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Attorneys for Plaintiff Fulvia Manzanares, on behalf of herself and all “aggrieved employees” pursuant to Labor Code § 2698 *et seq.*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

FULVIA MANZANARES, on behalf of
herself and all “aggrieved employees”
pursuant to Labor Code § 2698 *et seq.*,

Plaintiff,

v.

MALIBU FARM RESTAURANT AT THE
PIER, a California corporation, and DOES 1
through 10, inclusive,

Defendants.

CASE NO: 23SMCV04135

*Assigned to the Hon. Michael E. Whitaker,
Dept. 207*

**DECLARATION OF DANIEL F. GAINES
IN SUPPORT OF REQUEST FOR
DISMISSAL**

[Filed Concurrently: Request for Dismissal]

Complaint Filed: August 30, 2023

1 I, Daniel F. Gaines, declare as follows:

2 1. I am an attorney duly admitted to practice law in the State of California and I am a
3 managing shareholder at Gaines & Gaines, APLC, counsel of record for Plaintiff Fulvia Manzanares
4 (“Plaintiff”) in this matter. The matters set forth herein are of my own personal knowledge, and if
5 sworn as a witness, I could and would testify competently thereto.

6 2. On August 30, 2023, Plaintiff filed the instant Action seeking penalties on a
7 representative basis, on behalf of herself and all “aggrieved employees,” for Defendant Malibu Farm
8 Restaurant At The Pier’s (“Defendant”) alleged violations of California Labor Code and the Private
9 Attorneys General Act of 2004 (“PAGA”), codified as § 2698, *et seq.*, for failing to pay all overtime
10 wages earned, failing to provide meal and rest periods, or compensation in lieu thereof, failing to
11 retain records, failing to reimburse expenses, failing to issue complete and accurate wage statements,
12 and failing to timely pay all wages due at separation of employment. The alleged violations occurred
13 when Plaintiff worked for Defendant in Los Angeles County, California.

14 3. Following conversations with Defendant’s counsel, my office has ascertained that
15 Plaintiff’s claims are quite individual. Furthermore, liability is disputed. This determination is based
16 on information provided by Defendant’s counsel through discussions in this matter.

17 4. The Parties have negotiated a settlement of Plaintiff’s individual claims only, and the
18 PAGA representative claims will be dismissed without prejudice, as set forth in the concurrently-filed
19 request for dismissal. Attached hereto as **Exhibit A** is a true and correct redacted copy of the Parties’
20 Confidential Settlement Agreement and General Release of Claims (the “Settlement Agreement”).

21 5. The settlement does not contemplate the waiver of any claims by anyone other than
22 Plaintiff and does not provide for the waiver of PAGA representative claims asserted on behalf of any
23 employee or the State, such that there is no allocation of civil penalties in the Settlement.

24 6. No notice is required to be given to the aggrieved employees because no notice of the
25 pending Action was ever given; there has been no publicity of which the Parties are aware; neither
26 Plaintiff nor my office have communicated with any absent aggrieved employees about the Action;
27 there is no other pending action, of which the Parties are aware, brought by any aggrieved employee;
28

1 and the aggrieved employees are not reasonably ascertainable at the present time; consequently, no
2 absent aggrieved employee will suffer prejudice as a result of this dismissal.

3 7. Plaintiff, therefore, requests that the Court enter a dismissal of this action *with*
4 *prejudice* as to Plaintiff's individual claims and *without prejudice* as to the PAGA representative
5 claims, pursuant to the request submitted concurrently herewith.

6 8. Concurrent with the filing of this Request for Dismissal, Plaintiff has submitted the
7 Settlement Agreement to the LWDA in compliance with Labor Code section 2699(1)(2).

8 I declare under penalty of perjury under the laws of the State of California that the foregoing
9 is true and correct and was executed on December 5, 2023, at Westlake Village, California.

10
11 *Daniel F. Gaines*
12 _____
13 DANIEL F. GAINES
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EXHIBIT A

**CONFIDENTIAL SETTLEMENT AGREEMENT
AND GENERAL RELEASE OF CLAIMS**

This Confidential Settlement Agreement and General Release of Claims ("Agreement") is entered into by and between Malibu Farm Restaurant at the Pier (the "Company") and Fulvia Manzanares ("Employee") (the Company and Employee are collectively referred to as the "Parties") with respect to the following facts:

- A. The Company currently employs Employee as a member of its kitchen staff;
- B. On or about August 30, 2023, the Employee filed a representative action complaint against Company in Los Angeles Superior Court, Case No. 23SMCV04135, pursuant to California's Private Attorneys General Act ("PAGA") alleging an entitlement to civil penalties for the following alleged violations of the California Labor Code: §§ 201, 202, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174, 1174.5, 1194, and 2802 (the "Complaint"). Employee also alleged additional individual claims relating to race and ethnic discrimination and retaliation pursuant to the California Fair Employment and Housing Act ("FEHA"). The Company denies each and every allegation of wrongdoing contained in, and relating to, Employee's Complaint; and
- C. The Parties now desire to settle all claims and issues that have been raised, or could have been raised, in relation to Employee's employment with Company, and arising out of or in any way related to the acts, transactions, or occurrences involving Employee, including, but not limited to, Employee's employment with Company or termination of that employment, on the terms as set forth below.
- D. As part of this Agreement, Employee understands that her employment with the Company will be terminated, and her final day of employment will be November 17, 2023. Employee will be issued her final paycheck, including unpaid wages for hours worked, through the Effective Date, in addition to the Settlement Amount set forth below.

NOW, THEREFORE, in consideration of the promises and obligations set forth in this Agreement, the Parties agree as follows:

1. No Admission of Liability. Nothing in this Agreement shall be construed as an admission by the Company of any wrongdoing, liability, or noncompliance with any federal, state, or local rule, ordinance, statute, common law, or other legal obligation. The Company specifically disclaims and denies any wrongdoing or liability to Employee.
2. Payment. In consideration of Employee's execution of and compliance with all obligations contained in this Agreement, including Employee's general release of claims and agreement to maintain confidentiality, the Company will pay Employee the gross amount of [REDACTED] (the "Settlement Amount"). The Settlement Amount will be paid as follows: one (1) check made payable to "Fulvia Manzanares" in the gross amount of [REDACTED] less applicable withholdings and deductions, which the Parties agree represents a wage payment, for which Company will issue Employee a Form W-2, and

(2) one check made payable to "Gaines & Gaines, APLC Client Trust Account" in the gross amount of [REDACTED] without withholdings or deductions, which the Parties agree represents non-economic damages, including but not limited to, emotional distress, compensatory damages, punitive damages, and costs and attorneys' fees, for which Company will issue "Gaines & Gaines, APLC" a Form 1099-Misc. All attorneys' fees and costs incurred by Employee will be paid from the Settlement Amount. The Settlement Amount will be paid and a fully executed copy of this Agreement will be mailed to Gaines & Gaines, APLC, 4550 Thousand Oaks Blvd., Suite 100, attention Daniel Gaines, Esq., within seven (7) calendar days of the Effective Date, provided Employee returns a copy of the Agreement signed by Employee to Company at Dentons US, LLP, 4655 Executive Drive, San Diego, California, 92121, attention Carl J. Lehman, and provided that Employee must also supply Company with an IRS Form W-9 for "Gaines & Gaines, APLC."

3. Indemnification by Employee and No Representation Regarding Tax Issues. Employee agrees and acknowledges that the Company and its counsel have not made any representations to Employee regarding the tax consequences of any payments or amounts received by Employee under this Agreement. Employee agrees to indemnify the Company against the payment of any taxes, interest, penalties and other liabilities or costs that may be assessed as a result of her failure to pay taxes due on the Settlement Amount. Employee further agrees and acknowledges that, with the sole exception of her final paycheck, Employee has been properly paid for all hours worked for the Company, that all salary, wages, commissions, bonuses, and other compensation due to Employee have been paid, and that Employee is not owed anything else from the Company other than as provided for in this Agreement.

4. General Release and Waiver of Claims. In exchange for, and conditioned upon the Company's payment of, the consideration provided by the Company in this Agreement, Employee and Employee's heirs, executors, representatives, administrators, agents, and assigns (collectively the "Releasors") irrevocably and unconditionally fully and forever waive, release, and discharge the Company, including the Company's parents, subsidiaries, affiliates, predecessors, successors, joint employers, and assigns, and each of its and their respective agents, officers, directors, employees, shareholders, trustees, and partners (collectively, the "Released Parties"), from any and all claims, demands, actions, causes of action, judgments, rights, fees, damages, debts, obligations, liabilities and expenses (inclusive of attorneys' fees) of any kind whatsoever, whether known or unknown, (collectively, the "Claims"), that the Releasors may have or have ever had against the Released Parties, or any of them, arising out of, or in any way related to, Employee's hire, benefits, employment, termination, or separation from employment with the Company by reason of any actual or alleged act, omission, transaction, practice, conduct, occurrence, or other matter from the beginning of time up to and including the date of Employee's execution of this Agreement, including, but not limited to:

4.1 Any and all claims under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Family and Medical Leave Act, the California Family Rights Act, the Fair Labor Standards Act, the Equal Pay Act, the Age Discrimination in Employment Act, the Employee Retirement Income Security Act, the Civil Rights Act of

4.2 Any and all claims arising under tort, contract, or quasi-contract law, including but not limited to claims of breach of an express or implied contract, tortious interference with a contract or prospective business advantage, breach of the covenant of good-faith and fair dealing, promissory estoppel, detrimental reliance, invasion of privacy, nonphysical injury, personal injury or sickness, or any other harm, wrongful or retaliatory discharge, fraud, defamation, false imprisonment, and negligent or intentional infliction of emotional distress; and

4.4 This General Release is not intended to bar any claims that, by law, may not be waived, such as claims for workers' compensation benefits, unemployment insurance benefits, and statutory indemnity. In addition, this General Release does not prevent Employee from contacting, providing information to, or filing a charge with any federal, state, or local government agency or commission, including but not limited to the Equal Employment Opportunity Commission ("EEOC"), the Securities and Exchange Commission ("SEC"), or the National Labor Relations Board ("NLRB"). Employee is prevented, however, to the maximum extent permitted by law, from obtaining any monetary or other personal relief for any of the claims that Employee has released in this Paragraph 4 and its subparts with regard to any charge or claim that Employee may file or which may be filed or otherwise brought on Employee's behalf. Nothing in this Agreement is intended to or shall be interpreted: (i) to restrict or otherwise interfere with Employee's obligation to testify truthfully in any forum; or (ii) to restrict or otherwise interfere with Employee's right and/or obligation to contact, cooperate with, provide information to, or participate in any investigation by any government agency or commission (including but not limited to the EEOC, SEC, or NLRB). Nothing in this Agreement may be construed to interfere with, restrain, or coerce employees in the exercise of their rights under the NLRA.

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~~Complaint. Employee further agrees that Employee will not voluntarily participate in any other individual's litigation, grievance, or administrative claim against any of the Released Parties, nor encourage any other individual to pursue any litigation, grievance, or administrative claim against any of the Released Parties. To the extent permitted by law, Employee further covenants that she will bring no further claims against Company pursuant to PAGA either on an individual or representative basis on behalf of other allegedly aggrieved employees.~~

6. Section 1542 of the California Civil Code. This Agreement is intended to be effective as a general release of and bar to all claims as stated in Section 4. The Releasers specifically waive the protections of California Civil Code Section 1542, which states: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY." Employee acknowledges that Employee may later discover claims or facts in addition to or different from those which Employee now knows or believes to exist with regard to the subject matter of this Agreement, and which if known or suspected at the time of executing this Agreement may have materially affected its terms. Nevertheless, the Releasers waive any and all claims that might arise as a result of such different or additional claims or facts.

7. Stipulation of Dismissal. Employee agrees to sign and file a Request for Dismissal of the Complaint, with prejudice as to Employee's individual claims and without prejudice as to the representative PAGA claims, within ten (10) days of receipt of the Settlement Payment. The Court's dismissal of the Complaint in its entirety is a condition on Employee's entitlement to the Settlement Payment under this Agreement. Should the Court fail or refuse to grant the request for dismissal, this Agreement is null and void and Employee agrees to return the Settlement Payment, in its entirety, to the Company. Employee represents that Employee has not filed with any court, administrative agency, or arbitral forum any action or claim against Employer other than the Complaint. Plaintiff shall submit a redacted copy of this Agreement (i.e. with the three monetary amounts in paragraph 2 above blacklined) to: (1) the Court in connection with the Request for Dismissal and (2) to the California Labor and Workforce Development Agency ("LWDA") via the LWDA's online portal.

8. Confidentiality.

8.1 Employee agrees not to disclose to others the existence or terms of this Agreement, except that Employee may disclose this Agreement to the Employee's spouse, domestic partner, attorney, and tax advisor, if these individuals agree not to disclose to others the existence or terms of this Agreement, to the extent allowed under the law.

8.2 Permitted Disclosures. Nothing in this Agreement shall be construed to prevent disclosure of Confidential Information as may be required by applicable law or regulation, or pursuant to the valid order of a court of competent jurisdiction or an

authorized government agency, provided that the disclosure does not exceed the extent of disclosure required by such law, regulation, or order. Employee shall promptly provide written notice of any such order to the Company at Dentons US, LLP, 4655 Executive Drive, San Diego, California, 92121, attention Carl J. Lehman. Nothing in this Agreement prevents or restricts the disclosure of factual information relating to claims filed in a civil or administrative action regarding sexual assault or battery, harassment, or discrimination based on a legally protected characteristic, failure to prevent workplace harassment or discrimination, or retaliation against a person for reporting or opposing unlawful harassment or discrimination. Furthermore, nothing in this Agreement prohibits or restricts Employee's testimony in an administrative, legislative, or judicial proceeding, as requested by court order, subpoena, or written request from an administrative agency or the legislature, regarding alleged criminal conduct or alleged sexual harassment. Further, this Agreement in no way prohibits or is intended to restrict any protected rights under Section 7 of the NLRA or otherwise prohibit disclosing information as permitted by law.

9. Non-Defamation. Employee agrees and covenants not to make any remarks that are maliciously untrue and made with knowledge of their falsity with reckless disregard for their truth or falsity (i.e., defamatory) to the media, general public, or any other person or entity about the Company or any of the Released Parties.

10. Return of Property. Employee represents that Employee has returned all the Company's property.

11. Neutral Reference. In response to a request for reference, and consistent with Company policy, the Company will only provide your job title and dates of employment.

12. No Contest of Unemployment. If the Employee applies for unemployment benefits, the Company shall not actively contest it. However, the Company will respond truthfully to any requests for information about Employee received from the Employment Development Department (EDD).

13. ADEA Release, Effective Date, and Revocation. The General Release includes a release of claims arising under the Age Discrimination in Employment Act ("ADEA"), as amended by the Older Workers Benefit Protection Act ("OWBPA") and its implementing regulations. By signing this Agreement, Employee acknowledges and confirms that Employee: (i) has read and understood this Agreement; (ii) by this Agreement, has been advised in writing to consult with an attorney of Employee's choice, and has consulted with an attorney before signing this Agreement; (iii) knowingly, freely, and voluntarily agrees to all of the terms and conditions in this Agreement, including, without limitation, the General Release; (iv) has received good and valuable consideration for signing this Agreement, which is in addition to anything of value Employee was otherwise entitled to receive; (v) was given at least twenty-one (21) days to consider the terms of this Agreement and consult with counsel, but may sign it before the 21 days expire; (vi) has seven (7) days after signing this Agreement to revoke the Agreement by delivering a notice of revocation to the Company at Dentons US, LLP, 4655 Executive Drive, San Diego, California, 92121, attention Carl J. Lehman, before the

end of this seven-day period; and (vii) understands that the General Release does not apply to rights and claims that may arise after Employee signs this Agreement.

If Employee does not revoke this Agreement, the Agreement becomes effective on the eighth day after Employee signs it (the "Effective Date"). No part of this Agreement is effective or enforceable until the Effective Date.

14. Successors and Assigns. This Agreement is binding on Employee's heirs, family members, executors, agents, and assigns.

15. Governing Law, Jurisdiction, and Venue. This Agreement and all matters arising out of or relating to this Agreement and Employee's employment by the Company, whether sounding in contract, tort, or statute, for all purposes shall be governed by and construed in accordance with the laws of the state of California without regard to any conflict of laws principles that would require the laws of any other jurisdiction to apply.

16. Attorneys' Fees and Costs. The Parties agree that each party shall pay for their own attorney's fees and expenses related to all claims and issues in this matter. In the event of any dispute, controversy, claim, or action arising out of or related to this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection with the dispute, controversy, claim, or action.

17. Entire Agreement. Unless specifically provided herein, this Agreement contains all of the understandings and representations between the Company and Employee relating to the subject matter in this Agreement and supersedes all prior and contemporaneous understandings, discussions, agreements, representations, and warranties, both written and oral, regarding such subject matter; provided, however, that nothing in this Agreement modifies, supersedes, voids, or otherwise alters any arbitration, confidentiality, nondisclosure, or related agreements signed by Employee during Employee's employment with Company, which remain in full force and effect. In the event of any inconsistency between this Agreement and any other agreement between Employee and Company, the statements in this Agreement shall control.

18. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, or enforceable only if modified, such finding shall not affect the validity of the remainder of this Agreement, which shall remain in full force and effect and continue to be binding on the Parties.

19. Interpretation. Captions and headings of the sections and paragraphs of this Agreement are intended solely for convenience, and no provision of this Agreement is to be construed by reference to the caption or heading of any section or paragraph. This Agreement shall not be construed against either Party as the author or drafter of the Agreement.

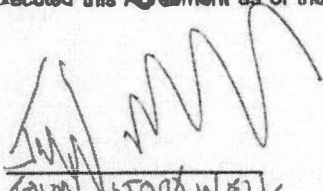
20. Counterparts. The Parties may execute this Agreement in counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument.

21. Acknowledgment of Full Understanding. EMPLOYEE ACKNOWLEDGES AND AGREES THAT EMPLOYEE HAS FULLY READ, UNDERSTANDS, AND VOLUNTARILY ENTERS INTO THIS AGREEMENT. EMPLOYEE ACKNOWLEDGES AND AGREES THAT EMPLOYEE HAS HAD AN OPPORTUNITY TO ASK QUESTIONS AND CONSULT WITH AN ATTORNEY OF EMPLOYEE'S CHOICE BEFORE SIGNING THIS AGREEMENT. EMPLOYEE FURTHER ACKNOWLEDGES THAT EMPLOYEE'S SIGNATURE BELOW IS AN AGREEMENT TO RELEASE THE COMPANY FROM ANY AND ALL CLAIMS THAT CAN BE RELEASED AS A MATTER OF LAW.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Execution Date above.

Malibu Farm Restaurant at the Pier

Dated: 11/20/23

Signature: 

Name: JOHN STODWELL

Title: COO

Fuivia Manzanaras

Dated: 11/16/23

Signature: Fuivia Manzanaras

125350796V-1

1 **PROOF OF SERVICE AND CERTIFICATION**

2 I am employed in the County of Ventura, State of California. I am over the age of 18 and not a party to the
3 within action; my business address is 4550 East Thousand Oaks Boulevard, Suite 100, Westlake Village, CA 91362.

4 _____ (For messenger) my business address is:

5 On December 6, 2023, I served the foregoing document described as **DECLARATION OF DANIEL F.**
6 **GAINES IN SUPPORT OF REQUEST FOR DISMISSAL** on the interested parties in this action by placing a true
7 copy thereof enclosed in sealed envelopes addressed as follows:

8 **Carl J. Lehman, Esq.**
9 **DENTONS US LLP**
10 **4655 Executive Drive, Suite 700**
11 **San Diego, CA 92121**

12 X (BY ☐ U.S. MAIL/ BY ☐ CERTIFIED MAIL, RETURN RECEIPT REQUESTED) The sealed envelope was
13 mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection
14 and processing correspondence for mailing. It is deposited with United States postal service on that same
15 day in the ordinary course of business. I am aware that on motion of party served, service is presumed
16 invalid if postal cancellation date or postage meter date is more that one day after date of deposit for
17 mailing in affidavit.

18 _____ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or
19 other facility regularly maintained by the express service carrier or delivered the sealed envelope to an
20 authorized carrier or driver authorized by the express carrier to receive documents.

21 _____ (BY ELECTRONIC SERVICE) The above-stated document was submitted for service by electronic transmission
22 via email pursuant to an agreement between counsel on the counsel of record listed above.

23 X (UPLOADED TO LWDA WEB PORTAL) I caused the above-described documents to be delivered to the Labor
24 & Workforce Development Agency via online process at the PAGA Filing website (www.dir.ca.gov)
25 in accordance with the procedure imposed by the LWDA.

26 I certify that the above document was printed on recycled paper.

27 I declare under penalty of perjury that the foregoing is true and correct.

28 Executed on December 6, 2023, at Westlake Village, California.

29 _____
30 JEREMY REYES