(a) **Number of Aggrieved Employees and Pay Periods**. Defendant shall determine the total number of Aggrieved Employees and the aggregate number of Pay Periods for those Aggrieved Employees as of the time of the close of the Representative Period. This information shall be provided to the Settlement Administrator along with the Aggrieved Employees' Data as described in Paragraph 37(a) above.

(b) **Calculation of the Pay Period Value.** The Settlement Administrator shall determine the value of a Pay Period ("Pay Period Value") by taking the Aggrieved Employees' Payment amount and dividing it by the sum of all Aggrieved Employees' Pay Periods.

(c) **Calculation of Aggrieved Employee's Settlement Shares.** The Settlement Administrator shall assign to each Aggrieved Employee an Aggrieved Employee's Settlement Share which shall be equal to the Pay Period Value multiplied by each Aggrieved Employee's Individual Pay Periods. Upon calculation of the Aggrieved Employee's Settlement Share, the Settlement Administrator shall furnish to PAGA Counsel and Defense Counsel a worksheet containing a list of employee identification numbers for the Aggrieved Employees with their corresponding Individual Pay Periods and Aggrieved Employee's Settlement Share.

47. **Taxes and Withholdings.** Each Aggrieved Employee's Settlement Share is intended to settle the Aggrieved Employees' claims for civil penalties. Accordingly, one hundred percent (100%) of each Aggrieved Employee's Settlement Share shall represent civil penalties. The Aggrieved Employee's Settlement Share shall be paid to the Aggrieved Employee in full

without deductions or withholdings, and the Settlement Administrator shall issue an IRS Form 1099 to each Aggrieved Employee for that amount, to the extent the Aggrieved Employee's Settlement Share is Six Hundred Dollars and Zero Cents ($600.00) or more. Each Aggrieved Employee shall be individually responsible for their own share of applicable income tax withholdings and deductions for his or her Aggrieved Employee's Settlement Share.

48. **Total Payment Amount.** In no event will Defendant be required to pay more than the Gross Settlement Amount (unless that amount is increased pursuant to Paragraph 12 above) for distribution to the Plaintiff, PAGA Counsel, Aggrieved Employees, the LWDA, Settlement Administrator, or for any other costs or expenses not otherwise enumerated.

49. **Payments to PAGA Counsel and Others.** Subject to the terms and conditions of this Settlement, the Settlement Administrator will make the following payments out of the Gross Settlement Amount as follows:

(a) **To PAGA Counsel:** PAGA Counsel will apply to the Superior Court for the PAGA Counsel Fees Payment in an amount not to exceed one-third (1/3) of the Gross Settlement Amount (currently estimated to be Forty-Six Thousand, Six Hundred Sixty-Six Dollars, and Sixty-Six Cents ($46,666.66)). PAGA Counsel will also submit to the Superior Court a memorandum of costs for the PAGA Counsel Litigation Expenses Payment in an amount not to exceed Twenty Thousand Dollars and Zero Cents ($20,000.00) as request reasonable costs of suit to be paid from the Gross Settlement Amount. Defendant will not oppose these requests. The Settlement Administrator will pay the amounts approved by the Superior Court out of the Gross Settlement Amount. Withholding and deductions will not be taken from the PAGA Counsel Fees Payment or PAGA Counsel Litigation Expenses Payment and one or more IRS Forms 1099 will be issued to PAGA Counsel with respect to those payments.

(b) **To the LWDA:** As part of their Motion for Approval, the Plaintiff will apply to the Superior Court for approval of the LWDA Payment in the estimated amount of Fifty-One Thousand, One Hundred and Twenty-Five Dollars ($51,125), which shall constitute the LWDA's seventy-five percent (75%) share of the estimated Sixty-Eight Thousand, Eight Hundred and Thirty-Three Dollars and Thirty-Four Cents ($68,833.34) in civil penalties paid under this

Settlement. The remaining estimated Seventeen Thousand Seven Hundred and Eight Dollars and Thirty-Three Cents ($17,208.33) in civil penalties shall be distributed on a *pro rata* basis based upon the number of pay periods worked by each Aggrieved Employee ("Aggrieved Employees' Payment").

(c) **To the Settlement Administrator:** The Settlement Administrator will be paid from the Gross Settlement Amount its reasonable fees and expenses as approved by the Superior Court, which are estimated to be Four Thousand, Five Hundred Dollars ($4,500).

50. **Appointment of Settlement Administrator.** The Parties will ask the Superior Court to appoint Phoenix Class Action Administration Solutions, a qualified and experienced administrator based in California where the Action is venued, to serve as the Settlement Administrator, which, as a condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and its compensation. The Settlement Administrator's duties will include (i) calculating Aggrieved Employee's Settlement Shares; (ii) preparing, printing, and mailing the Aggrieved Employee Notice to all Aggrieved Employees; (iii) using reasonable measures to contact all Aggrieved Employees, including conducting a National Change of Address search on all Aggrieved Employees before mailing the Aggrieved Employee Notice to each Aggrieved Employee's address; (iv) re-mailing the Aggrieved Employee Notice to the Aggrieved Employee's new address for those Aggrieved Employees whose address had changed; (v) setting up a toll-free telephone number to receive calls from Aggrieved Employees; (vi) using reasonable measures to deliver issued checks to Aggrieved Employees, including use of a "skip-trace" for undeliverable checks; and (vii) otherwise administering the Settlement pursuant to this Agreement. The Settlement Administrator's reasonable fees and expenses are estimated to be Four Thousand Five Hundred Dollars ($4,500) and will be paid out of the Gross Settlement Amount, as set forth herein, subject to Court approval.

V. RELEASE OF CLAIMS

51. **Plaintiff and Aggrieved Employees Released Claims.** As of the date Defendant deposits the Gross Settlement Amount into the Settlement Account, Plaintiff, along with each Aggrieved Employee, and without the need to manually sign a release document, shall release the

Released Parties from all causes of action and claims for civil penalties under the California Labor Code Private Attorneys General Act of 2004 that were alleged in the operative complaint in the Action or reasonably could have been alleged based on the facts contained in the operative complaint in the Action or LWDA letters, including claims for civil penalties based on the following: (i) failure to pay all regular rate wages, minimum wages, and overtime wages due; (ii) failure to provide compliant meal periods; (iii) failure to provide compliant rest breaks; (iv) failure to timely pay wages during employment; (v) failure to provide complete, accurate wage statements; (vi) failure to pay wages timely at time of termination or resignation; (vii) failure to maintain records in accordance with Labor Code Section 1174; (viii) failure to reimburse necessary expenditures; (ix) failure to provide payroll and personnel records; (x) unpaid sick leave; and/or (xi) claims, causes of action or legal theories of relief seeking civil penalties under the California Labor Code Private Attorneys General Act of 2004 plead in the operative complaint and underlying LWDA Exhaustion Letters filed by Contreras (collectively, the "PAGA Released Claims"). PAGA Released Claims for Aggrieved Employees who worked for Defendant in California during the Representative Period shall have their claims released during the Representative Period.

52. Released Parties include Defendant and its past, present and/or future, direct and/or indirect, owners, officers, directors, members, managers, employees, agents, representatives, attorneys, including but not limited to O'Hagan Meyer, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.

53. Plaintiff's individual claims are subject to a separate agreement, in which Plaintiff has released all potentially remaining employment claims inclusive of a § 1542 of the Civil Code of the State of California waiver.

54. In light of the binding nature of a PAGA judgment on non-party employees pursuant to *Arias v. Sup. Ct. (Angelo Dairy)* (2009) 46 Cal.4th 969 and *Cardenas v. McLane Foodservice, Inc.* (2011) 796 F.Supp.2d 1246, individuals meeting the definition of an Aggrieved Employee may not exclude themselves from the Settlement and shall receive a payment for the

amount of each such individual's estimated share of the PAGA Payment, and shall have released PAGA claims, as outlined in Paragraph 54.

55. The PAGA Released Claims described in Paragraph 51 expressly exclude all claims made by an Aggrieved Employee for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, claims while classified as exempt, and claims outside of the Representative Period.

56. **PAGA Counsel.** As of the Effective Date, and except as otherwise provided by this Settlement, PAGA Counsel and any counsel associated with PAGA Counsel waive any further claims to costs and attorneys' fees and expenses against Defendant or the Released Parties based on any claim released by this agreement during the Representative Period.

57. **No Effect on Other Benefits.** The payment the Aggrieved Employee's Settlement Shares will not result in any additional employee benefit payments (such as 401(k), vacation, or bonus) and shall not have any effect on the eligibility for, or calculation of, any employee benefit.

VI. DUTIES OF THE PARTIES

58. **Mutual Full Cooperation.** The Parties agree to cooperate fully with one another to accomplish and implement the terms of this Stipulation. Such cooperation shall include, but not be limited to, execution of such other documents and the taking of such other actions as may reasonably be necessary to fulfill the terms of this Settlement unless the Court denies the Settlement with prejudice. The Parties shall use their best efforts, including all efforts contemplated by this Stipulation and any other efforts that may become necessary by court order or otherwise, to effectuate this Stipulation and the terms set forth herein. As soon as practicable after execution of this Stipulation, PAGA Counsel, with the cooperation of Defendant and Defense Counsel, shall take all necessary and reasonable steps to secure the Court's approval of this Stipulation. The Parties will work together to make any non-material modifications of the Settlement requested by the Court to obtain approval of the Parties' Settlement.

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

VII. MISCELLANEOUS TERMS

60. **No Admission of Liability.** Defendant denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, or has any liability to anyone under the claims asserted in the Action. This Settlement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Settlement is intended or will be construed as an admission of liability or wrongdoing by Defendant, an admission by Plaintiff that any of his claims were non-meritorious, or any defense asserted by Defendant was meritorious. This Settlement and the fact that Plaintiff and Defendant were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with the Settlement).

61. Whether or not the Judgment becomes Final, neither the Settlement, any document, statement, proceeding or conduct related to the Settlement, nor any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendant or any of the Released Parties, including, but not limited to, evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any of the Released Parties, or any other civil, criminal or administrative action or proceeding except for purposes of effectuating this Settlement.

62. Any and all provisions of this Settlement may be admitted in evidence and otherwise used in any and all proceedings to enforce any or all terms of this Settlement, or in defense of any claims released or barred by this Settlement.

63. **Integrated Agreement.** After this Settlement is signed and delivered by all Parties and their counsel, this Settlement and its exhibits will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Settlement or its exhibits other than the representations, warranties, covenants, and inducements expressly stated in this Settlement and its exhibits.

64. **Attorney Authorization.** PAGA Counsel and Defense Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement. The Parties and their counsel will cooperate with each other and use their best efforts to affect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties will seek the assistance of mediator Steven Rottman, and if no resolution is reached the Superior Court, and in all cases all such documents, supplemental provisions and assistance of the court will be consistent with this Settlement.

65. **Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties, their successors-in-interest, and/or the Parties' respective counsel, as authorized, and approved by the Court.

66. **Settlement Binding on Successors.** This Settlement Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

67. **Applicable Law.** All terms and conditions of this Settlement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.

68. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Settlement. This Settlement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

69. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Settlement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Settlement through arms-length negotiations, taking into account all relevant factors, current and potential.

70. **Headings.** The descriptive heading of any section or Paragraph of this Settlement is inserted for convenience of reference only and does not constitute a part of this Settlement.

71. **Notice.** All notices, demands or other communications given under this Settlement will be in writing and deemed to have been duly given as of the third business day after mailing by U.S. Mail, addressed as follows:

To PAGA Counsel:	Harout Messrelian MESSRELIAN LAW INC. 500 N. Central Ave., Suite 840 Glendale, California 91203 Telephone: (818) 484-6531 Facsimile: (818) 956-1983
To the Defendant's Counsel:	Matthew C. Sgnilek, Esq. Joana M. Brooker, Esq. O'HAGAN MEYER 3200 Park Center Drive, Suite 700 Costa Mesa, CA 92626

72. **Execution in Counterpart.** This Settlement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile signatures, scanned PDF signatures, and electronic (e.g. DocuSign) signatures will be presumptive evidence of execution of the original, which shall be produced on reasonable request. Any executed counterpart will be admissible to prove the existence and contents of this Settlement.

PLAINTIFF: **ARNULFO CONTRERAS**

Dated: 4/13/2026

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Arnulfo Contreras
Plaintiff

DEFENDANT: **SURF CITY TSP LP**

Dated: ____________________

____
Michael Linley

Title: ____________________

APPROVED AS TO FORM BY COUNSEL

PAGA COUNSEL: **MESSRELIAN LAW INC.**

Dated: 4/13/2026

ID KgfmAa9rfMj3NLQkR78zaf8

Harout Messrelian
Attorney for Plaintiff

DEFENSE COUNSEL: **O'HAGAN MEYER LLP**

Dated: ____________________

____
Matthew C. Sgnilek
Attorneys for Defendant

72. **Execution in Counterpart.** This Settlement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile signatures, scanned PDF signatures, and electronic (e.g. DocuSign) signatures will be presumptive evidence of execution of the original, which shall be produced on reasonable request. Any executed counterpart will be admissible to prove the existence and contents of this Settlement.

PLAINTIFF: **ARNULFO CONTRERAS**

Dated: ____________________

____
Arnulfo Contreras
Plaintiff

DEFENDANT: **SURF CITY TSP LP**

Dated: 04/13/2026

____
Michael Linley

Title: Vice President of General Partner

APPROVED AS TO FORM BY COUNSEL

PAGA COUNSEL: **MESSRELIAN LAW INC.**

Dated: ____________________

____
Harout Messrelian
Attorney for Plaintiff

DEFENSE COUNSEL: **O'HAGAN MEYER LLP**

Dated: 4/14/2026

____
Matthew C. Sgnilek
Attorneys for Defendant

EXHIBIT 2

This Joint Stipulation of Representative PAGA Action Settlement and Release of Claims ("Settlement" or "Agreement") is made and entered into by and between Plaintiff Arnulfo Contreras ("Plaintiff" or "Representative Plaintiff"), individually and on behalf of all putative Aggrieved Employees, and Defendant Surf City TSP LP ("Defendant"). Plaintiff and Defendant are collectively referred to herein as "the Parties."

I. DEFINITIONS

The following definitions are applicable to this Settlement, in addition to other terms defined elsewhere in this Settlement:

1. "Action" shall mean the operative Complaint of the civil action initially commenced on May 18, 2023, filed and maintained by Plaintiff against Defendant in the Superior Court of California, County of Orange, Case No. 30-2023-01326722-CU-OE-CXC.

2. "Aggrieved Employees" shall mean all persons who, during the Representative Period, have previously been or currently are employed in California by Defendant, as a non-exempt employee. An "Aggrieved Employee" shall mean an individual who is a member of the Aggrieved Employees (or if any such person is incompetent, deceased, or unavailable due to military service, the person's legal representative or successor in interest evidenced by reasonable verification).

3. "Aggrieved Employee Notice" shall mean the Notice of Settlement and Approval, a sample of which is attached hereto as Exhibit "A". The Aggrieved Employee Notice shall further contain (i) an Aggrieved Employee's first and last name, (ii) last known address, (iii) the Aggrieved Employee's Individual Pay Periods, and (iv) the Aggrieved Employee's individual share of the Aggrieved Employees' Payment.

4. "Aggrieved Employee's Settlement Share" shall mean the value of each Aggrieved Employee's share of the Aggrieved Employees' Payment as provided by this Agreement.

5. "Aggrieved Employees' Payment" shall mean the remaining twenty-five percent (25%) of the Net Settlement Amount to be distributed on a *pro rata* basis based upon the number of Pay Periods worked by each Aggrieved Employee.

6. "Defense Counsel" shall mean the attorneys representing Defendant in the Action, Matthew C. Sgnilek, Esq., and Joanna Booker, Esq., of O'Hagan Meyer LLP.

7. "Effective Date" shall mean the date by which this Settlement is approved by the Superior Court by entry of the Judgment and the Judgment becomes Final. If no appeal is filed, the Effective Date shall occur 60 calendar days from entry of Judgment by the Court. If a timely appeal is filed, the Judgment shall become final on the date all appeals from the Judgment have been fully adjudicated. The occurrence of the Effective Date is a prerequisite to any obligation of Defendant to pay any funds into the Settlement Account.

8. "Individual Pay Periods" shall mean the number of Pay Periods for an individual Aggrieved Employee.

9. "Judgment" shall mean the Order of Final Judgment entered by the Superior Court that the Parties anticipate will be entered following an Approval Hearing on the Settlement in this Action.

10. "LWDA Payment" shall mean the payment to the California Labor and Workforce Development Agency ("LWDA") constituting seventy-five percent (75%) of the Net Settlement Amount.

11. "~~Maximum~~ Gross Settlement Amount" shall mean the ~~maximum~~ gross settlement amount of One Hundred Forty Thousand Dollars and Zero Cents ($140,000.00) payable by Defendant as provided by this Agreement~~, unless that amount is increased pursuant to Paragraph 12 below~~.

12. Defendant represents that as of March 21, 2024 (the date of mediation) the number of pay periods worked by aggrieved employees during the PAGA Period is approximately 3,400. If it is determined that the pay periods through the PAGA Period exceeds 3,740 (3,400 plus 10% of 3,400), then Defendant shall have the option of either (i) increasing the PAGA Payment Amount by an amount determined by the following formula: Actual Number of Pay Periods ÷ 3,740 × PAGA Payment Amount; or (ii) changing the end date of the PAGA Period to a date for which there are no more than 3,740 pay periods. Defendant asserts that as of May 21, 2024, the number of pay periods worked by aggrieved employees

during the PAGA period is 3,433 and thus this Escalator provision has not been triggered.

13. "Net Settlement Amount" shall mean the ~~Maximum~~ Gross Settlement Amount, less (i) the PAGA Counsel Fees Payment approved by the Superior Court; (ii) the PAGA Counsel Litigation Expenses Payment approved by the Superior Court; (iii) the Settlement Administrator Payment approved by the Superior Court; and (iv) any other fees or expenses (other than PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment) incurred in implementing the terms and conditions of this Agreement as approved by the Superior Court.

14. "PAGA Counsel" shall mean the attorneys representing Plaintiff in the Action, Harout Messrelian of Messrelian Law.

15. "PAGA Counsel's Fees Payment" shall mean one-third (1/3) of the ~~Maximum~~ Gross Settlement Amount (currently estimated to be Forty-Six Thousand, Six Hundred Sixty-Six Dollars, and Sixty-Six Cents ($46, 666.66) subject to approval by the Superior Court as PAGA Counsel's attorneys' fees incurred in connection with the Action, including fees incurred in pre-filing investigation, filing of the Action, and all related litigation activities, this Settlement, and all post-Settlement compliance procedures.

16. "PAGA Counsel's Litigation Expenses Payment" shall mean the actual litigation expenses and/or costs expended by PAGA Counsel subject to approval by the Superior Court incurred in connection with the Action, including pre-filing investigation, filing of the Action, and all related litigation activities, this Settlement, and all post-Settlement compliance procedures. PAGA Counsel's expenses are not to exceed Twenty Thousand Dollars ($20,000.00).

17. "Pay Period" shall mean any pay period in which an Aggrieved Employee actually received payment from Defendant as an hourly-paid, non-exempt employee.

18. "Representative Period" shall mean the period of time from March 14, 2022, through May 21, 2024.

19. "Individual Settlement Payment" shall mean the individual payment made to Plaintiff for his individual non-PAGA claims in lieu of a representative enhancement payment. This is subject to a separate agreement with a general release wherein the Plaintiff expressly waives and relinquishes all rights and benefits of § 1542 of the Civil Code of the State of California.

20. "Settlement Administrator" shall mean Phoenix Class Action Administration Solutions proposed by the Parties and appointed by the Superior Court to administer the Settlement.

21. "Settlement Administrator Payment" shall mean the payment to the Settlement Administrator for its fees and expenses in administering this Settlement.

22. "Superior Court" shall mean the Superior Court of California for the County of Orange County.

II. RECITALS

23. On December 21, 2022 PAGA Counsel, on behalf of Plaintiff and the Aggrieved Employees, gave written notice to the Labor Workforce and Development Agency ("LWDA") of the Labor Code violations Defendant is alleged to have violated. ("LWDA Exhaustion Letters").

24. On May 23, 2023 Plaintiff filed a Complaint against Defendant in the Orange County Superior Court, Case No. 30-2023-01326722-CU-OE-CXC. In his Complaint, Plaintiff pled a cause of action for Civil Penalties pursuant to the Private Attorneys' General Act ("PAGA").

25. Defendant denies and continues to deny all of Plaintiff's allegations inclusive of the representative manageability of the Action. Specifically, Defendant contends (1) it did not fail to pay Plaintiff or Aggrieved Employees the minimum, straight time, regular rate, and/or overtime wages; (2) it paid Plaintiff and Aggrieved Employees for all hours worked; (3) it provided Plaintiff and Aggrieved Employees with all meal periods according to law and/or paid accurate meal period premium wages; (4) it provided Plaintiff and Aggrieved Employees with all rest periods according to law and/or paid accurate rest period premium wages; (5) it did not fail to timely pay Plaintiff or Aggrieved Employees wages due and owing during employment and/or upon separation; (6) it provided Aggrieved Employees and Plaintiff with accurate itemized wage statements, consistent with Labor Code Section 226; (7) it properly maintained all payroll and personnel records; (8) it reimbursed employees including Plaintiff for all necessary business expenses; (9) Aggrieved Employees are not entitled to penalties under PAGA; and (10) it is not liable for damages, including civil penalties, attorneys' fees, or costs of litigation to Aggrieved Employees.

26. In connection with the Action, and in order to work toward a mediated resolution without the time and expense of formal discovery, the Parties produced voluminous documents and data (including, by Defendant, human resources documents and policies, time records, and payroll data during the Representative Period) which were reviewed, investigated, and analyzed by PAGA Counsel.

27. On March 21, 2024, the Parties in Action participated in a full day of mediation before an experienced employment and PAGA action mediator, Steven Rottman, Esq. (the "Mediation") and the Parties reached a settlement at the ~~Maximum~~ Gross Settlement Amount.

28. The Settlement described in this Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Settlement is intended or will be construed as an admission by Defendant that Plaintiff's claims in the Action have any merit or that Defendant has any liability to Plaintiff, the Aggrieved Employees or the State on those claims, or as an admission by Plaintiff that Defendant's defenses in the Action have any merit. This Settlement is intended to fully, finally, and forever compromise, release, resolve, discharge, and settle the released claims subject to the terms and conditions set forth in this Settlement.

29. Based on its own thorough, independent investigation and evaluation of this case, PAGA Counsel is of the opinion that the Settlement of this Action with Defendant for the consideration and on the terms set forth in this Settlement is fair, reasonable, adequate, and in the best interest of the LWDA and Aggrieved Employees in light of all known facts and circumstances, including the risk of significant costs and delay, the defenses asserted by Defendant including the risks of adverse determinations on the merits and numerous potential appellate issues. Although Defendant contends that it has no liability in the Action, Defense Counsel shares PAGA Counsel's belief that the Settlement represents a fair and adequate settlement given the respective risks associated with the case.

30. Based on the foregoing Recitals, the Parties agree as follows:

III. PROCEDURE FOR APPROVING SETTLEMENT

31. **Motion for Approval of Settlement by the Superior Court.** Plaintiff will move the Superior Court for an order granting Approval of the Settlement and approving the Aggrieved

Employee Notice (attached as Exhibit "A" to this Stipulation) ("Motion for Approval"). Any unresolved disagreement among the Parties concerning the Aggrieved Employee Notice or other documents necessary to implement the Settlement will be referred first to Steven Rottman, Esq., and if no resolution is reached, then to the Superior Court.

32. At the hearing on the Motion for Approval, the Parties anticipate that they will jointly appear, support the granting of the Motion for Approval, and obtain an order granting approval of the Settlement and granting approval of the Aggrieved Employee Notice.

33. Should the Superior Court require any amendments to this Agreement or the Motion for Approval, the Parties agree to work jointly to resolve any issues in order to secure the Superior Court's approval.

34. Should the Superior Court decline to approve any material aspects of the Settlement, the Settlement will be null and void and the Parties will have no further obligations under it. In such event, the Parties shall be returned to their respective positions as of the date and time immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects as if this Agreement had not been executed.

35. Upon approval of the Settlement by the Superior Court, the Parties will present for the Superior Court's approval and entry a Proposed Final Order and Judgment. The entry of the Order and Judgment shall permanently bar all Aggrieved Employees from prosecuting against Defendant any claims for PAGA penalties through the Representative Period, which were or could have been brought in this Action, as well as all claims as set forth in the Release contained in Section V of this Agreement~~, whether known or unknown~~.

36. The Parties agree that the Action shall be dismissed with prejudice at the time the Superior Court enters Judgment. After entry of the Judgment, the Superior Court will have continuing jurisdiction over the Action and the Settlement pursuant to California Code of Civil Procedure section 664.6 solely for purposes of (i) enforcing this Settlement, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.

37. **Aggrieved Employee Notice.** After the Superior Court enters its order granting Preliminary Approval, every Aggrieved Employee will be provided with the Aggrieved Employee Notice (in English and Spanish) which will include the Aggrieved Employee Notice completed to reflect the order granting Approval of the Settlement and the Aggrieved Employee's information as follows:

(a) Within twenty-one (21) days after the Motion for Approval is granted, Defendant will provide to the Settlement Administrator the "Aggrieved Employees' Data," which shall consist of an electronic database containing (i) each Aggrieved Employee's first and last name, (ii) last known mailing address, (iii) the Aggrieved Employee's Social Security number or Tax ID, and (iv) the Aggrieved Employee's total number of Individual Pay Periods. If any or all of the Aggrieved Employees' Data are unavailable to Defendant, Defendant will so inform PAGA Counsel prior to the date on which Defendant is required to submit the Aggrieved Employees' Data to the Settlement Administrator and the Parties will make their best efforts to reconstruct or otherwise agree upon the Aggrieved Employees' Data prior to when it must be submitted to the Settlement Administrator. This information will otherwise remain confidential and will not be disclosed to anyone, except as required to applicable taxing authorities, as required to carry out the reasonable efforts to identify Aggrieved Employee information as described in Paragraph 47, pursuant to Defendant's express written authorization, or by order of the Superior Court.

(b) If An Aggrieved Employee Notice is returned by the U.S. Postal Service because of an incorrect address, the Settlement Administrator will promptly, and not later than five (5) days from receipt of the returned packet, search for a more current address for the Aggrieved Employee and re-mail the Aggrieved Employee Notice to the Aggrieved Employee. The Settlement Administrator will use the Aggrieved Employees' Data and otherwise work with Defense Counsel or utilize its own resources such as skip traces to find a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, court orders, and fee, to trace the mailing address of any Aggrieved Employee for whom an Aggrieved Employee Notice is returned by the U.S. Postal Service. These reasonable steps shall include the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Aggrieved Employees for whom new addresses are found.

38. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Settlement, Plaintiff, Aggrieved Employees, Defendant, and its respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, a motion for new trial, a motion under Code of Civil Procedure Section 473, and any extraordinary writ, and the Judgment therefore will become non-appealable by them at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings, or post-judgment proceedings, or any waiver of the right to appeal a reduction by the Court of the requested PAGA Counsel Fees Payment. If an appeal is taken from the Judgment, the time for consummation of the Settlement (including making payments under the Settlement) will be suspended until such time as the appeal is finally resolved and the Judgment, consistent with the terms of this Settlement, becomes Final. All fees and costs incurred as a result of an appeal shall be incurred by PAGA Counsel.

39. **Vacating, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion, petition, writ, or application, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then either Party will have the right to void the Settlement, which the Party must do by giving written notice to the other Parties, the reviewing court, and the Superior Court, not later than fourteen (14) days after the reviewing court's decision vacating, reversing, or materially modifying the Judgment becomes final. A vacation, reversal, or modification of the Superior Court's award of the Individual Settlement Payment to Plaintiff, the PAGA Counsel Fees Payment, and/or PAGA Counsel Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of the Judgment within the meaning of this Paragraph.

40. **Establishment of Settlement Account.** The Settlement Administrator shall establish a Settlement Account within ten (10) days of the Effective Date and notify the Parties when the Settlement Account has been established. The Settlement Administrator shall also provide Defendant with an itemized statement for the total amount to be deposited into the Settlement Account, which shall equal the Gross ~~Maximum~~ Settlement Amount ("Settlement Account Deposit"). Within ten (10) days after receiving notification of the Settlement Account and statement for the Settlement Account Deposit, Defendant shall pay into the Settlement Account an amount equal to the Settlement Account Deposit. Defendant shall have no obligation to pay any additional funds into the Settlement Account.

41. **Payment of Aggrieved Employees' Settlement Shares.** The Settlement Administrator shall pay to each Aggrieved Employee his or her Aggrieved Employee's Settlement Share from the Settlement Account. The Settlement Administrator shall pay each Aggrieved Employee's Settlement Share by sending a check in the appropriate amount to the Aggrieved Employee at the address indicated in the Aggrieved Employees' Data. Such payment, with the Aggrieved Employees' Notice, shall be sent by the Settlement Administrator via U.S. Mail within ten (10) calendar days of its receipt of the Settlement Account Deposit from Defendant.

42. **Uncashed Aggrieved Employees' Settlement Share Checks.** Any checks paid to Aggrieved Employees shall be negotiable for one hundred and eighty (180) calendar days from the date of their issuance. An Aggrieved Employee must cash his or her Aggrieved Employee's Settlement Share check within one hundred and eighty (180) calendar days after it is mailed to him or her. If a check remains uncashed after one hundred and eighty (180) calendar days from the initial mailing, or if a check is returned to the Settlement Administrator as undeliverable during the one hundred eighty-day period, the Settlement Administrator shall take all reasonable efforts to identify the Aggrieved Employee's correct address, including the performance of a "skip-trace." If an updated address can be identified, the Settlement Administrator shall issue another check to the Aggrieved Employee and mail it to the Aggrieved Employee at his or her updated address. If an updated address for the Aggrieved Employee cannot be identified, if a reissued check is once again returned to the Settlement Administrator as undeliverable, or if the reissued check remains

uncashed after one hundred eighty (180) calendar days, the Settlement Administrator will keep an accounting of such funds and shall give notice to the Parties of the total balance of uncashed Aggrieved Employee's Settlement Shares. An Aggrieved Employee who fails to negotiate or receive their Settlement Share check despite the procedures described above shall nevertheless remain bound by the Settlement and the releases contained herein.

43. The funds represented by Aggrieved Employee's Settlement Share checks remaining uncashed for more than one hundred and eighty (180) calendar days after issuance shall be voided and then shall be transmitted to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code Section 1500, *et seq.*, in the names of those Aggrieved Employees who did not cash their checks until such time they claim their property. The Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out to Aggrieved Employees, whether or not they all cash their settlement checks.

44. **Payment of PAGA Counsel's Fees Payment and PAGA Counsel's Litigation Expenses Payment.** The Settlement Administrator shall pay to PAGA Counsel the PAGA Counsel's Fees Payment and PAGA Counsel's Litigation Expenses Payment from the Settlement Account. The Settlement Administrator shall pay the PAGA Counsel's Fees Payment and PAGA Counsel's Litigation Expenses Payment by sending a wire or check in the appropriate amount to PAGA Counsel at the address provided for in Paragraph 74. Such payment shall be sent by the Settlement Administrator within ten (10) calendar days of its receipt of the Settlement Account Deposit from Defendant.

45. **Final Report by Settlement Administrator to Superior Court.** Within ten (10) days after final disbursement of all funds from the Settlement Account, the Settlement Administrator will serve on the Parties and file with the Superior Court a declaration providing a final summary report on the disbursements of all funds from the Settlement Account. Within ten (10) days after transmission of any remaining unclaimed funds to Controller of the State of California the Settlement Administrator will serve on the Parties and file with the Superior Court a declaration providing a final summary report on the transmission of any remaining unclaimed

funds to Controller of the State of California as outlined in Paragraph 42.

IV. SETTLEMENT TERMS AND CONDITIONS

46. **Aggrieved Employee's Settlement Shares.** Subject to the terms and conditions of this Settlement, the Settlement Administrator will calculate the Aggrieved Employee's Settlement Shares for each Aggrieved Employee, including Plaintiff, within ten (10) days after Defendant provide the Settlement Administrator with the Aggrieved Employees' Data. The Aggrieved Employee's Settlement Share for each Aggrieved Employee will be calculated as follows, understanding that the formulas below do not constitute an admission by either Party, and are intended only to provide a practical means to simplify and administer the claims process:

(a) **Number of Aggrieved Employees and Pay Periods**. Defendant shall determine the total number of Aggrieved Employees and the aggregate number of Pay Periods for those Aggrieved Employees as of the time of the close of the Representative Period. This information shall be provided to the Settlement Administrator along with the Aggrieved Employees' Data as described in Paragraph 37(a) above.

(b) **Calculation of the Pay Period Value.** The Settlement Administrator shall determine the value of a Pay Period ("Pay Period Value") by taking the Aggrieved Employees' Payment amount and dividing it by the sum of all Aggrieved Employees' Pay Periods.

(c) **Calculation of Aggrieved Employee's Settlement Shares.** The Settlement Administrator shall assign to each Aggrieved Employee an Aggrieved Employee's Settlement Share which shall be equal to the Pay Period Value multiplied by each Aggrieved Employee's Individual Pay Periods. Upon calculation of the Aggrieved Employee's Settlement Share, the Settlement Administrator shall furnish to PAGA Counsel and Defense Counsel a worksheet containing a list of employee identification numbers for the Aggrieved Employees with their corresponding Individual Pay Periods and Aggrieved Employee's Settlement Share.

47. **Taxes and Withholdings.** Each Aggrieved Employee's Settlement Share is intended to settle the Aggrieved Employees' claims for civil penalties. Accordingly, one hundred percent (100%) of each Aggrieved Employee's Settlement Share shall represent civil penalties. The Aggrieved Employee's Settlement Share shall be paid to the Aggrieved Employee in full

without deductions or withholdings, and the Settlement Administrator shall issue an IRS Form 1099 to each Aggrieved Employee for that amount, to the extent the Aggrieved Employee's Settlement Share is Six Hundred Dollars and Zero Cents ($600.00) or more. Each Aggrieved Employee shall be individually responsible for their own share of applicable income tax withholdings and deductions for his or her Aggrieved Employee's Settlement Share.

48. **Total Payment Amount.** In no event will Defendant be required to pay more than the Gross ~~Maximum~~ Settlement Amount (unless that amount is increased pursuant to Paragraph 12 above) for distribution to the Plaintiff, PAGA Counsel, Aggrieved Employees, the LWDA, Settlement Administrator, or for any other costs or expenses not otherwise enumerated.

49. **Payments to PAGA Counsel and Others.** Subject to the terms and conditions of this Settlement, the Settlement Administrator will make the following payments out of the Gross ~~Maximum~~ Settlement Amount as follows:

(a) **To PAGA Counsel:** PAGA Counsel will apply to the Superior Court for the PAGA Counsel Fees Payment in an amount not to exceed one-third (1/3) of the Gross ~~Maximum~~ Settlement Amount (currently estimated to be Forty-Six Thousand, Six Hundred Sixty-Six Dollars, and Sixty-Six Cents ($46,666.66)). PAGA Counsel will also submit to the Superior Court a memorandum of costs for the PAGA Counsel Litigation Expenses Payment in an amount not to exceed Twenty Thousand Dollars and Zero Cents ($20,000.00) as request reasonable costs of suit to be paid from the Gross ~~Maximum~~ Settlement Amount. Defendant will not oppose these requests. The Settlement Administrator will pay the amounts approved by the Superior Court out of the Gross ~~Maximum~~ Settlement Amount. Withholding and deductions will not be taken from the PAGA Counsel Fees Payment or PAGA Counsel Litigation Expenses Payment and one or more IRS Forms 1099 will be issued to PAGA Counsel with respect to those payments.

(b) **To the LWDA:** As part of their Motion for Approval, the Plaintiff will apply to the Superior Court for approval of the LWDA Payment in the estimated amount of Fifty-One Thousand, One Hundred and Twenty-Five Dollars ($51,125), which shall constitute the LWDA's seventy-five percent (75%) share of the estimated Sixty-Eight Thousand, Eight Hundred and Thirty-Three Dollars and Thirty-Four Cents ($68,833.34) in civil penalties paid under this

Settlement. The remaining estimated Seventeen Thousand Seven Hundred and Eight Dollars and Thirty-Three Cents ($17,208.33) in civil penalties shall be distributed on a *pro rata* basis based upon the number of pay periods worked by each Aggrieved Employee ("Aggrieved Employees' Payment").

(c) **To the Settlement Administrator:** The Settlement Administrator will be paid from the Gross ~~Maximum~~ Settlement Amount its reasonable fees and expenses as approved by the Superior Court, which are estimated to be Four Thousand, Five Hundred Dollars ($4,500).

50. **Appointment of Settlement Administrator.** The Parties will ask the Superior Court to appoint Phoenix Class Action Administration Solutions, a qualified and experienced administrator based in California where the Action is venued, to serve as the Settlement Administrator, which, as a condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and its compensation. The Settlement Administrator's duties will include (i) calculating Aggrieved Employee's Settlement Shares; (ii) preparing, printing, and mailing the Aggrieved Employee Notice to all Aggrieved Employees; (iii) using reasonable measures to contact all Aggrieved Employees, including conducting a National Change of Address search on all Aggrieved Employees before mailing the Aggrieved Employee Notice to each Aggrieved Employee's address; (iv) re-mailing the Aggrieved Employee Notice to the Aggrieved Employee's new address for those Aggrieved Employees whose address had changed; (v) setting up a toll-free telephone number to receive calls from Aggrieved Employees; (vi) using reasonable measures to deliver issued checks to Aggrieved Employees, including use of a "skip-trace" for undeliverable checks; and (vii) otherwise administering the Settlement pursuant to this Agreement. The Settlement Administrator's reasonable fees and expenses are estimated to be Four Thousand Five Hundred Dollars ($4,500) and will be paid out of the Gross ~~Maximum~~ Settlement Amount, as set forth herein, subject to Court approval.

V. RELEASE OF CLAIMS

51. **Plaintiff and Aggrieved Employees Released Claims.** As of the date Defendant deposits the Gross Settlement Amount into the Settlement Account~~of the Judgment~~, Plaintiff, along with each Aggrieved Employee, and without the need to manually sign a release document,

shall release the Released Parties ~~and the State of California~~ from all causes of action and claims for civil penalties under the California Labor Code Private Attorneys General Act of 2004 that were alleged in the operative complaint in the Action or reasonably could have been alleged based on the facts contained in the operative complaint in the Action or LWDA letters, including claims for civil penalties based on the following: (i) failure to pay all regular rate wages, minimum wages, and overtime wages due; (ii) failure to provide compliant meal periods; (iii) failure to provide compliant rest breaks; (iv) failure to timely pay wages during employment; (v) failure to provide complete, accurate wage statements; (vi) failure to pay wages timely at time of termination or resignation; (vii) failure to maintain records in accordance with Labor Code Section 1174; (viii) failure to reimburse necessary expenditures; (ix) failure to provide payroll and personnel records; (x) unpaid sick leave; and/or (xi) claims, causes of action or legal theories of relief seeking civil penalties under the California Labor Code Private Attorneys General Act of 2004 plead in the operative complaint and underlying LWDA Exhaustion Letters filed by Contreras (collectively, the "PAGA Released Claims"). PAGA Released Claims for Aggrieved Employees who worked for Defendant in California during the Representative Period shall have their claims released during the Representative Period.

52. Released Parties ~~includes~~include Defendant and ~~it~~ its past, present and/or future, direct and/or indirect, owners, officers, directors, members, managers, employees, agents, representatives, attorneys, including but not limited to O'Hagan Meyer, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.

53. Plaintiff's individual claims are subject to a separate agreement, in which Plaintiff has released all potentially remaining employment claims inclusive of a § 1542 of the Civil Code of the State of California waiver.

54. In light of the binding nature of a PAGA judgment on non-party employees pursuant to *Arias v. Sup. Ct. (Angelo Dairy)* (2009) 46 Cal.4th 969 and *Cardenas v. McLane Foodservice, Inc.* (2011) 796 F.Supp.2d 1246, individuals meeting the definition of an Aggrieved Employee may not exclude themselves from the Settlement and shall receive a payment for the

amount of each such individual's estimated share of the PAGA Payment, and shall have released PAGA claims, as outlined in Paragraph 54.

55. The PAGA Released Claims described in Paragraph 51 expressly exclude all claims made by an Aggrieved Employee for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, claims while classified as exempt, and claims outside of the Representative Period.

56. **PAGA Counsel.** As of the Effective Date, and except as otherwise provided by this Settlement, PAGA Counsel and any counsel associated with PAGA Counsel waive any further claims to costs and attorneys' fees and expenses against Defendant or the Released Parties based on any claim released by this agreement during the Representative Period.

57. **No Effect on Other Benefits.** The payment the Aggrieved Employee's Settlement Shares will not result in any additional employee benefit payments (such as 401(k), vacation, or bonus) and shall not have any effect on the eligibility for, or calculation of, any employee benefit.

VI. DUTIES OF THE PARTIES

58. **Mutual Full Cooperation.** The Parties agree to cooperate fully with one another to accomplish and implement the terms of this Stipulation. Such cooperation shall include, but not be limited to, execution of such other documents and the taking of such other actions as may reasonably be necessary to fulfill the terms of this Settlement unless the Court denies the Settlement with prejudice. The Parties shall use their best efforts, including all efforts contemplated by this Stipulation and any other efforts that may become necessary by court order or otherwise, to effectuate this Stipulation and the terms set forth herein. As soon as practicable after execution of this Stipulation, PAGA Counsel, with the cooperation of Defendant and Defense Counsel, shall take all necessary and reasonable steps to secure the Court's approval of this Stipulation. The Parties will work together to make any non-material modifications of the Settlement requested by the Court to obtain approval of the Parties' Settlement.

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

VII. MISCELLANEOUS TERMS

60. **No Admission of Liability.** Defendant denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, or has any liability to anyone under the claims asserted in the Action. This Settlement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Settlement is intended or will be construed as an admission of liability or wrongdoing by Defendant, an admission by Plaintiff that any of his claims were non-meritorious, or any defense asserted by Defendant was meritorious. This Settlement and the fact that Plaintiff and Defendant were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with the Settlement).

61. Whether or not the Judgment becomes Final, neither the Settlement, any document, statement, proceeding or conduct related to the Settlement, nor any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendant or any of the Released Parties, including, but not limited to, evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any of the Released Parties, or any other civil, criminal or administrative action or proceeding except for purposes of effectuating this Settlement.

62. Any and all provisions of this Settlement may be admitted in evidence and otherwise used in any and all proceedings to enforce any or all terms of this Settlement, or in defense of any claims released or barred by this Settlement.

63. **Integrated Agreement.** After this Settlement is signed and delivered by all Parties and their counsel, this Settlement and its exhibits will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Settlement or its exhibits other than the representations, warranties, covenants, and inducements expressly stated in this Settlement and its exhibits.

64. **Attorney Authorization.** PAGA Counsel and Defense Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement. The Parties and their counsel will cooperate with each other and use their best efforts to affect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties will seek the assistance of mediator Steven Rottman, and if no resolution is reached the Superior Court, and in all cases all such documents, supplemental provisions and assistance of the court will be consistent with this Settlement.

65. **Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties, their successors-in-interest, and/or the Parties' respective counsel, as authorized, and approved by the Court.

66. **Settlement Binding on Successors.** This Settlement Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

67. **Applicable Law.** All terms and conditions of this Settlement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.

68. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Settlement. This Settlement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

69. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Settlement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Settlement through arms-length negotiations, taking into account all relevant factors, current and potential.

70. **Headings.** The descriptive heading of any section or Paragraph of this Settlement is inserted for convenience of reference only and does not constitute a part of this Settlement.

71. **Notice.** All notices, demands or other communications given under this Settlement will be in writing and deemed to have been duly given as of the third business day after mailing by U.S. Mail, addressed as follows:

To PAGA Counsel:	Harout Messrelian MESSRELIAN LAW INC. 500 N. Central Ave., Suite 840 Glendale, California 91203 Telephone: (818) 484-6531 Facsimile: (818) 956-1983
To the Defendant's Counsel:	Matthew C. Sgnilek, Esq. Joana M. Brooker, Esq. O'HAGAN MEYER 3200 Park Center Drive, Suite 700 Costa Mesa, CA 92626

72. **Execution in Counterpart.** This Settlement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile signatures, scanned PDF signatures, and electronic (e.g. DocuSign) signatures will be presumptive evidence of execution of the original, which shall be produced on reasonable request. Any executed counterpart will be admissible to prove the existence and contents of this Settlement.

PLAINTIFF: **ARNULFO CONTRERAS**

Dated: ____________________

____
Arnulfo Contreras
Plaintiff

DEFENDANT: **SURF CITY TSP LP**

Dated: ____________________

____
Michael Linley

Title: ____________________

APPROVED AS TO FORM BY COUNSEL

PAGA COUNSEL: **MESSRELIAN LAW INC.**

Dated: ____________________

____
Harout Messrelian
Attorney for Plaintiff

DEFENSE COUNSEL: **O'HAGAN MEYER LLP**

Dated: ____________________

____
Matthew C. Sgnilek
Attorneys for Defendant

72. **Execution in Counterpart.** This Settlement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile signatures, scanned PDF signatures, and electronic (e.g. DocuSign) signatures will be presumptive evidence of execution of the original, which shall be produced on reasonable request. Any executed counterpart will be admissible to prove the existence and contents of this Settlement.

PLAINTIFF: **ARNULFO CONTRERAS**

Dated: ____________________

____
Arnulfo Contreras
Plaintiff

DEFENDANT: **SURF CITY TSP LP**

Dated: ____________________

____
Michael Linley

Title: ______________________

APPROVED AS TO FORM BY COUNSEL

PAGA COUNSEL: **MESSRELIAN LAW INC.**

Dated: ____________________

____
Harout Messrelian
Attorney for Plaintiff

DEFENSE COUNSEL: **O'HAGAN MEYER LLP**

Dated: ____________________

____
Matthew C. Sgnilek
Attorneys for Defendant

EXHIBIT 3

[Date]

Phoenix Class Action Administration Solutions
[Phoenix Class Action Address]

[Employee Name]
[Employee Street Address]
[City, State Zip]

Notice of Court Approved PAGA Settlement and Your Settlement Payment

Re: Arnulfo Contreras v. Surf City TSP LP
Orange County Superior Court, Case No: 30-2023-01326722-CU-OE-CXC

Dear [Employee Name]:

You have received this notice because Surf City TSP LP's ("Defendant" or "Surf City") records indicate that you are or were employed by Surf City in California as an hourly, nonexempt employee at some time between March 14, 2022 and May 21, 2024 (the "PAGA Period"). This notice relates to the Court-approved settlement of a Private Attorneys General Act ("PAGA") representative lawsuit titled *Arnulfo Contreras v. Surf City TSP LP*, filed in Orange County Superior Court, Case No. 30-2023-01326722-CU-OE-CXC (the "Lawsuit").

According to the Defendant's records, you are a PAGA Employee and therefore entitled to a share of the settlement based upon the Court approved allocation. Your share of the PAGA penalties is calculated by taking a "pay period value" figure and multiplying that by the number of pay periods you worked in the PAGA period, which is defined as the period from March 14, 2022, through May 21, 2024.

The enclosed PAGA settlement check is your share of the PAGA settlement, which represents penalties and will be reported to you, the payee, on an IRS Form 1099. The PAGA settlement check is valid for 180 days from the date on the check. Checks that are not cashed within 180 days of issuance will be voided and the funds will be transmitted to the California State Controller Unclaimed Payment Fund to be held in your name. Regardless of what you do with the settlement check, you will have released claims for penalties arising under PAGA as asserted in the Lawsuit.

If you have any questions concerning this PAGA settlement, please contact the Settlement Administrator, Phoenix Class Action Administration Solutions, at [Phoenix Class Action's Phone Number]. PLEASE DO NOT CONTACT THE COURT.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of Surf City, dba Sandy's Beach Shack. The Lawsuit accuses Defendant of violating California labor laws by failing to pay overtime wages, pay minimum wages, timely pay wages due upon termination, reimburse necessary expenses, provide meal periods, permit and authorize rest breaks, provide suitable seating/break areas, and provide accurate itemized wage statements. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys

General Act (Labor Code §§ 2698, et seq.) ("PAGA"), which allows Plaintiff to recover civil penalties on behalf of the California Labor and Workforce Development Agency ("LWDA"). Plaintiff is represented by attorneys in the Lawsuit: Messrelian Law ("PAGA Counsel.")

Defendant strongly denies violating any laws or failing to pay any wages and contends they complied with all applicable laws.

2. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

Defendant will pay $140,000.00 as the Maximum Settlement Amount (Gross Settlement). Defendant has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual PAGA Payments, attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to theLWDA. The Gross Settlement will be divided as follows:

- PAGA Counsel's Fees Payment amounting to $42,000.00 (30.00% of the Gross Settlement Amount)

- PAGA Counsel's Litigation Expenses Payment in the amount of $16,536.79 (the Agreement provides up to $20,000.00)

- Administration Expenses Payment of $4,500.00 to Phoenix Class Action Administration Solutions ("Phoenix" or "Administrator") to administer the Settlement.

- Approximately $76,963.21 ("Net Settlement Amount"), divided as follows:
  $ 57,722.41 to the LWDA (75%); and
  $ 19,240.80 to the PAGA Members (25%)

Although Plaintiff and Defendant have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

Need to Promptly Cash Payment Checks. The front of every check issued for Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name.

Aggrieved Employees' PAGA Release. After the Court's judgment is final, and Defendant has paid the Gross Settlement, all Aggrieved Employees cannot sue, continue to sue, or participate in any other PAGA claim against Defendant or related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement. You also cannot opt out of this settlement. The Participating PAGA Members will be bound by the release even if you do not cash your check.

EXHIBIT 4

[Date]

Phoenix Class Action Administration Solutions
[Phoenix Class Action Address]

[Employee Name]
[Employee Street Address]
[City, State Zip]

Notice of Court Approved PAGA Settlement and Your Settlement Payment

Re: Arnulfo Contreras v. Surf City TSP LP
Orange County Superior Court, Case No: 30-2023-01326722-CU-OE-CXC

Dear [Employee Name]:

You have received this notice because Surf City TSP LP's ("Defendant" or "Surf City") records indicate that you are or were employed by Surf City in California as an hourly, nonexempt employee at some time between March 14, 2022 and May 21, 2024 (the "PAGA Period"). This notice relates to the Court-approved settlement of a Private Attorneys General Act ("PAGA") representative lawsuit titled *Arnulfo Contreras v. Surf City TSP LP*, filed in Orange County Superior Court, Case No. 30-2023-01326722-CU-OE-CXC (the "Lawsuit").

According to the Defendant's records, you are a PAGA Employee and therefore entitled to a share of the settlement based upon the Court approved allocation. Your share of the PAGA penalties is calculated by taking a "pay period value" figure and multiplying that by the number of pay periods you worked in the PAGA period, which is defined as the period from March 14, 2022, through May 21, 2024.

The enclosed PAGA settlement check is your share of the PAGA settlement, which represents penalties and will be reported to you, the payee, on an IRS Form 1099. The PAGA settlement check is valid for 180 days from the date on the check. Checks that are not cashed within 180 days of issuance will be voided and the funds will be transmitted to the California State Controller Unclaimed Payment Fund to be held in your name. Regardless of what you do with the settlement check, you will have released claims for penalties arising under PAGA as asserted in the Lawsuit.

If you have any questions concerning this PAGA settlement, please contact the Settlement Administrator, Phoenix Class Action Administration Solutions, at [Phoenix Class Action's Phone Number]. PLEASE DO NOT CONTACT THE COURT.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of Surf City, dba Sandy's Beach Shack. The Lawsuit accuses Defendant of violating California labor laws by failing to pay overtime wages, pay minimum wages, timely pay wages due upon termination, reimburse necessary expenses, provide meal periods, permit and authorize rest breaks, provide suitable seating/break areas, and provide accurate itemized wage statements. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) ("PAGA"), which allows Plaintiff to recover civil penalties on behalf of the California Labor and Workforce Development Agency ("LWDA"). Plaintiff is represented by attorneys in the Lawsuit: Messrelian Law ("PAGA Counsel.")

Defendant strongly denies violating any laws or failing to pay any wages and contends they complied with all applicable laws.

2. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

Defendant will pay $140,000.00 as the Maximum Settlement Amount (Gross Settlement). Defendant has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual PAGA Payments, attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to theLWDA. The Gross Settlement will be divided as follows:

- PAGA Counsel's Fees Payment amounting to $~~46,666.66~~42,000.00 (~~33.33~~30.00% of the ~~Maximum~~ Gross Settlement Amount)

- PAGA Counsel's Litigation Expenses Payment in the amount of $16,536.79 (the Agreement provides up to $20,000.00)

- Administration Expenses Payment of $4,500.00 to Phoenix Class Action Administration Solutions ("Phoenix" or "Administrator") to administer the Settlement.

- Approximately $76,963.21 ~~72,296.55~~ ("Net Settlement Amount"), divided as follows:
  $ 57,722.41~~54,222.41~~ to the LWDA (75%); and
  $ 19,240.80~~18,074.14~~ to the PAGA Members (25%)

Although Plaintiff and Defendant~~s~~ have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

Need to Promptly Cash Payment Checks. The front of every check issued for Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name.

Aggrieved Employees' PAGA Release. After the Court's judgment is final, and Defendant~~s~~ ~~have~~ has paid the Gross Settlement, ~~all Aggrieved Employees will be barred from asserting PAGA claims against Defendants. This means that~~ all Aggrieved Employees cannot sue, continue to sue, or participate in any other PAGA claim against Defendant~~s~~ or related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement. You also cannot opt out of this settlement. The Participating PAGA Members will be bound by the release even if you do not cash your check.

EXHIBIT 5

MESSRELIAN LAW INC.
Harout Messrelian, Esq. (SBN 272020)
hm@messrelianlaw.com
101 N. Brand Blvd., Suite 1450
Glendale, California 91203
Telephone: (818) 484-6531
Facsimile: (818) 956-1983

Attorney for Plaintiff,
ARNULFO CONTRERAS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

(UNLIMITED JURISDICTION)

ARNULFO CONTRERAS, Plaintiff, vs. SURF CITY TSP, LP; MICHAEL LINLEY, an individual; and DOES 1 to 25, inclusive, Defendants.	Case No.: 30-2023-01326722-CU-OE-CXC *[Assigned for all purposes to Honorable Layne H. Melzer, Judge]* **[PROPOSED] ORDER AND JUDGMENT APPROVING PAGA SETTLEMENT** [Filed Concurrently with Notice of Motion, Memorandum of Points and Authorities, Declaration of Harout Messrelian, Declaration of Jodey Lawrence, and Declaration of Arnulfo Contretras] Hearing Date: May 7, 2026 Time: 2:00 pm Department: CX102 Complaint Filed: May 18, 2023

The Court having considered Plaintiff's Notice of Motion and Motion to Approve PAGA Settlement Agreement ("Motion"), the supporting declarations and exhibits thereto, all papers filed and proceedings had herein, and the absence of any objections received from the Labor & Workforce Development Agency ("LWDA") regarding the proposed Settlement, and having reviewed the record in the Action, and good cause appearing, the Court hereby GRANTS Plaintiff's motion and

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The Court, for purposes of this Order and Judgment, refers to all defined terms as set forth in the Joint Stipulation of Representative PAGA Action Settlement and Release of Claims ~~PAGA Settlement Agreement~~ ("original PAGA Settlement") attached as Exhibit "1" to the Declaration of Harout Messrelian in Support of the foregoing Motion. (DECLARATION IN SUPPORT FILED BY CONTRERAS, ARNULFO ON 08/18/2025, ROA # 81). The subsequent amendments to the Joint Stipulation of Representative PAGA Action Settlement and Release of Claims ("Amended PAGA Settlement") are further attached as Exhibit "1" to the Supplemental Declaration of Harout Messrelian ([PENDING NAME], ROA # [Pending]).

2. The Court hereby accepts and approves the Settlement as fair, reasonable, and adequate, and directs the parties to effectuate the Settlement according to its terms;

3. Plaintiff and all Aggrieved Employees shall have, by entry and operation of this Order and Judgment, fully, finally, and forever released, relinquished, and discharged the Released Parties from all Released PAGA Claims as follows:

> **"Aggrieved Employees"** means are all persons who during the period from March 14, 2022 through May 21, 2024 (the "Representative Period"), have previously been or currently are employed in California by Defendant Surf City TSP, LP as a non-exempt employee.
>
> **"Representative Period"** means the period of time March 14, 2022 through May 21, 2024.
>
> **"Released Parties"** means Defendant Surf City and its past, present and/or future, direct and/or indirect, owners, officers, directors, members. managers, employees, agents, representatives, attorneys, including but not limited to O'Hagan Meyer, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.

> **"PAGA Released Claims"** means "[A]ll causes of action and claims for civil penalties under the California Labor Code Private Attorneys General Act of 2004 that were alleged in the operative complaint in the Action or reasonably could have been alleged based on the facts contained in the operative complaint in the Action or LWDA letters. including claims for civil penalties based on the following: (i) failure to pay all regular rate wages, minimum wages, and overtime wages due; (ii) failure to provide compliant meal periods; (iii) failure to provide compliant rest breaks; (iv) failure to timely pay wages during employment; (v) failure to provide complete. accurate wage statements; (vi) failure to pay wages timely at time of termination or resignation; (vii) failure to maintain records in accordance with Labor Code Section 1174; (viii) failure to reimburse necessary expenditures; (ix) failure to provide payroll and personnel records; (x) unpaid sick leave: and/or (xi) claims, causes of action or legal theories of relief seeking civil penalties under the California Labor Code Private Attorneys General Act of 2004 plead in the operative complaint and underlying LWDA Exhaustion Letters filed by Plaintiff Contreras."

4. The Parties shall bear their own respective attorneys' fees and costs, except as otherwise provided for in the Settlement and approved by the Court.

5. The Settlement is not an admission by Defendant as defined below, nor is this Order a finding of the validity of any allegations or of any wrongdoing by Defendant. Neither this Order, the Settlement, nor any document referred to herein, nor any action taken to carry out the Settlement, may be used as an admission of any fault, wrongdoing, omission, concession, or liability whatsoever by or against Defendant.

6. The Court hereby appoints ~~Phoenix Settlement Administrators~~Phoenix Class Action Administration Solutions as the Settlement Administrator.

7. Defendant shall pay the Gross Settlement Amount of $140,000.00 to the Settlement Administrator pursuant to the timing and terms of the Settlement.

8. The Court hereby approves the following amounts from the Gross Settlement Amount:

a. Actual administration costs of $4,500.00 payable to the Settlement Administrator for administration of the Settlement;

b. Attorneys' fees to PAGA Counsel in the ~~total maximum~~ amount of $~~46,666.66~~42,000.00;

c. Reimbursement for actual expenses incurred by PAGA Counsel in the amount of $16,536.79; and

d. After deducting the foregoing payments, the estimated remainder of approximately $76,963.21~~72,296.55~~ shall form the Net Settlement Amount. Pursuant to Labor Code section 2699(i), the Net Settlement Amount will then be distributed 75 percent ($57,722.41~~54,222.41~~) to the LWDA, and the remaining 25 percent ($19,240.80~~18,074.14~~) to the Aggrieved Employees on a pro rata basis, as set forth in the Settlement Agreement. The Court approves these payments, and directs the Settlement Administrator to issue checks to the LWDA and Aggrieved Employees, along with the Notice of PAGA Settlement, as set forth in the Settlement Agreement, and to otherwise carry out its duties as set forth in the Settlement Agreement

9. The Court hereby confirms Harout Messrelian of Messrelian Law Inc as PAGA Counsel.

10. The Court finds that the fees requested by PAGA Counsel of $42,000.00 ~~46,666.66~~ (~~1/3~~30% of the Gross Settlement Amount) are reasonable, and the costs requested of $16,536.79 were reasonable and necessary for the prosecution of this action. The Court hereby awards attorneys' fees in the amount of $42,000.00~~46,666.66~~ and costs in the amount of $16,536.79 to PAGA Counsel for their current attorneys' costs. The payment of fees and costs to PAGA Counsel shall be made in accordance with the terms of the Settlement.

11. The Court approves, as to form and content, the proposed Amended PAGA Notice letter attached as Exhibit 2 to the Supplemental Declaration of Harout Messrelian to be sent to the Aggrieved Employees along with their respective Individual PAGA Payments. ([PENDING NAME], ROA # [Pending]).

12. This action is dismissed with prejudice.

13. Plaintiff shall submit a copy of this Order and Judgment to the LWDA within ten calendar days after entry of the Order and Judgment.

14. Without affecting the finality of this Order, this Court shall retain jurisdiction, pursuant to C.C.P. section 664.6 and CRC 3.769(h), over this action, the Parties, and the

Aggrieved Employees to the fullest extent necessary to interpret, enforce, and effectuate the terms and intent of the Settlement and this Order and Judgment.

15. The Court sets a Final Report Hearing status conference re: final accounting for February 11, 2027, at 2:00 ~~a.m.~~/p.m. At least 16 calendar days prior to the hearing, Plaintiff shall submit a final report including the actual amounts paid to Aggrieved Employees, the other amounts distributed under the Settlement, and the amounts tendered to the California State Controller's Office for Unclaimed Property Division.

IT IS SO ORDERED, ADJUDGED AND DECREED.

Date: ________________, 2026

____
Honorable Layne H. Melzer
Judge of the Orange County Superior Court

EXHIBIT 6