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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SANTA CLARA**

EDUARDO MARTINEZ GUIZAR,

 Plaintiff,

vs.

AIR CULINAIRE WORLDWIDE, LLC;
 and DOES 1 to 25, inclusive,

 Defendants.

Case No. 23CV415879
 [Hon. Charles F. Adams, Dept. 7]

REPRESENTATIVE ACTION

**JOINT STIPULATION OF PAGA
 SETTLEMENT AND RELEASE OF
 CLAIMS**

Complaint Filed: May 4, 2023
 Trial Date: None set

This Joint Stipulation of PAGA Settlement and Release of Claims ("Settlement" or "Agreement") is made and entered into by and between Plaintiff EDUARDO MARTINEZ GUIZAR ("Plaintiff" or "PAGA Representative"), individually and on behalf of all putative PAGA members as the representative of the California Labor and Workforce Development Agency, the LWDA, and the State of California, and Defendant AIR CULINAIRE WORLDWIDE, LLC ("Defendant" or

“ACW”). 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. “Superior Court” shall mean the Superior Court of California for the County of Santa Clara.

2. The “Action” shall mean the operative Complaint of the civil action commenced on May 4, 2023, filed and maintained by Plaintiff against Defendant in the Superior Court of California, Santa Clara County, Case No. 23CV415879.

3. “PAGA Group Counsel” shall mean the attorneys representing Plaintiff in the Action, Harout Messrelian, Esq. and Maralle Messrelian, Esq. (Of Counsel) of Messrelian Law Inc.

4. “Defense Counsel” shall mean the attorneys representing Defendant in the Action, Clint Robison, Esq. and Michael Kessler, Esq. of O’Hagan Meyer.

5. The “PAGA Period” shall mean the period of time from January 10, 2022 through September 26, 2024.

6. The “PAGA Group” shall mean all persons who, during the PAGA Period, have previously been or currently are employed in California by Defendant, as an hourly-paid, non-exempt employee. “PAGA Group Member” shall mean an individual who is a member of the PAGA Group (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).

7. “Settlement Administrator” shall mean Simpluris, Inc. (“Simpluris”) proposed by the Parties and appointed by the Superior Court to administer the Settlement.

8. “Gross Settlement Amount” (or “GSA”) shall mean the Gross Settlement Amount of \$170,000.00 payable by Defendant as provided by this Agreement unless that amount is increased pursuant to Paragraph 9 below.

9. Defendant represents that as of August 26, 2024, the number of Pay Periods in the PAGA Period is approximately 4,815. Should the number of Pay Periods as of September 26, 2024, increase by 10% or more (i.e., to more than 5,297 Pay Periods), the Gross Settlement Amount shall

increase by the same number of percentage points above 10% as the actual number of Pay Periods above 5,297. For example, if as of September 26, 2024, the number of Pay Periods during the PAGA Period is 5,778 (i.e., 12% above 4,815), then the Gross Settlement Amount shall increase by 2% (i.e., to \$204,000).

10. “PAGA Group Counsel Fees Payment” shall mean PAGA Group Counsel’s attorney 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. Defendant has agreed not to oppose PAGA Counsel’s request for attorney fees not to exceed thirty five percent (35%) of the Gross Settlement Amount (defined above), e.g. a maximum of \$59,500.00, subject to Superior Court application by PAGA Group Counsel and subject to Superior Court approval as described herein.

11. “PAGA Group Counsel Litigation Expenses Payment” shall mean the actual litigation expenses and/or costs expended by PAGA Group Counsel subject to proof and 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 Group Counsel’s expenses are not to exceed Twelve Thousand Dollars and Zero Cents (\$12,000.00).

12. “Settlement Administrator Payment” shall mean the payment to the Settlement Administrator for its fees and expenses in administering this Settlement in an amount not to exceed \$3,250.00.

13. “Pay Period” shall mean any pay period in which a PAGA Group Member actually received payment from Defendant as an hourly-paid, non-exempt employee.

14. “Individual Pay Periods” shall mean the number of Pay Periods for an individual PAGA Group Member in the PAGA Period.

15. “LWDA Payment” shall mean the payment to the California Labor and Workforce Development Agency (“LWDA”) constituting seventy-five percent (75%) of the value assigned to the claim for penalties under the California Labor Code Private Attorneys General Act, California Labor Code Section 2698, *et seq.* (“PAGA”). Specifically, Seventy-One Thousand Four Hundred

Thirty Seven Dollars and Fifty Cents (\$71,437.50), which shall constitute the LWDA's seventy-five percent (75%) share of Ninety Five Thousand Two Hundred Fifty Dollars and Zero Cents (\$95,250.00) in civil penalties paid under this Settlement.

16. "Net Settlement Amount" ("NSA") shall mean the Gross Settlement Amount, less (i) the PAGA Group Counsel Fees Payment approved by the Superior Court; (ii) the PAGA Group 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 Group Counsel Fees Payment and PAGA Group Counsel Litigation Expenses Payment) incurred in implementing the terms and conditions of this Agreement as approved by the Superior Court. The NSA amount shall not exceed \$95,250.00.

17. "PAGA Group Payment" ("PAGA-GP") shall mean the amount remaining of the NSA after deducting the LWDA Payment, estimated to be \$23,812.50 based on the maximum NSA amount set forth in Paragraph 16 above. The PAGA-GP amount shall be distributed *pro rata* to each PAGA Group Member based upon the number of Pay Periods worked by each PAGA Group Member.

18. "PAGA Group Payment Share" shall mean the value of each PAGA Group Member's share of the PAGA Group Payment as provided by this Agreement.

19. "PAGA Group Notice" shall mean the Notice of Settlement and Approval, a sample of which is attached hereto as **Exhibit A**. The PAGA Group Notice shall further contain (i) a PAGA Group Member's first and last name, (ii) last known address, (iii) last four digits of their social security number, (iv) employee identification number, if applicable, (v) the PAGA Group Member's Individual Pay Periods; and (vi) the amount of the PAGA Group Member's individual share of the PAGA Group Payment.

20. "Effective Date" shall mean the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the day the Court enters Judgment.

21. "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.

II. RECITALS

22. On January 10, 2023, PAGA Group Counsel, on behalf of Plaintiff and the PAGA Group Members, gave written notice to the LWDA of the Labor Code violations Defendant is alleged to have violated (“PAGA Letter”).

23. On May 4, 2023, Plaintiff commenced the Action against Defendant by filing a Complaint in the Superior Court alleging causes of action for: (1) failure to compensate for all hours worked; (2) failure to pay minimum wages; (3) failure to pay overtime; (4) failure to provide accurate itemized wage statements; (5) failure to pay wages when employment ends; (6) failure to pay wages owed every pay period; (7) failure to give rest breaks; (8) failure to give meal breaks; (9) failure to reimburse for business expenses; (10) Private Attorneys General Act; (11) failure to provide personnel file; (12) failure to provide pay records; (13) discrimination on the basis of physical disability in violation of FEHA; (14) failure to accommodate physical disability in violation of FEHA; (15) failure to engage in interactive process to determine reasonable accommodations in violation of FEHA; (16) retaliation in violation of FEHA; (17) failure to prevent discrimination and retaliation in violation of FEHA; (18) wrongful termination in violation of public policy; and (19) violation of California Business and Professions Code § 17200 (“Complaint”).

24. Defendant denies and continues to deny all of Plaintiff’s material allegations. Specifically, Defendant contends: (1) it did not fail to pay the PAGA Group for all hours worked; (2) it did not fail to pay the PAGA Group minimum wages; (3) it did not fail to pay the PAGA Group overtime; (4) it provided the PAGA Group with accurate itemized wage statements, consistent with Labor Code Section 226; (5) it did not fail to timely pay the PAGA Group wages due and owing when their employment ended; (6) it did not fail to timely pay the PAGA Group wages due and owing every pay period; (7) it provided the PAGA Group with all rest periods according to law; (8) it provided the PAGA Group with all meal periods according to law; (9) it did not fail to reimburse the PAGA Group for business expenses; (10) it did not violate Business & Professions Code Section 17200, *et seq.*; (11) the PAGA Group is not entitled to penalties under PAGA; and (12) Defendant

is not liable for damages, including past and future wages, regular wages, overtime wages, employment benefits, compensatory damages, general damages, special and consequential damages, punitive damages, damages and penalties under Labor Code § 226, damages and penalties under Labor Code § 203, restitution and disgorgement, injunctive relief, meal period premium wages, rest period premium wages, civil penalties, interest, unpaid wages, liquidated damages, waiting time penalties, statutory penalties, penalties, attorneys' fees, or costs of litigation to the PAGA Group.

25. 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 PAGA Period) which were reviewed, investigated, and analyzed by PAGA Group Counsel.

26. On August 26, 2024, the Parties in the Action participated in a full day of mediation before an experienced and well-respected employment and PAGA mediator, Mariam Zadeh, which resulted in a settlement of the Action (the "Mediation")

27. 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 it has any liability to Plaintiff, the PAGA Group, or the State on those claims, or as an admission by Plaintiff that Defendant's defenses in 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.

28. Based on its own thorough, independent investigation and evaluation of this case, PAGA Group 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 PAGA Group 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 Group Counsel's belief that the

Settlement represents a fair and adequate settlement given the respective risks associated with the case.

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

III. PROCEDURE FOR APPROVING SETTLEMENT

30. **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 PAGA Group Notice (attached as **Exhibit A** to this Stipulation) (“Motion for Approval”). The Parties will meet and confer first regarding the PAGA Group Notice or other documents necessary to implement the Settlement before requesting Superior Court intervention regarding unresolved disagreements.

31. 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 PAGA Group Notice.

32. 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.

33. 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.

34. 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 PAGA Group Members from prosecuting against Defendant any claims or causes of action of any kind through the PAGA Period, which were or could have been brought in this Action, whether known or unknown, as well as all claims as set forth in the Release contained in Section V of this Agreement.

35. After entry of the Judgment, the Superior Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of (i) enforcing this Settlement, (ii) addressing

1 settlement administration matters, and (iii) addressing such post-Judgment matters as may be
2 appropriate under court rules or applicable law.

3 **36. PAGA Group Notice.** After the Superior Court enters its order granting Approval,
4 every PAGA Group Member will be provided with the PAGA Group Notice (in English and Spanish)
5 which will include the PAGA Group Notice completed to reflect the order granting Approval of the
6 Settlement and the PAGA Group Member's information as follows:

7 (a) Within twenty-one (21) calendar days after the Motion for Approval is granted,
8 Defendant will provide to the Settlement Administrator the "PAGA Group Members' Data," which
9 shall consist of an electronic database containing (i) each PAGA Group Member's first and last name,
10 (ii) last known mailing address, (ii) the PAGA Group Member's Social Security number or Tax ID,
11 (iii) the PAGA Group Member's employee identification number, if applicable, and based on
12 Defendant's payroll records, and (iv) the PAGA Group Member's total number of Individual Pay
13 Periods. If any or all of the PAGA Group Members' Data is unavailable to Defendant, Defendant
14 will so inform PAGA Group Counsel prior to the date on which Defendant is required to submit the
15 PAGA Group Members' Data to the Settlement Administrator and the Parties will make their best
16 efforts to reconstruct or otherwise agree upon the PAGA Group Members' Data prior to when it must
17 be submitted to the Settlement Administrator. If the Parties are unable to agree, the dispute will be
18 first be submitted to the Settlement Administrator, and if unable to be resolved by the Settlement
19 Administrator to the agreement of all Parties, the dispute shall be submitted to the Superior Court.
20 This information will otherwise remain confidential and will not be disclosed to anyone, except as
21 required to applicable taxing authorities, as required to carry out the reasonable efforts to identify
22 PAGA Group Member information as described in this Paragraph 36(b), pursuant to Defendant's
23 express written authorization, or by order of the Superior Court.

24 (b) If a PAGA Group Notice is returned by the U.S. Postal Service because of an incorrect
25 address, the Settlement Administrator will promptly, and not later than five (5) days from receipt of
26 the returned packet, search for a more current address for the PAGA Group Member and re-mail the
27 PAGA Group Notice to the PAGA Group Member. The Settlement Administrator will use the PAGA
28 Group Members' Data and otherwise work with Defense Counsel or utilize its own resources such

1 as skip traces to find a more current address. The Settlement Administrator will be responsible for
2 taking reasonable steps, consistent with its agreed-upon job parameters, court orders, and fee, to trace
3 the mailing address of any PAGA Group Member for whom a PAGA Group Notice is returned by
4 the U.S. Postal Service. These reasonable steps shall include the tracking of all undelivered mail;
5 performing address searches for all mail returned without a forwarding address; and promptly re-
6 mailing to PAGA Group Members for whom new addresses are found.

7 **37. Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms
8 and conditions of this Settlement, Plaintiff, PAGA Group Members, Defendant, and their respective
9 counsel hereby waive any and all rights to appeal from the Judgment, including all rights to any post-
10 judgment proceeding and appellate proceeding, such as a motion to vacate judgment, a motion for
11 new trial, a motion under Code of Civil Procedure Section 473, and any extraordinary writ, and the
12 Judgment therefore will become non-appealable by them at the time it is entered. The waiver of
13 appeal does not include any waiver of the right to oppose any appeal, appellate proceedings, or post-
14 judgment proceedings. If an appeal is taken from the Judgment, the time for consummation of the
15 Settlement (including making payments under the Settlement) will be suspended until such time as
16 the appeal is finally resolved and the Judgment, consistent with the terms of this Settlement, becomes
17 Final.

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

1 **39. Establishment of Settlement Account.** The Settlement Administrator shall establish
2 a Settlement Account within ten (10) days of the Effective Date and notify the Parties when the
3 Settlement Account has been established. The Settlement Administrator shall also provide Defendant
4 with an itemized statement for the total amount to be deposited into the Settlement Account, which
5 shall equal the Gross Settlement Amount (“Settlement Account Deposit”). On or before January 15,
6 2025 or within ten (10) days after receiving notification of the Settlement Account and statement for
7 the Settlement Account Deposit, whichever is later, Defendant shall pay into the Settlement Account
8 an amount equal to the Gross Settlement Amount. Defendant shall have no obligation to pay any
9 additional funds into the Settlement Account or fully fund the Settlement Account before January
10 15, 2025. The Parties discussed at the Mediation that Defendant shall have no obligation to fund the
11 Gross Settlement Amount until at least January 15, 2025, and the Parties agreed that this was a
12 material term of the Settlement.

13 **40. Payment of PAGA Group Payment Shares.** The Settlement Administrator shall pay
14 to each PAGA Group Member his or her PAGA Group Payment Share from the Settlement Account.
15 The Settlement Administrator shall pay each PAGA Group Payment Share by sending a check in the
16 appropriate amount to the PAGA Group Member at the address indicated in the PAGA Group
17 Member’s Data. Such payment, with the PAGA Group Notice, shall be sent by the Settlement
18 Administrator via U.S. Mail within fourteen (14) days of its receipt of the Settlement Account
19 Deposit from Defendant.

20 **41. Uncashed PAGA Group Payment Share Checks.** Any checks paid to PAGA Group
21 Members shall be negotiable for a period of no more than one hundred eighty (180) calendar days
22 from the date of their issuance. Each PAGA Group Member must cash/deposit his or her PAGA
23 Group Payment Share check within one hundred eighty days (180) calendar days after it is issued to
24 him or her. If a check remains uncashed/undeposited after one hundred eighty (180) calendar days
25 from the date of issuance, or if a check is returned to the Settlement Administrator as undeliverable
26 during the one hundred eighty-day period, the Settlement Administrator shall take all reasonable
27 efforts to identify the PAGA Group Member’s correct address, including the performance of a “skip-
28 trace.” If an updated address can be identified, the Settlement Administrator shall issue another check

1 to the PAGA Group Member and mail it to the PAGA Group Member at his or her updated address.
2 Any reissued check shall be negotiable for one hundred and eighty (180) calendar days from the date
3 of reissuance. If an updated address for the PAGA Group Member cannot be identified, if a reissued
4 check is once again returned to the Settlement Administrator as undeliverable, or if the reissued
5 check remains uncashed/undeposited after one hundred eighty (180) calendar days, the Settlement
6 Administrator will keep an accounting of such funds and shall give notice to the Parties of the total
7 balance of uncashed PAGA Group Payment Shares. A PAGA Group Member who fails to negotiate
8 or receive their PAGA Group Payment Share check despite the procedures described above shall
9 nevertheless remain bound by the Settlement and the releases contained herein.

10 42. The funds represented by PAGA Group Payment Share checks remaining uncashed
11 for more than 180 days after issuance shall be voided and then shall be transmitted to the Controller
12 of the State of California to be held pursuant to the Unclaimed Property Law, California Code of
13 Civil Procedure § 1500, *et seq.* in the names of those PAGA Group Members who did not cash their
14 checks until such time they claim their property. After the expiration of the 180-calendar day check
15 cashing period, as outlined above, the Settlement Administrator shall begin the process of
16 transferring the funds in accordance with California Code of Civil Procedure §§ 1500-1582 and the
17 timing requirements set forth by the Office of the State Controller. The Parties agree that this
18 disposition results in no “unpaid residue” under California Civil Procedure Code § 384, as the entire
19 Net Settlement Amount will be paid out to the LWDA and PAGA Group Members, whether or not
20 all PAGA Group Members cash their settlement checks.

21 43. **Final Reports by Settlement Administrator to Superior Court.** Within ten (10)
22 days after final disbursement of all funds from the Settlement Account, the Settlement Administrator
23 will serve on the Parties and file with the Superior Court a declaration providing a final summary
24 report on the disbursements of all funds from the Settlement Account. Within ten (10) days after
25 transmission of any remaining unclaimed funds to the Controller of the State of California, the
26 Settlement Administrator will serve on the Parties and file with the Superior Court a declaration
27 providing a final summary report on the transmission of any remaining unclaimed funds to the
28 Controller of the State of California.

IV. SETTLEMENT TERMS AND CONDITIONS

44. PAGA Group Payment Shares. Subject to the terms and conditions of this Settlement, the Settlement Administrator will calculate the PAGA Group Payment Shares for each PAGA Group Member within ten (10) days after Defendant provide the Settlement Administrator with the PAGA Group Members' Data. The PAGA Group Payment Share for each PAGA Group Member 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 PAGA Group Members and Pay Periods.** Defendant shall determine the total number of PAGA Group Members and the aggregate number of Pay Periods for those PAGA Group Members during the PAGA Period. This information shall be provided to the Settlement Administrator along with the PAGA Group Members' Data as described in Paragraph 36(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 PAGA Group Payment amount and dividing it by the sum of all PAGA Group Members' Pay Periods.

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

45. Taxes and Withholdings. Each PAGA Group Payment Share is intended to settle the PAGA Group Members' claims for civil penalties arising under PAGA. Accordingly, one hundred percent (100%) of each PAGA Group Payment Share shall represent civil penalties. The PAGA Group Payment Share shall be paid to the PAGA Group Member in full without deductions or withholdings, and the Settlement Administrator shall issue an IRS Form 1099 to each PAGA Group Member for that amount. Each PAGA Group Member shall be individually responsible for his/her

1 own share of applicable income tax withholdings and deductions for his or her PAGA Group
2 Payment Share.

3 46. **Total Payment Amount.** In no event will Defendant be required to pay more than
4 the Gross Settlement Amount for distribution to the Plaintiff, PAGA Group Counsel, PAGA Group
5 Members, LWDA, Settlement Administrator, or for any other costs or expenses not otherwise
6 enumerated.

7 47. **Payments to Plaintiff and PAGA Group Counsel and Others.** Subject to the terms
8 and conditions of this Settlement, the Settlement Administrator will make the following payments
9 out of the Gross Settlement Amount as follows:

10 (a) **To PAGA Group Counsel:** PAGA Group Counsel will apply to the Superior Court
11 for the PAGA Group Counsel Fees Payment in an amount not to exceed thirty five percent (35%) of
12 the Gross Settlement Amount. PAGA Group Counsel will also submit to the Superior Court a
13 memorandum of costs for the PAGA Group Counsel Litigation Expenses Payment in an amount not
14 to exceed Twelve Thousand Dollars and Zero Cents (\$12,000) as requested reasonable costs incurred
15 in the Action to be paid from the Gross Settlement Amount. Defendant will not oppose these requests.
16 The costs and fees provided under the Agreement and approved by the Court shall be the total costs
17 and attorneys' fees recoverable in the Action. PAGA Group Counsel shall not seek additional costs
18 or fees arising from the litigation of the Action. The Settlement Administrator will pay the amounts
19 approved by the Superior Court out of the Gross Settlement Amount. Withholding and deductions
20 will not be taken from the PAGA Group Counsel Fees Payment or PAGA Group Counsel Litigation
21 Expenses Payment and one or more IRS Forms 1099 will be issued to PAGA Group Counsel with
22 respect to those payments.

23 (b) **To the Settlement Administrator:** The Settlement Administrator will be paid from
24 the Gross Settlement Amount its reasonable fees and expenses as approved by the Superior Court,
25 which shall not exceed \$3,250.00.

26 (c) **Distribution of the LWDA Payment and PAGA Group Payment:** As part of their
27 Motion for Approval, the Parties will jointly apply to the Superior Court to approve the distribution
28 of the LWDA Payment and PAGA Group Payment.

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48. **Appointment of Settlement Administrator.** The Parties will ask the Superior Court to appoint Simpluris Inc., a qualified and experienced administrator based in California in or near where the Action is filed, 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 PAGA Group Payment Shares; (ii) preparing, printing, and mailing the PAGA Group Notice to all PAGA Group Members; (iii) using reasonable measures to contact all PAGA Group Members, including conducting a National Change of Address search on all PAGA Group Members before mailing the PAGA Group Notice to each PAGA Group Member's address; (iv) re-mailing the PAGA Group Notice to the PAGA Group Member's new address for those PAGA Group Members whose address had changed; (v) setting up a toll-free telephone number to receive calls from PAGA Group Members; (vi) issuing the checks to effectuate the payments due under the Settlement; (vii) using reasonable measures to deliver issued checks to PAGA Group Members, including use of a "skip-trace" for undeliverable checks; and (viii) otherwise administering the Settlement pursuant to this Agreement. The Settlement Administrator will have the final authority to resolve all disputes concerning the calculation of a PAGA Group Member's PAGA Group Payment Share, subject to the terms set forth in this Agreement. The Settlement Administrator's reasonable fees and expenses are estimated to be Three Thousand Two Hundred Fifty Dollars (\$3,250.00) and will be paid out of the Gross Settlement Amount, as set forth herein, subject to Superior Court approval.

V. RELEASE OF CLAIMS

49. **Release of Claims by the LWDA and State of California.** Upon Defendant's payment into the Settlement Account the Gross Settlement Amount, Plaintiff as the representative of the California Labor and Workforce Development Agency, the LWDA, and the State of California, without the need to manually sign a release document, in exchange for the consideration recited in this Agreement, on behalf of himself or itself and on behalf of his/its current, former, and future heirs, executors, administrators, attorneys, agents, and assigns, shall and does hereby fully and finally release the Released Parties from any and all claims for the recovery for civil penalties, attorneys' fees, expenses and costs pursuant to the California Labor Code Private Attorneys General Act of

2004 based upon all causes of action and claims that were alleged in the Complaint in the Action and/or the PAGA Letter or reasonably could have been alleged by reason of or in connection with any matter or fact set forth or referred to in the Complaint in the Action and/or the PAGA Letter, including failure to compensate for all hours worked; failure to pay minimum wages; failure to pay overtime; failure to provide accurate itemized wage statements; failure to pay wages when employment ends; failure to pay wages owed every pay period; failure to give rest breaks; failure to give meal breaks; failure to reimburse for business expenses; failure to provide personnel file; failure to provide pay records; violation of California Business and Professions Code § 17200; violations of the Labor Code §§ 201, 202, 203, 204, 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, and 2802; failure to pay for all hours worked, including minimum wage for all hours worked and for “off the clock” work; failure to pay overtime compensation and properly calculate the employee’s regular rate of pay in connection with the employee’s overtime rate of pay; failure to provide compliant rest periods and properly calculate the employee’s regular rate of pay in connection with the employee’s rest period premium payment; failure to provide compliant meal periods and properly calculate the employee’s regular rate of pay in connection with the employee’s meal period premium payment; failure to pay all wages due within the time period specified by Labor Code § 204; failure to include pertinent information on wage statements in compliance with Labor Code § 226(a) and therefore, provide complete, accurate itemized wage statements; failure to keep accurate and complete payroll records showing the actual hours worked per day and the wages paid in compliance with Labor Code § 1174(d); willful failure to pay all wages earned and due upon separation of employment; and failure to reimburse necessary, business related expenses and costs by employees (the “PAGA Released Claims”). Plaintiff as the representative of the California Labor and Workforce Development Agency, the LWDA, and the State of California shall release the Released Parties from the PAGA Released Claims that arose during the PAGA Period. The Parties intend that this Settlement Agreement may be used as an affirmative defense against subsequent PAGA claims for claim preclusion, issue preclusion, or other effects if an aggrieved employee makes a subsequent claim on behalf of the LWDA based on the same factual allegations as the PAGA Released Claims that were at issue in this action on behalf of the LWDA. PAGA Group Members

cannot opt out of or object to the PAGA Release.

50. Released Parties includes Defendant and its past, present and/or future, direct and/or indirect, officers, owners, 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, franchisors, trusts, stockholders, fiduciaries, and joint venturers.

51. The PAGA Released Claims described in Paragraph 49 expressly exclude all claims made by PAGA Group Members for individual wage claims, vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, claims while classified as exempt, and claims outside of the PAGA Period.

52. **No Effect on Other Benefits.** The payment of the PAGA Group Payment 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. MISCELLANEOUS TERMS

53. **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).

54. 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 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.

55. Notwithstanding Paragraph 54 of this Settlement, 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.

56. **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.

57. **Attorney Authorization.** PAGA Group 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 the Superior Court, and in all cases all such documents, supplemental provisions and assistance of the court will be consistent with this Settlement.

58. **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.

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

60. **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.

61. **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.

62. **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.

63. **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.

64. **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:

65.

To PAGA Group Counsel:

Harout Messrelian, Esq.
Maralle Messrelian, Esq., Of Counsel
MESSRELIAN LAW INC.
500 N. Central Ave., Suite 840
Glendale, CA 91203

To Defense Counsel:

Clint D. Robison, Esq.
Michael I. Kessler, Esq.
O'HAGAN MEYER
21650 Oxnard Street, Suite 530
Woodland Hills, CA 91367

65. **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 signatures will be presumptive evidence of execution of the original, which shall be produced on reasonable request. /

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Any executed counterpart will be admissible to prove the existence and contents of this Settlement.

DATED: 01/17/2025

EDUARDO MARTINEZ GUIZAR



Eduardo Martinez Guizar (Jan 17, 2025 23:13 PST)

DATED: January __, 2025

AIR CULINAIRE WORLDWIDE, LLC

By: _____

Its: _____

Approved as to Form:

DATED: January 17, 2025

MESSRELIAN LAW INC.

By: 

HAROUT MESSRELIAN
MARALLE MESSRELIAN
Attorneys for Plaintiff,
EDUARDO MARTINEZ GUIZAR

DATED: January __, 2025

O'HAGAN MEYER

By: _____

CLINT D. ROBISON
MICHAEL I. KESSLER
Attorneys for Defendant,
AIR CULINAIRE WORLDWIDE, LLC

Any executed counterpart will be admissible to prove the existence and contents of this Settlement.

DATED: _____

EDUARDO MARTINEZ GUIZAR

DATED: January __, 2025

AIR CULINAIRE WORLDWIDE, LLC

By:

DocuSigned by:



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John D. Lee

Its:

Chief Executive Officer

Approved as to Form:

DATED: January __, 2025

MESSRELIAN LAW INC.

By:

HAROUT MESSRELIAN
MARALLE MESSRELIAN
Attorneys for Plaintiff,
EDUARDO MARTINEZ GUIZAR

DATED: January 21, 2025

O'HAGAN MEYER

By:



CLINT D. ROBISON
MICHAEL I. KESSLER
Attorneys for Defendant,
AIR CULINAIRE WORLDWIDE, LLC

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EXHIBIT A

NOTICE OF PAGA SETTLEMENT

*Eduardo Martinez Guizar v. Air Culinaire Worldwide, LLC
Santa Clara County Superior Court, Case No. 23CV415879*

<<Simpluris, Inc.>>

[]

[]

Telephone: []

«Barcode» «BarcodeString»

SIMID «SIMID»

<< Last Four of SS#>>

<<Employee ID#>>

«FirstName»

«LastName»

«Address1» «Address2»

«City» «State» «Zip»

You are receiving this notice as a result of a lawsuit brought on a representative basis under the Private Attorneys General Act, Labor Code § 2698 et seq. (“PAGA”) (“the Action”). The plaintiff in the Action is Eduardo Martinez Guizar (“Plaintiff”) and the Defendant is Air Culinaire Worldwide, LLC (“Defendant”). The Action seeks civil penalties for purported violations of the California Labor Code on behalf of all non-exempt California employees who worked for Defendant during the PAGA Period of January 10, 2022 through September 26, 2024 (the “PAGA Group Members”). Defendant denies all claims and allegations in the Action, denies that it owes any penalties, and asserts that it has fully complied with all applicable Labor Code provisions. Nevertheless, to avoid further costs and time in defending the Action, Defendant has settled the case, and the Court has approved the settlement and release of claims. By settling the Action, Defendant is not admitting that it has done anything wrong. Upon the Effective Date of this Settlement, Plaintiff, the State of California (including, but not limited to, the LWDA), and the PAGA Group Members will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the PAGA Released Claims with respect to Defendant and its past, present and/or future, direct and/or indirect, officers, owners, 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, franchisors, trusts, stockholders, fiduciaries, and joint venturers. The Released PAGA Claims shall include all claims for PAGA penalties, attorneys’ fees, expenses and costs that were alleged in the Complaint in the Action and/or the PAGA Letter or reasonably could have been alleged by reason of or in connection with any matter or fact set forth or referred to in the Complaint in the Action and/or the PAGA Letter, including failure to compensate for all hours worked; failure to pay minimum wages; failure to pay overtime; failure to provide accurate itemized wage statements; failure to pay wages when employment ends; failure to pay wages owed every pay period; failure to give rest breaks; failure to give meal breaks; failure to reimburse for business expenses; failure to provide personnel file; failure to provide pay records; violation of California Business and Professions Code § 17200; violations of the Labor

Code §§ 201, 202, 203, 204, 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, and 2802; failure to pay for all hours worked, including minimum wage for all hours worked and for “off the clock” work; failure to pay overtime compensation and properly calculate the employee’s regular rate of pay in connection with the employee’s overtime rate of pay; failure to provide compliant rest periods and properly calculate the employee’s regular rate of pay in connection with the employee’s rest period premium payment; failure to provide compliant meal periods and properly calculate the employee’s regular rate of pay in connection with the employee’s meal period premium payment; failure to pay all wages due within the time period specified by Labor Code § 204; failure to include pertinent information on wage statements in compliance with Labor Code § 226(a) and therefore, provide complete, accurate itemized wage statements; failure to keep accurate and complete payroll records showing the actual hours worked per day and the wages paid in compliance with Labor Code § 1174(d); willful failure to pay all wages earned and due upon separation of employment; and failure to reimburse necessary, business related expenses and costs by employees..

By Order dated <<court approval order date>>, the Superior Court of the State of California, Santa Clara County approved the Settlement of the PAGA claims.

According to the Defendant’s records, you are an Aggrieved Employee and therefore entitled to a share of the settlement based upon the Court approved allocation. Each Aggrieved Employee is receiving a *pro rata* share of the Aggrieved Employees Payment based on the number of pay periods the person worked for Defendant as a non-exempt, hourly-paid employee during the PAGA Period, defined as the period of time from January 10, 2022 through September 26, 2024.

To calculate an Aggrieved Employee’s share of the Aggrieved Employees Payment, the Aggrieved Employees Payment was divided by the aggregate total number of pay periods of all Aggrieved Employees, resulting in the “Pay Period Value.” Each Aggrieved Employee’s share of the Aggrieved Employee’s share of the Aggrieved Employees Payment will be calculated by multiplying each individual Aggrieved Employee’s total number of pay periods by the Pay Period Value.

Your Compensable Pay Periods are: <<PayPeriods>>

Your Aggrieved Employee’s share of the Aggrieved Employees Payment is: \$<<Est.PAGAPaymentAmt>>

Enclosed with this Notice is your check for your share. The settlement check shall remain valid for 180 days. Thereafter, all uncashed checks shall be distributed to California State Controller’s Office Unclaimed Property Fund with an identification of the amount of unclaimed funds attributable to each Aggrieved Employee.

Please Note: One hundred percent (100%) of your individual PAGA payment under this Settlement will be considered penalties and may be subject to local, state, or federal tax withholdings and will be reported to the IRS and state tax authorities. You should rely on your

own tax advisors as to the tax consequences of your individual PAGA payment. Neither Plaintiff nor Defendant have made any representations or warranties regarding the taxation of your individual PAGA payment. Nothing within this notice or any other communication shall constitute or be construed or relied upon as tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended). Enclosed are the appropriate tax forms pertaining to your payment.

Do not call or write the Court or Office of the Clerk to ask questions about the settlement or to ask questions about the claims process. If you have any questions, you may call or write to Simpluris, Inc. (the Settlement Administrator) using the contact information at the top of this correspondence.