

PAGA SETTLEMENT AGREEMENTⁱ

This PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Michelle Renee Silvestre (“Plaintiff”) and defendant RBD California Restaurants Limited (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s PAGA lawsuit alleging wage and hour violations against Defendant captioned *Silvestre v. RBD California Restaurants Limited* initiated on January 23, 2023 and pending in Superior Court of the State of California, County of San Bernardino.
- 1.2. “Administrator” means Phoenix Settlement Administrators, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.
- 1.4. “Aggrieved Employee” means all individuals employed as hourly and/or non-exempt employees by Defendant in California for one or more pay periods during the PAGA Period.
- 1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in Defendant’s possession including the Aggrieved Employee’s: (1) name; (2) last known home address and telephone number; (3) number of pay periods as an Aggrieved Employee during the PAGA Period; and (4) social security number.
- 1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.
- 1.7. “Court” means the Superior Court of California, County of San Bernardino.
- 1.8. “Defense Counsel” means Mathew T. Theriault of Gordon & Rees Scully Mansukhani.
- 1.9. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the day the Court enters Judgment.

- 1.10. “Gross Settlement Amount” means \$628,000.00 which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator’s Expenses Payment.
- 1.11. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.
- 1.12. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.13. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.14. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.15. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.
- 1.16. “PAGA Counsel” means Kashif Haque, Samuel Wong, and Jessica L. Campbell of Aegis Law Firm, PC, the attorneys representing the Plaintiff in the Action.
- 1.17. “PAGA Counsel Fees Payment” and “PAGA Counsel Litigation Expenses Payment” mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.18. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.19. “PAGA Period” means the period from January 17, 2022 to January 10, 2024.
- 1.20. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.21. “PAGA Notice” means Plaintiff’s January 17, 2023 letter and Plaintiff’s Amended PAGA Notice described in Paragraph 5.1 to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd. (a).
- 1.22. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$95,291.67) and the 75% to LWDA (\$285,875.00) in settlement of PAGA claims.

- 1.23. "Plaintiff" means Michelle Renee Silvestre, the named plaintiff in the Action.
- 1.24. "Approval Order" means the proposed Court Order Granting Approval of PAGA Settlement.
- 1.25. "Released PAGA Claims" means the claims being released as described in Paragraph 5 below. In consideration of Defendant's payments set forth in this Agreement, upon the Effective Date this Agreement forever bars Plaintiff, the PAGA Members, the LWDA, and any other representative, proxy, or agent thereof, including, but not limited to, any and all Aggrieved Employees from pursuing any action against Defendants under the PAGA based on or arising out of alleged violations of those Labor Code sections alleged in the Action (including, without limitation, attorneys' fees and costs), as described in paragraph 5.
- 1.26. "Released Parties" means: Defendant and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, affiliates.
- 1.27. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.
- 1.28. "Defendant" means named Defendant RBD California Restaurants Limited.

2. RECITALS.

- 2.1. On January 17, 2023, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for failure to pay minimum wages; failure to pay overtime wages; failure to provide meal periods; failure to permit rest breaks; failure to provide accurate itemized wage statements; failure to pay wages timely during employment; failure to pay all wages due upon separation of employment and violation to business and professions code §§ 17200, et seq. On April 11, 2023, Plaintiff filed a First Amended Complaint alleging causes of action against Defendant for add a cause of action under PAGA. The First Amended Complaint is the operative complaint in the Action (the "Operative Complaint.")[. Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.
- 2.2. Pursuant to Labor Code section 2699.3, subd. (a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.
- 2.3. On November 9, 2023, the Parties participated in an all-day mediation presided over by which led to this Agreement to settle the Action.

2.4. The Parties are aware of the pending action *Villa, et al., v. RBD California Restaurants*

Limited, San Bernardino Sup. Court Case No. CIVSB 2320249 (filed 8/25/23), which action asserts representative PAGA claims that will be extinguished by the Settlement. *Villa* is currently stayed, and the named Plaintiffs therein are pursuing their individual wage and hour claims through arbitration.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant promises to pay \$628,000.00 and no more as the Gross Settlement Amount. Defendant has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.
- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
 - 3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than one third which is currently estimated to be \$209,333.33 and PAGA Counsel Litigation Expenses Payment of not more than \$20,000.00. Defendant will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.
 - 3.2.2. To the Administrator: An Administrator Expenses Payment not to exceed \$17,500 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$17,500, the Administrator will retain the remainder in the Net Settlement Amount.
 - 3.2.3. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$381,166.67 to be paid from the Gross Settlement Amount, with 75%

(\$285,875.00) allocated to the LWDA PAGA Payment and 25% (\$95,291.67) allocated to the Individual PAGA Payments.

3.2.3.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$95,291.67) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

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

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant estimates the Aggrieved Employees worked a total of 65,810 PAGA Pay periods.

4.2. Aggrieved Employee Data. Within 10 calendar days of the Effective Date, Defendant will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 30 days after the Effective Date.

4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.

4.4.1. The Administrator will issue checks for the Individual PAGA Payments and send

them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

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

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

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

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

5.1 Release by Aggrieved Employees:

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties arising during the PAGA Period that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice for violations predicated upon California Labor Code §§ 98.6, 201, 201.3, 202, 203, 204, 210, 216, 223, 225.5, 226, 226.3, 226(a), 226.7, 227.3, 232, 232.5, 233, 234, 245, 246, 247, 247.5, 248, 248.2, 248.5, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1102.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1198.5, 1199, 1527, 2800, 2802, 2810.5, 3366, 3457, 6401, 6402, 6403 and 8397.4, IWC Wage Order 5, § 3-4, 7, 9, 11-12 and 14, C.C.R., Title 8, section 11050(3), (4), (7), (9), (11)-(12), (14), during the Covered Period. Within 14 days of executing this Settlement, Plaintiff shall serve an amended notice to the LWDA and Defendant pursuant to California Labor Code section 2698, et seq., identifying each Labor Code,

Wage Order, and C.C.R. provision herein, and the purported facts and theories pursuant to PAGA (the “Amended PAGA Notice”). Plaintiff will thereafter amend her Complaint’s PAGA allegations to include these purported violations/claims.

6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT.

Plaintiff will prepare and file an application or motion for approval of this Settlement.

7. SETTLEMENT ADMINISTRATION.

7.1 Selection of Administrator. The Parties have jointly selected Phoenix Settlement Administrators to serve as the Administrator and verified that, as a condition of appointment, Phoenix Settlement Administrators agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.

7.4 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8. AGGRIEVED EMPLOYEE SIZE ESTIMATES and ESCALATOR CLAUSE

Based on its records, Defendant estimates that the Aggrieved Employees worked 65,810 Pay Periods during the PAGA Period. If the number of PAGA Pay Periods exceeds 65,810 by more than 10%, Defendant, in its sole discretion, will increase the Gross Settlement Amount by the same percentage or adjust the ending date of the PAGA Period so that no more than 65,810 PAGA Pay Periods are released.

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

9.1 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment

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

10. ADDITIONAL PROVISIONS.

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

10.2 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

10.3 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

10.4 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

- 10.5 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 10.6 No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 10.7 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 10.8 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 10.9 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 10.10 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 10.11 Confidentiality. Other than information necessary to secure Court approval of this Settlement, the Parties agree to keep confidential all matters relative to this Settlement, including the terms of the Settlement and the facts and circumstances leading up to it. If asked about the disputes between the parties, the Parties shall provide no other statement than “the matter has been resolved” or “the matter has settled.” The Parties may, however, discuss the terms of this Settlement with their spouses, attorneys, financial advisors, tax advisors, and accountants, or in connection with any litigation, at which time the individual receiving information about the terms of this Settlement shall be informed that the terms of this Settlement are confidential, and the individual may not reveal or disclose to any third party the terms of the Settlement. Notwithstanding the above, Plaintiff’s Counsel may list publicly-available information about this PAGA Action in their declarations establishing their qualifications in other cases.
- 10.12 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 10.13 Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first

business day thereafter.

- 10.14 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Aegis Law Firm, PC
Kashif Haque
Samuel Wong
Jessica L. Campbell
9811 Irvine Center Drive, Suite 100
Irvine, California 92618
(949) 379-6250
jcampbell@aegislawfirm.com

To Defendant:

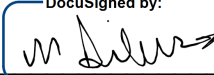
Gordon & Rees Scully Mansukhani
Matthew T. Theriault
633 West Fifth Street, 52nd Floor
Los Angeles, CA 90071
310-663-0817
mtheriault@grsm.com

- 10.15 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

- 10.16 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Date: 5/14/2024 | 2:08 PM PDT

MICHELLE RENEE SILVESTRE

DocuSigned by:

A2EC6E800D8B4D7...
Plaintiff

Date: _____

DEFENDANT RBD CALIFORNIA
RESTAURANTS LIMITED



Arif Khan, President

Date: _____

AEGIS LAW FIRM, PC



Samuel Wong
Kashif Haque
Jessica Campbell
Attorneys for Plaintiff

Date: June 4, 2024

GORDON & REES SCULLY MANSUKHANI



Mathew T. Theriault

Attorneys for Defendant