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Attorneys for Plaintiff ANDREW GONZALEZ, in a Representative capacity only, and on behalf of other members of the general public similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF SAN DIEGO**

ANDREW GONZALEZ, in a Representative capacity only, and on behalf of other members of the general public similarly situated,

Plaintiff

v.

COIN DROP INVESTMENTS, LLC, a California Limited Liability Company, and DOES 1-10, inclusive,

Defendants

CASE NO. 37-2023-00016775-CU-OE-CTL

**DECLARATION OF ERIC K. YAECKEL  
IN SUPPORT OF PLAINTIFF'S *EX PARTE*  
APPLICATION RE: UNOPPOSED PAGA  
APPROVAL**

Date: February 15, 2024

Time: 8:45 a.m.

Dept.: C-68

Judge: Hon. Richard S. Whitney

1 I, Eric K. Yaeckel declare as follows:

- 2 1. I am an attorney licensed to practice law before all the courts of the State of California, and am  
3 employed with the law firm of SULLIVAN & YAECKEL LAW GROUP, APC, attorneys of  
4 record for Plaintiff ANDREW GONZALEZ, in a Representative capacity only, and on behalf  
5 of other members of the general public similarly situated in this matter.
- 6 2. I make this declaration in support of Plaintiff's Unopposed *Ex Parte* Application Re: PAGA  
7 Settlement Approval. I am personally familiar with the facts set forth in this declaration and,  
8 if called to testify, could and would do so.
- 9 3. As this is a "PAGA" action only, the Limitations Period begins on February 15, 2022. There  
10 are approximately **54** PAGA Members at issue.
- 11 4. Following the exchange of discovery, analysis of numerous sets of time and wage data, and a  
12 a full day mediation before Hon. Herbert B. Hoffman (Ret.), the Parties reached a proposed  
13 settlement that includes a payment of penalties to the LWDA.
- 14 5. On **December 29, 2023**, Plaintiff's counsel first gave notice of the terms of the instant  
15 Settlement to the LWDA.
- 16 6. On **January 31, 2024**, after the parties had finalized and executed the "long-form" settlement  
17 agreement, Plaintiff's Counsel again provided the LWDA with notice of the Settlement and  
18 specific notice of the instant hearing. Attached hereto as **Exhibit A** is a true and correct copy  
19 of the Settlement Agreement.
- 20 7. On **February 24, 2024**, Plaintiff's counsel uploaded via the LWDA's electronic filing portal  
21 copies of this entire *ex parte* application, including the Notice, this supporting Memorandum,  
22 Declaration, and Proposed Order & Judgment.
- 23 8. The Total Value of the proposed Settlement is **\$85,000.00** which is broken down as follows:
- 24 \* **\$28,333.33** Attorneys' Fees (1/3 of total settlement value);
- 25 \* **\$7,500.00** Costs of Litigation.
- 26 \* **\$10,000.00** Plaintiff's Individual Section 1542 Release
- 27 \* **\$5,000.00** Plaintiff's Representative Enhancement
- 28 \* Sub-Total of **\$31,566.67**. 75% (**\$23,675.00**) shall be assigned/paid to the

LWDA as penalties.

\* The remaining 25% (**\$1,000.00**) in cash will be disbursed among all employees based on work weeks employed during the PAGA period.

Given the above, the average payment to each individual employee will be approximately **\$146.14**.

9. There are no restrictions for any of the **54** employees to file individual actions, as the settlement agreement only covers PAGA claims.
10. The instant *Ex Parte* request is based on the fact that **(1)** the PAGA period “cutoff date” is contingent on Court approval, any delay diminishes the amounts received by the impacted employees; **(2)** Notice to certain ex-employees may be adversely impacted by further delay (*i.e.* ex-employees may change their mailing address without filing a proper “forwarding address”)
11. An expedient approval of this settlement will provide a direct benefit to the impacted employees at issue. The “fixes” provide a guarantee of future Labor Code compliance, and an immediate monetary benefit. It also allows Defendants the opportunity to move on, and focus on future business.
12. Plaintiff alleges that he - and other employees - received “interrupted,” “short,” “late,” or “missing” Meal Periods, including those documented within Defendant’s Time Records. Plaintiff also challenged whether Defendant maintained lawful meal and rest periods. Plaintiff alleged he- and other employees -were not properly compensated due to Defendant’s failure to maintain accurate time records. Finally, Plaintiff also challenged whether Defendant maintained lawful meal and rest period policies.
13. The catalyst of this litigation concerned allegations that Mr. Gonzalez was denied legally compliant meal and rest periods, and was not paid for all hours worked.
14. Plaintiff counsel contends its investigations revealed that Defendant’s timekeeping policies and employee records were not in compliance with California law. However, these investigations also revealed that the “rate of violation” by Defendant was significantly less than 100%. On many of those occasions, it appears that Defendant did, in fact, comply with the law.

- 1 15. Based on the above, the maximum liability in a case of this type would be in the range of  
2 **\$100,000.00** to **\$200,000.00**. However, without revealing settlement protected  
3 communications, it was highly unlikely Plaintiff could ever recover anything approaching a  
4 maximum judgment.
- 5 16. Moreover, Plaintiff's counsel is aware of the Court's discretion to mitigate penalties pursuant  
6 to California Labor Code section 2699(e)(2). To confirm, Plaintiff's counsel experienced the  
7 mitigation of "PAGA" penalties in *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504.  
8 In *Carrington*, Judge Bacal significantly mitigated PAGA penalties (\$5 per violation), due to  
9 the efforts made by the employer to comply with the law.
- 10 17. Plaintiff's counsel agrees with Her Honor, and with the provision of the Labor Code, that  
11 penalties *should* be mitigated where violations are minimal (or rare), or where the employer  
12 makes significant efforts to comply with the Labor Code.
- 13 18. As the above factors exist in this case, it is the opinion of Plaintiff's counsel that the settlement  
14 is fair, adequate, and reasonable. Specifically, Plaintiff's counsel's understanding is that  
15 Defendant has agreed to make changes to its policies, and amend them to the extent they do  
16 not comply with California law.
- 17 19. Plaintiffs' counsel, William B. Sullivan has approximately 30 years of experience in "class  
18 action" litigation, both as plaintiff and defense counsel. Plaintiff's counsel, Eric K. Yaeckel,  
19 has over 13 years of experience prosecuting class and representative action claims under the  
20 California Labor Code. Plaintiff's counsel, Eric K. Yaeckel and William B. Sullivan, are the  
21 attorneys of record in a matter that was recently heard (and favorably decided) before the  
22 California Supreme Court titled *Donohue v. AMN Servs., LLC* (2021) 11 Cal.5th 58. The  
23 *Donohue* matter was a certified class and PAGA action.
- 24 20. Plaintiff's counsel were lead counsel on approximately 40 employment "wage and hour"  
25 claims with class action, or representative action allegations. Based on said experience, it is  
26 the opinion of Plaintiff's counsel that this settlement represents a fair and adequate payment.
- 27 21. Here, the parties seek to allocate **\$31,566.67** of the total settlement to the Total Value of the  
28 PAGA Fund. Of this amount, the value of additional measures taken to address and effectuate

1 Labor Code compliance attributed towards LWDA penalties is **\$23,675.00**, which is 75% of  
2 the PAGA fund. The remaining (25%) **\$7,891.67** will be allocated and distributed among the  
3 current or ex-employees within the PAGA representation period.

4 22. The parties contend the settlement agreement amount is fair, adequate, and reasonable. The  
5 release only applies to the PAGA claims for penalties, based upon the allegations in Plaintiff's  
6 operative Complaint.

7 23. To date, Plaintiff has not received a response from the LWDA regarding the proposed  
8 settlement. If the LWDA contacts Plaintiff's counsel at any time prior to the February 15, 2024  
9 hearing, Plaintiff's counsel will provide an updated declaration to the Court.

10  
11 I declare under penalty of perjury under the laws of the State of California that the foregoing  
12 is true and correct. Executed this 14th day of February, 2024 at San Diego, California.

13 *Eric Yaeckel*

14 \_\_\_\_\_  
Eric K. Yaeckel

# **EXHIBIT A**

**PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 ET SEQ.)**  
**SETTLEMENT AGREEMENT AND RELEASE**

***Andrew Gonzalez, et al. v. Coin Drop Investments, LLC, et al.***  
**San Diego County Superior Court, Case No. 37-2023-00016775-CU-OE-CTL**  
**(the “Action”)**

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned Parties, subject to the approval of the Court, that the settlement of this action shall be memorialized by, and subject to the following terms and conditions of, this Settlement Agreement (“Agreement”). Capitalized terms used herein shall have the meanings set forth in Article I or elsewhere in the Private Attorneys General Act (Labor Code § 2698 *et seq.*).

This Agreement is made by and between Defendant Coin Drop Investments, LLC dba Coin-Op Gaslamp (“CDI”) and Defendant Sporting Fraternity, Inc. (“Sporting Fraternity” or “SFI” and together with CDI, the “Defendants”) and Plaintiff Andrew Gonzalez (“Plaintiff” or “Gonzalez”), for himself and on behalf of the State of California and other Aggrieved Employees (defined below), (Defendants and Plaintiff as defined herein, are sometimes collectively referred to as the “Parties”) and shall be binding on the Parties and all of the Aggrieved Employees, subject to the Court’s approval of the Settlement.

The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and concluded by agreement of CDI to pay the sum of seventy-five thousand dollars (\$75,000.00), for settlement of the Private Attorneys General Act (“PAGA”) claim, which shall be inclusive of Plaintiff’s Counsel’s attorneys’ fees and costs and the settlement administrator’s fees.

Defendants represent that, as of December 12, 2023 (the date the Parties mediated the case), there were approximately 54 non-exempt employees (“Aggrieved Employees”), and this estimate serves as the basis for Plaintiff accepting the settlement. If, as of the end date of the PAGA Period (defined below), the number of Defendants’ non-exempt employees increases by more than twenty percent Defendants shall increase the GSF proportionally for any excess above twenty percent.

## **Article I.**

### **Definitions.**

#### **Section 1.01 Definitions.**

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

- (a) “Action” shall refer to the lawsuit entitled: *Andrew Gonzalez, et al. v. Coin Drop Investments, LLC, et al.*, San Diego County Superior Court, Case No. 37-2023-00016775-CU-OE-CTL.
- (a) “Aggrieved Employees” is defined as all past and present hourly-paid, non-exempt employees of Defendant Coin Drop Investments, LLC dba Coin-Op Gaslamp and/or Defendant Sporting Fraternity, Inc. who worked for Defendant Coin Drop Investments, LLC dba Coin-Op Gaslamp and/or Defendant Sporting Fraternity, Inc. in California at any time during the PAGA Period.
- (b) “Court” means the Superior Court for the State of California.
- (c) “Defendants’ Counsel” are:

Daniel Gardenswartz, Esq.  
Mei-Ying Imanaka, Esq.  
Jing Y. Li, Esq.  
SOLOMON WARD SEIDENWURM & SMITH, LLP  
401 B Street, Suite 1200  
San Diego, CA 92101  
Phone: 619.231.0303; Fax: 619.615.7938  
Email: [dgardenswartz@swsslaw.com](mailto:dgardenswartz@swsslaw.com)  
Email: [mimanaka@swsslaw.com](mailto:mimanaka@swsslaw.com)  
Email: [jli@swsslaw.com](mailto:jli@swsslaw.com)

- (d) “Effective Date” means the date the Court enters the order approving the Settlement as described in this Agreement.
- (e) “Gross Settlement Amount” refers to seventy-five thousand dollars and zero cents (\$75,000.00), which shall be paid by CDI to fund the Settlement, and from which all settlement payments for the Net Settlement Amount, Court approved attorneys’ fees and costs, Plaintiff’s incentive payment, and Settlement Administration Costs shall be paid. The Parties agree that there is no right to opt-out or object to a PAGA Settlement. It is therefore the Parties’

intention that the Settlement shall be final at the time of Court approval and entry of judgment. Funding shall be due based on this date and there shall be no further waiting periods given that there is no right to appeal.

(f) “Net Settlement Amount” means the total sum available for payment of PAGA penalties to the Aggrieved Employees and the Labor and Workforce Development Agency (“LWDA”) after deducting Plaintiff’s Counsel’s attorneys’ fees and costs, the costs of administration, and Plaintiff’s incentive payment, collectively referenced in Section 3.01(a-d), from the \$75,000.00 Gross Settlement Amount.

(g) “Plaintiff’s Counsel” are:

SULLIVAN & YAECKEL LAW GROUP, APC  
Eric K. Yaeckel, Esq.  
Ryan T. Kuhn, Esq.  
Karoline D. Kitlowski  
2330 Third Avenue  
San Diego, CA 92101  
Phone: 619.702.6760; Fax: 619.702.6761  
Email: [yaeckel@sullivanlawgroupapc.com](mailto:yaeckel@sullivanlawgroupapc.com)  
Email: [ryan@sullivanlawgroupapc.com](mailto:ryan@sullivanlawgroupapc.com)  
Email: [karoline@sullivanlawgroupapc.com](mailto:karoline@sullivanlawgroupapc.com)

(h) “PAGA Period” means between February 8, 2022, through the date that the Court approves this PAGA settlement.

(i) “Released Claims” mean any and all claims under the PAGA that were alleged in the Complaint or that could have been alleged based on the facts alleged in those pleadings or in the PAGA Notice, including but not limited to any and all claims for PAGA penalties for violations of the California Labor Code governing overtime wages, minimum wage for all hours worked, statutorily mandated rest periods and rest period premiums, statutorily mandated meal periods and meal period premiums, final wages and compensation at the time of separation, accurate itemized wage statements, reimbursement of necessary business expenses, payment of wages, and maintenance of accurate records on behalf of aggrieved employees. Specifically, the Released Claims are claims for civil penalties under PAGA,

including but not limited to, for violations of Labor Code §§ 201-203, 204, 226, 226.7, 510, 512, 516, 558, 1174, 1182.12, 1194, 1194.2, 1197, 1198, 2802, and 2804.

- (j) “Released Parties” means Defendants and their present and former officers, directors, employees, shareholders, agents, trustees, representatives, contractors, attorneys, insurers, reinsurers, parent companies, subsidiaries, divisions, affiliated entities, predecessors, successors, assigns, partners, investors as well as any individual or entity that could be alleged to be jointly liable with Defendants or for the acts or omissions of Defendants.
- (k) “Settlement Administrator” refers to Phoenix Settlement Administrators.
- (l) “Settlement” or “Agreement” refers to the settlement of the Action reached by the Parties to the Action embodied herein.

## **Article II.**

### **Background.**

#### **Section 2.01 Background.**

- (a) On April 21, 2023, Plaintiff filed his Complaint in the Action in the Superior Court of the State of California for the County of San Diego.
- (b) On February 8, 2023, Plaintiff, through his counsel, sent notice to the LWDA giving notice of his intent to pursue a representative PAGA action, on behalf of himself and the State of California as well as on behalf of other aggrieved employees (the “PAGA Notice”).
- (c) The Parties meet and conferred regarding the validity and enforceability of a Voluntary Agreement to Arbitrate Disputes which expressly covers wage and hour claims and contains a class action waiver. Thereafter, the Parties agreed to explore settlement of the PAGA claims at mediation.
- (d) Subsequently, the Parties engaged in an extensive investigation along with informal discovery. In advance of the mediation, Defendants provided Plaintiff and Plaintiff’s Counsel with documents and information about the number of potentially aggrieved employees, the number of pay periods at issue, time and attendance reports, wage statements, as well as relevant policy documents.

- (e) The Parties attended a full day mediation with the Hon. Herbert B. Hoffman (Ret.), whereat they reached the Settlement.

### **Article III.**

#### **Approval and Implementation of Settlement.**

##### **Section 3.01 Allocation of the Gross Settlement Amount.**

The Parties will cooperate in obtaining through written stipulation or unopposed motion or *ex parte* application, if required, an Order from the Court approving the payment of the Gross Settlement Amount as follows:

**(a) Plaintiff's Attorneys' Fees.**

Defendants will not oppose Plaintiff's Counsel request to be paid up to 33 1/3% of the total sum of the Gross Settlement Amount of seventy-five thousand dollars (\$75,000.00) plus the general release payment to Plaintiff of ten thousand dollars (\$10,000.00), which is twenty-eight thousand three hundred thirty three dollars and thirty three cents (\$28,333.33) for attorneys' fees ("Plaintiff's Attorney's Fees.") If Plaintiff's counsel's request is not approved and/or is reduced by the Court, any amount not approved and/or reduced by the Court will be included in the Net Settlement Amount to be paid to the Aggrieved Employees. Plaintiff's counsel's failure to obtain Court approval of Plaintiff's Attorney's Fees shall not set aside this Agreement. Defendants agree not to oppose a fee request by Plaintiff's counsel as set forth above.

**(b) Litigation Costs.**

Defendants will not oppose Plaintiff's Counsel request to be paid an amount estimated at not more than seven thousand five hundred dollars and zero cents (\$7,500.00), as reimbursement for expenses incurred in the Action ("Litigation Costs"), supported by declaration. If Plaintiff's Counsel's request for reimbursement of Litigation Costs is not approved and/or is reduced by the Court, any amount not approved and/or reduced by the Court will be included in the Net Settlement Amount to be paid to Aggrieved

Employees. Defendants agree not to oppose a request for reimbursement of Litigation Costs not more than \$7,500.00.

**(c) Administration Costs.**

Plaintiff's Counsel shall request up to twenty-six hundred dollars and zero cents (\$2,600.00) of the Gross Settlement Amount as payment to the Settlement Administrator for costs incurred by the Settlement Administrator in connection with the Settlement, including mailing of the Notice of PAGA Settlement described herein ("Settlement Administration Costs"). To the extent the Settlement Administration Costs exceed this amount, they shall be paid from the Gross Settlement Amount; to the extent they fall below this amount, they shall be included in the Net Settlement Amount to be paid to the Aggrieved Employees.

**(d) Service Award.**

Defendants will not oppose Plaintiff's Counsel request up to five thousand dollars and zero cents (\$5,000.00) of the Gross Settlement Amount as a service award for Plaintiff. This sum is the payment for Plaintiff's service as PAGA representative plaintiff. If this request is not approved or is reduced by the Court, this settlement shall not be set aside, and any amount not approved and/or reduced will be included in the Net Settlement Amount to be paid to the Aggrieved Employees. This award is in addition to the Plaintiff's respective share of the of the Net Settlement Amount as an Aggrieved Employee.

**(e) Plaintiff's General Release of All Claims.**

Separate and apart from the Gross Settlement Amount, with the condition that this Court approves of this PAGA Settlement, CDI will pay Plaintiff ten thousand dollars and zero cents (\$10,000) ("Individual Settlement Payment"), less applicable withholdings and deductions, for a general release of all of his individual claims. This payment is in addition to the Plaintiff's service award, if any, and Plaintiff's respective share of the of the Net Settlement Amount as an Aggrieved Employee.

(f) **Net Settlement Amount.**

The Net Settlement Amount shall be determined by deducting Plaintiff's Attorney's Fees, Litigation Costs, Service Award, , and Settlement Administration Costs as set forth in section 3.01(a), (b), (c), and (d) from the Gross Settlement Amount. The Net Settlement Amount shall be distributed as set forth below in section 3.04(b).

The Parties agree to use their best efforts to expedite the preparation and submission of the settlement documents. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed and shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to the approval and implementation of the payment of PAGA penalties as described in this Agreement.

**Section 3.02 Court Approval.**

The Parties will seek the Court's approval of the PAGA settlement and the payment of penalties as described in this Agreement by way of a stipulation or unopposed ex parte application, or as otherwise required by the Court, to be prepared and filed by Plaintiff's Counsel, subject to Defendants' Counsel's approval. Plaintiff's Counsel will submit this Agreement to the Court for its approval. Pursuant to Labor Code section 2699(1)(2), Plaintiff also will submit a copy of this Agreement to the Labor and Workforce Development Agency at the same time it is submitted to the Court. The Court's approval of the payment of the Gross Settlement Amount as described in this Agreement shall be embodied in a written Order.

**Section 3.03 Notice to Aggrieved Employees.**

(a) **Notice.**

Notice shall be provided to the Aggrieved Employees in the following manner:

- (1) No later than twenty-one (21) days after the Court approves this Settlement, Defendants shall provide the Settlement Administrator with a list of all Aggrieved Employees ("Aggrieved Employees List"). The Aggrieved Employees List shall state the first name and last name in separate columns for each Aggrieved Employee; the last known home address for each

Aggrieved Employee; each Aggrieved Employee's social security number, if available, and each Aggrieved Employee's respective number of pay periods worked for Defendants during the PAGA Period.

- (2) The Settlement Administrator shall utilize the United States National Change of Address ("NCOA") database to determine the best most recent addresses for the Aggrieved Employees prior to mailing the notices and settlement checks.
- (3) Within thirty (30) days after the Final Deposit Date (defined below), the Settlement Administrator shall mail the Notice of PAGA Settlement (attached hereto as Exhibit "A") together with a settlement payment to all Aggrieved Employees by first-class United States mail, postage prepaid, with directions to the Postmaster to forward the Notice of PAGA Settlement and return all undeliverable Notices to the Settlement Administrator. For each Notice of PAGA Settlement that is returned as undeliverable, the Settlement Administrator shall promptly attempt to locate the Aggrieved Employee by performing a skip trace and shall re-mail the Notice and settlement check no later than ten (10) days following receipt of the undeliverable Notice. If no new address is located via skip trace, or if a Notice is returned as undeliverable a second time, the Settlement Administrator need not attempt another mailing.

#### **Section 3.04 Settlement Payment Procedures.**

**(a) Deposit of Gross Settlement Amount with Settlement Administrator.**

CDI shall deposit the Gross Settlement Amount within forty-five (45) days of the Effective Date (the "Deposit Date").

**(b) PAGA Payments.**

The Net Settlement Amount will be subdivided as follows: 75% of the payment will be paid to the LWDA and 25% will be paid to Aggrieved Employees. The 25% of the Net Settlement Amount payable to the Aggrieved Employees will be divided among the Aggrieved Employees based on the following formula:

Twenty-Five Percent of the Net Settlement Amount shall be divided by the total pay periods worked for Defendants by all Aggrieved Employees during the PAGA Period to yield the “Employee Settlement Share Value.” Each Aggrieved Employee shall be paid their Employee Settlement Share Value multiplied by their individual total pay periods worked for Defendants during the PAGA Period.

The payments to the Aggrieved Employees and the LWDA shall be made by the Settlement Administrator no later than thirty (30) days after the Deposit Date.

All Aggrieved Employees will receive an IRS Form 1099 for their portion of the settlement, if deemed required by the Settlement Administrator (in compliance with IRS guidelines).

The settlement checks issued to Aggrieved Employees shall remain valid for one hundred eighty (180) days. Funds from any settlement checks remaining uncashed after one hundred eighty (180) days shall be sent by the Settlement Administrator to Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code section 1500 *et seq.*, for the benefit of that Aggrieved Employee. The Parties agree that this disposition results in no “unpaid residue” under California Civil Procedure Code section 384, as the entire Net Settlement Amount will be paid out to the Aggrieved Employees and the LWDA. Therefore, Defendants will not be required to pay any interest on said amount. In the event that an Aggrieved Employee’s Individual Settlement Payment is distributed to the Controller of the State of California, the terms of the final judgment and the Release of Claims will nevertheless be binding upon that Aggrieved Employee.

**(c) Plaintiff’s Attorneys’ Fees, Litigation Costs, and Service Fees Payment.**

No later than thirty (30) days after the Deposit Date, the Settlement Administrator shall pay the court approved Plaintiff’s Attorneys’ Fees and Litigation Costs to Plaintiff’s Counsel.

Any Plaintiff’s Attorneys’ Fees or Litigation Costs awarded to Plaintiff’s Counsel and Service Fees awarded to Plaintiff by the Court shall be deducted from the Gross Settlement Amount for the purpose of determining the Net Settlement Amount. The “future” aspect of these amounts includes, without limitation, all time and expenses expended by Plaintiff’s Counsel in defending the Settlement and securing Approval of the Agreement (including any appeals therein). There will be no additional charge of any kind to the Aggrieved Employees or

request for additional consideration from Defendants for such work. This amount shall include all attorneys' fees, litigation costs, service fees, and expenses for which Plaintiff and Plaintiff's Counsel could claim under any legal theory whatsoever in connection with the Action.

**(d) Settlement Administrator Expenses.**

Upon completion of the Settlement Administrator's duties under the Agreement, the Settlement Administrator shall pay itself its actual costs in administering the settlement, up to the \$2,600 allocated to it for Settlement Administration Expenses.

**Section 3.05 Order Approving Settlement and Judgment.**

Plaintiff and Defendants will jointly submit, with the documents asking the Court to approve the settlement and this Agreement, an order based on the Settlement to be entered by the Court granting approval of the PAGA penalties and retaining jurisdiction over all matters relating to the administration, consummation, enforcement, and interpretation of the terms of this Agreement and entering judgment thereon and closing the case, after submission of proof by the administrator of the payment of all funds enumerated in the Settlement.

**Article IV.**

**Limitations On Use Of This Settlement.**

**Section 4.01 No Admission.**

Defendants deny liability for any claims alleged by Plaintiff on his own behalf or on behalf of the State of California and any of its agencies, including but not limited to the Department of Industrial Relations, Division of Labor Standards Enforcement, and Labor Workforce and Development Agency, and the Aggrieved Employees upon any claim or cause of action. This Agreement does not constitute, and is not intended to constitute, an admission by Defendants as to the merits, validity, or accuracy of any of the allegations or claims made against it in the Action.

Nothing in this Agreement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the negotiations leading to this Agreement, is intended by the Parties to

constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. The Parties themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding, as purported evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity, or for any other purpose. Notwithstanding the foregoing, this Agreement may be used in any proceeding before the Court that has as its purpose the interpretation, implementation, or enforcement of this Agreement or any orders or judgments of the Court entered in connection with the Agreement.

None of the documents produced or created by Plaintiff or the Aggrieved Employees in connection with the Action or this Agreement constitute, and they are not intended to constitute, an admission by Defendants of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.

**Section 4.02 Non-Evidentiary Use.**

Neither this Agreement nor any of its terms shall be offered or used as evidence by any of the Parties, or their respective counsel in the Action or in any other action or proceeding; provided, however, this shall not prevent this Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Agreement and to secure its approval by the Court.

**Section 4.03 Nullification.**

- (a) If the Court should for any reason refuse to approve the payment of PAGA penalties as described in this Agreement, then (1) except as set forth in this section 4.03, subdivisions (b) and (c), this Agreement shall be considered null and void, and (2) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect.

- (b) If the Court does not approve the payment of PAGA penalties as described in this Agreement, the Parties agree to meet and confer to address the Court's concerns. If the Parties are unable to agree on a resolution, the Parties agree to seek the assistance of mediator Hon. Herbert B. Hoffman (Ret.) to resolve any disputes.
- (c) Invalidation of any material portion of this Agreement shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

## **Article V.**

### **Release and Waiver of Claims.**

#### **Section 5.01 Plaintiff's and Aggrieved Employees' Release of PAGA Claims.**

Upon the final approval by the Court of this Settlement, Plaintiff and each Aggrieved Employee, shall, for the PAGA Period, fully release and forever discharge the Released Parties from the Released Claims that arose during the PAGA Period.

## **Article VI.**

### **Miscellaneous Provisions**

#### **Section 6.01 Voluntariness.**

This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any of the Parties, or of any other person, firm or other entity.

#### **Section 6.02 Amendments.**

The terms and provisions of this Agreement may be amended only by a written agreement that is both (a) signed by the Plaintiff and Defendants and their counsel and (b) approved by the Court. Any waiver of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement unless expressly so indicated otherwise.

#### **Section 6.03 Assignment.**

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Aggrieved Employee, Plaintiff's Counsel, or Defendants' Counsel without the express written consent of each other Party and their respective counsel hereto. The representations,

warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement and shall not be construed to confer any right or to avail any remedy to any other person. Plaintiff expressly warrants that he has not transferred to any person or entity any right or cause of action, or claim released by this Agreement.

**Section 6.04 Non-Cooperation with Third Party Claims.**

Unless compelled by a validly issued subpoena or court order, Plaintiff agrees not to invite, solicit, initiate, participate, or otherwise cooperate in any way in any legal or adversary proceedings, potential legal or adversary proceedings, or in any other public or private activity, taken against Defendants and/or any Releasees, which may be contemplated or initiated by any persons or entities not a party to this Agreement, regarding any of the claims released by this Agreement. Nothing within this Agreement is intended to prevent or interfere with Plaintiff's participation in any investigation, hearing, or proceeding conducted by any governmental agency, in accordance with applicable law.

Plaintiff and his counsel represent and warrant that they have not informed any persons not a Party to this Agreement of the terms or existence of this Agreement except as specifically authorized in this Agreement. Plaintiff's counsel further confirms that except for Plaintiff, Plaintiff's counsel is not currently representing any other parties adverse to Defendants and is not currently contemplating any other cases against Defendants on behalf of any person or entity. Plaintiff and Plaintiff's Counsel also agree that they will not Solicit ("Solicit" as used here is as defined in Rule 7.3, of the California Rules of Professional Conduct), directly or indirectly, any current or former employees of Defendants to pursue a claim against Defendants, and Plaintiff will not otherwise voluntarily assist other claimants adverse to Defendants. Nothing within this provision shall impose a restriction upon counsel's right to practice law as protected by Rule 5.6 of the California Rules of Professional Conduct.

Plaintiff and Plaintiff's counsel represent and warrant that neither they nor anyone acting on their behalf are aware of any individual or entity who has considered or intends to file claims of any

nature against the Defendants. Nothing in this Section 6.04 shall be construed as precluding Plaintiff's counsel from representing any person adverse to Defendants in the future.

Nothing in this section shall be construed as interfering with, restraining, or coercing the exercise of, Plaintiff's rights under Section 7 of the National Labor Relations Act, including the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, as well as the right to refrain from any or all such activities (Plaintiff's "Section 7 Rights").

**Section 6.05 Governing Law.**

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California.

**Section 6.06 Entire Agreement.**

This Agreement contains the entire understanding of the Parties hereto in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings among the Parties hereto with respect to the settlement of the Action.

**Section 6.07 Waiver of Compliance.**

Any failure of any Party, and/or Plaintiff's Counsel hereto to comply with any obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the extent permitted under applicable law, by the Party or Parties and their respective counsel hereto entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

**Section 6.08 Counterparts.**

This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken

together shall constitute but one and the same instrument. A scanned or faxed signature shall be valid as an original signature.

**Section 6.09 Attorneys' Fees and Costs.**

Except as expressly provided herein, Defendants and Plaintiff shall each bear its/his own attorney's fees and costs.

**Section 6.10 Dispute(s).**

Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, Plaintiff's Counsel and Defendants' Counsel shall meet and confer in an attempt to reach a resolution. If the Parties are unable to reach a resolution, they agree to submit any such dispute(s) to Hon. Herbert B. Hoffman (Ret.) for binding resolution. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other written or oral representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary or contradict its terms. In entering into this Agreement, the Parties agree that this Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and enforced under the laws of the State of California, both in its procedural and substantive aspects, without regard to its conflict of laws provisions. Any claim arising out of or relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior Court of the State of California for the County of San Diego. The foregoing is only limited to disputes concerning this Agreement and in no way limits or negates the enforceability and effect of the underlying arbitration agreement signed by Defendants and the Aggrieved Employees. Plaintiff, on his own behalf and on behalf of the Aggrieved Employees, and Defendants participated in the negotiation and drafting of this Agreement and had available to them the advice and assistance of independent counsel. As such, neither Plaintiff nor Defendants may claim that any ambiguity in this Agreement should be construed against the other.

**Section 6.11 Fair Settlement**

Plaintiff, Defendants, Plaintiff's Counsel, and Defendants' Counsel believe that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this

Agreement through arms-length negotiation, taking into account all relevant factors, current and potential, and is consistent with public policy, and fully complies with applicable provisions of law.

**Section 6.12 Binding.**

This Agreement shall bind and inure to the benefit of the Parties hereto and to their respective successors, assigns, legatees, heirs, and personal representatives.

**Section 6.13 Waiver of Appeals.**

The Parties waive all appeals from the Court's approval of the PAGA penalties, unless the Court materially modifies the settlement and/or the PAGA penalties.

**Section 6.13 Continuing Jurisdiction.**

The Court shall retain exclusive and continuing jurisdiction of this Action over all Parties and Aggrieved Employees to interpret and enforce the terms, conditions and obligations of this Agreement pursuant to Code of Civil Procedure section 664.6.

**Article VII.**

**Confidentiality**

**Section 7.01 Confidentiality.**

Plaintiff and his Counsel agree that they have not and will not publish the Agreement. In response to any inquiries Plaintiff will state that "the case was resolved and it was resolved confidentially" or words to that effect. Plaintiff's Counsel shall not report the Agreement or its content in any medium or in any publication, shall not post or report anything regarding the claims of Plaintiff or the Aggrieved Employees on their website, and shall not contact any reporters or media regarding the Agreement or its content. However, Plaintiff's attorneys are authorized to make a limited disclosure to the Court and the LWDA for the purposes of obtaining the approval of the settlement. This disclosure is limited to court filings and electronic submission of settlement documents to the LWDA and neither Plaintiff nor his counsel or representatives are permitted to disseminate or publish, distribute, or discuss the information provided to the Court in those filings outside the filings themselves and any hearing held on those filings, unless ordered otherwise by the Court. However, nothing in this Agreement shall preclude Plaintiff's counsel from identifying the

terms of this settlement to any future tribunal for purposes of establishing Plaintiff's counsel's adequacy as class counsel or as PAGA counsel.

**IN WITNESS WHEREOF**, the Parties have executed this Private Attorneys General Act Settlement Agreement on the date set forth below.

**APPROVED AND ACCEPTED.**

[SIGNATURES ON FOLLOWING PAGE(S)]

1/31/2024

Dated: \_\_\_\_\_

DocuSigned by:  
ANDY  
522BA7DD0F344DE...

By: \_\_\_\_\_  
Andrew Gonzalez

Dated: 2/2/24

Coin Drop Investments, LLC  
dba Coin-Op Gaslamp

Roy Ledo  
By: ROY LEDO  
Its: OWNER - MEMBER

Dated: 2/2/24

Sporting Fraternity, Inc.

Roy Ledo  
By: ROY LEDO  
Its: OWNER - CHAIRMAN

APPROVED AS TO FORM AND ATTORNEY OBLIGATIONS ONLY:

Dated: 2/1/2024

SULLIVAN & YAECKEL LAW  
GROUP



Eric K. Yaeckel  
Counsel for Andrew Gonzalez

Dated: 2/8/24

SOLOMON WARD SEIDENWURM &  
SMITH, LLP



Daniel E. Gardenswartz  
Counsel for Defendants

# **EXHIBIT A**

[CLAIMS ADMINISTRATOR LETTERHEAD]

Mailing Date

NOTICE OF SETTLEMENT

*Re: Andrew Gonzalez, et al. v. Coin Drop Investments, LLC, et al., San Diego County Superior Court  
Case No. 37-2023-00016775-CU-OE-CTL, filed April 21, 2023 (the “Lawsuit”)*

A settlement has been reached in the above-referenced Lawsuit.

On [date], 2024, the San Diego Superior Court issued an Order approving the settlement of claims brought pursuant to the Private Attorneys General Act of 2004 (“PAGA”). The Court approved a Settlement in the amount of \$75,000.00. After accounting for Plaintiff’s attorney’s fees of \$[amount] and costs of \$[amount]; Plaintiff’s service award of \$[amount]; and settlement administration costs of \$[amount]; the remaining amount will be \$[amount] (the “PAGA Penalties”). Pursuant to California law the State of California will receive \$[amount] (75% of the PAGA Penalties as required by law) and the eligible current and former non-exempt employees of Defendant Coin Drop Investments, LLC dba Coin-Op Gaslamp and/or Defendant Sporting Fraternity, Inc. (collectively “Defendants”) are receiving a pro rata share of the remaining \$[amount] (25% of the PAGA Penalties) based upon the number of pay periods he/she worked for Defendants from February 8, 2022 through [date the Court approves settlement]. The amount that you receive is based on the number of pay periods that you worked for Defendants from February 8, 2022 through [date the Court approves settlement].

By way of this Settlement, Defendants have been released from any and all claims under the PAGA relating to any and all facts and claims for PAGA penalties that were asserted in the Lawsuit, or could have been asserted under PAGA based on the facts alleged in the Lawsuit, including but not limited to any and all claims for PAGA penalties for violations of the California Labor Code governing: overtime wages, minimum wage for all hours worked, statutorily mandated rest periods and rest period premiums, statutorily mandated meal periods and meal period premiums, final wages and compensation at the time of separation, accurate itemized wage statements, reimbursement of necessary business expenses, payment of wages, and maintenance of accurate records on behalf of aggrieved employees (the “Released Claims”). Specifically, the Released Claims are claims for civil penalties under PAGA for violations of Labor Code §§ 201-203, 204, 226, 226.7, 510, 512, 516, 558, 1174, 1182.12, 1194, 1194.2, 1197, 1198, 2802, and 2804.

Defendants deny any liability or wrongdoing and contend, among other things, that they have complied at all times with the California Labor Code, the related California Wage Orders, and all other state and federal wage laws, and further contend that the Lawsuit is without merit.

You are receiving money under the Settlement because you are or were a non-exempt employee of Defendants within the State of California who worked one or more pay periods from February 8, 2022 through [date the Court approves settlement]. Your settlement amount is <<\$ Amount>>. Your enclosed check is valid for 180 days from the date of its issuance. After that date, you cannot cash the check and it will be null and void. Funds attributable to such uncashed checks will be sent 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 your name. **Even if you fail to cash the enclosed check, you will still be deemed to have waived all PAGA claims based on or arising from the Lawsuit, including all claims set forth in the release of claims described above.** However, nothing in this Settlement releases your individual wage and hour claims.

|  |                                                                                                                                                                                        |
|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <p><b><u>For Questions About the Settlement, Your Check, or Address Information, Please Contact:</u></b></p> <p>Phoenix Settlement Administrators<br/>[INSERT CONTACT INFORMATION]</p> |
|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|