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County of Los Angeles
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Executive Officer/Clerk of Court,
By V. Sino-Cruz, Deputy Clerk

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Attorneys for Plaintiff Luis Gutierrez

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

ROBERTO ARMENTA, an aggrieved
employee, on behalf of himself and other
current and former employees,

Plaintiffs,

vs.

FM RESTAURANTS HQ, LLC, an entity
unknown; FM RESTAURANTS HOLDCO,
LLC dba Xperience Restaurant Group, an entity
unknown; FM RESTAURANTS CHEVY'S
OPCO, LLC, an entity unknown; FM
RESTAURANTS SIGNATURE OPCO, LLC,
an entity unknown; FM RESTAURANTS
ACAPULCO OPCO, LLC, an entity unknown;
FM RESTAURANTS LAS BRISAS OPCO,
LLC, an entity unknown; and RESTAURANTS
EL TORITO OPCO, LLC, an entity unknown;
and DOES 1 through 50, inclusive,

Defendants.

Case No. 23STCV25827

Assigned For All Purposes To:
Hon. Gail Killefer; Dept. 37

**DECLARATION OF KENNETH YOON
IN SUPPORT OF PLAINTIFFS' MOTION
FOR APPROVAL OF PRIVATE
ATTORNEYS GENERAL ACT (LABOR
CODE § 2698, ET SEQ.) SETTLEMENT
AGREEMENT**

Date: May 29, 2025
Time: 8:30 a.m.
Place: Dept. 37

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1 databases that maintain so much of the relevant information in wage and hour litigation. I
2 believe that my formal education in mathematics, statistics and computer science provides the
3 background knowledge to litigate wage and hour class action with better understanding than
4 counsel without such background. I believe that without this type of inherent knowledge
5 (knowledge not based on reliance on expert consultants), I could not have as effectively
6 represented Plaintiffs and the Class nor my other clients in other wage and hour litigation.

7 5. My firm's primary focus is employment law. I have handled a significant
8 number of wage-and-hour matters, particularly class actions. I have a practice that encompasses
9 cases in the California Superior Courts and Courts of Appeal and the United States District
10 Courts for the Central, Northern and Eastern Districts of California and before the United States
11 Court of Appeals for the Ninth Circuit.

12 6. I have been preliminarily approved as class counsel in a number of class actions.
13 I have been appointed class counsel after contested certification motions in several actions. The
14 following matters are just a sampling of the cases that have been granted final approval in which
15 I have been approved as class counsel: *Briggs v. Custom Building Products, Inc.*, Los Angeles
16 Superior Court Case No. BC 343656; *Rangel v. United Title Company, et al.*, Los Angeles
17 Superior Court Case No. BC 347222; *Bernandez, et al. v. Roscoe's House of Chicken N Waffles*,
18 Los Angeles Superior Court Case No. BC 351467; *Campbell v. Applebee's International, Inc.*,
19 et al., San Diego Superior Court Case No. 37-2007-00064259-CU-OE-CTL; *CVS Pharmacy*
20 *Wage and Hour Cases*, Judicial Council Coordination Proceeding No. 4539; *McBride v. Ensign*
21 *United States Drilling (California), Inc.*, Los Angeles Superior Court Case No. BC 400742;
22 *Javier, et al. v. Davita Inc., et al.*, Los Angeles Superior Court Case No. BC 400811, *Napoto v.*
23 *DHL Express (USA), Inc.*, et al., Northern District of California Case No 2009-CV-09-01551-
24 JL; *Lugliani v. Kinder Morgan Energy Partners, L.P., et al.*, Central District of California Case
25 No. SACV 10-1303-JAK(VBKx). I argued and was counsel of record in two wage and hour
26 matters that have resulted in influential 9th Circuit opinions: *Abdullah v. U.S. Security*
27 *Associates, Inc.*, 731 F.3d 952 (9th Cir. 2013), and *Urbino v. Orkin Services of California, Inc.*,
28 726 F.3d 1118 (9th Cir. 2013). I also argued before the Court of Appeal and was counsel of

1 record on the wage and hour matter *Nieto v. Fresno Beverage Co., Inc.*, 33 Cal. App. 5th 274
2 (2019). I also tried a wage and hour class action to verdict in federal court: *Hamilton v. Wal-*
3 *Mart Stores, Inc.*, Case No. 5:17-cv-01415 (C.D. Cal. April. 12, 2019) (jury awards class \$6M
4 in meal break suit). My firm handled the cross-appeals arising from that judgment. *Hamilton v.*
5 *Wal-Mart Stores, Inc.*, 39 F.4th 575 (9th Cir. 2022) (holding manageability does not apply to
6 PAGA).

7 7. Also associated with my firm and serving as Plaintiffs' Counsel in this action
8 (and Class Counsel in the related district court action) is Stephanie E. Yasuda. Ms. Yasuda was
9 involved on an as-needed basis. I directly supervised all attorneys' work product to ensure the
10 quality of the work, the necessity of the work, and to minimize duplication of attorney time. Ms.
11 Yasuda received her J.D. from Loyola Law School, Los Angeles, cum laude, in 2009, where she
12 graduated in the top 10% of her class. She is admitted to practice in the State of California. Ms.
13 Yasuda was recognized as a Super Lawyer by California Super Lawyers Magazine for 2020 to
14 2025, after having been recognized as a Rising Star by that publication for the years 2018-2019.
15 Ms. Yasuda has served as class counsel in numerous class actions that have been granted final
16 approval, and Ms. Yasuda is currently handling several class and representative actions pending
17 in state and federal court.

18 **APPROVAL OF THE PAGA SETTLEMENT**

19 8. Marked and attached hereto as "Exhibit 1" is the Stipulation and Agreement for
20 PAGA Representative Action Settlement (hereinafter "Settlement," "Agreement," or
21 "Settlement Agreement") entered into by and between Plaintiffs Roberto Armenta and Luis
22 Gutierrez ("Plaintiffs") and Defendant FM Restaurants HQ, LLC ("Defendant").

23 9. The "Aggrieved Employees" covered under the Settlement consist of the
24 following individuals: all non-exempt employees of Defendant who worked at any of
25 Defendant's restaurants in the State of California (including Acapulco, Chevys Fresh Mex, El
26 Torito, El Torito Grill, Las Brisas, SOL, and Solita) at any time during the PAGA Period.

27 10. Based on information available from Defendant, there are approximately 8,500
28 Aggrieved Employees. It should also be noted that Plaintiffs have satisfied the prerequisites

under California Labor Code § 2699.3(a), including and not limited to, providing the California Labor and Workforce Development Agency and the employer with written notice of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations, by way of written correspondence on August 11, 2023, October 23, 2023, December 27, 2023, and February 21, 2025, submitted to the California Labor and Workforce Development Agency online (in conformity with the then-applicable submission requirement) and sent to Defendant by U.S. Certified Mail. Attached hereto as “Exhibit C” to the Settlement are true and correct copies of correspondences sent to the LWDA and Defendant. After more than sixty-five (65) days elapsed from the date of the initial letter without Plaintiff receiving any response from the LWDA, in conformity with the requirements under the PAGA statute, on October 20, 2023, Plaintiff Armenta filed his initial complaint for penalties in this action.

11. The aggrieved employees receive the following benefits from the Settlement: (1) their penalty recoveries over a reasonably short period of time as opposed to waiting additional years for the same, or possibly worse, result; and (2) a guaranteed result that avoids the risk that Defendant is unable to pay after trial and appeal rights are exhausted.

12. The “Gross Settlement Amount” means the amount of \$345,000 that Defendant will pay as a result of the Settlement. The “Net Settlement Amount” shall be the Gross Settlement Amount, less the following amounts: (1) the attorneys’ fees (up to 35%) to PAGA Counsel; (2) up to \$25,000 for reimbursement of actual litigation costs to PAGA Counsel (the actual amount which is \$16,511.22); (3) the Enhancement Payment of up to \$5,000 to each Plaintiff, \$10,000 total; and (4) Settlement Administration Costs to CPT Group for administration costs in the amount of \$28,000.¹ Assuming the proposed attorneys’ fees, litigation costs, and Enhancement Payments are each approved, the Net Settlement Amount is currently estimated to be approximately \$161,250. Seventy-five percent (75%) of the Net Settlement Amount shall be transmitted to the LWDA, and twenty-five percent (25%) of the Net Settlement Amount shall be paid to the Aggrieved Employees, pursuant to California Labor

¹ Attached as Exhibit 2 is an estimate from CPT Group for \$28,000.

Code § 2699(i). No portion of the Gross Settlement Amount will revert to Defendant. The Individual PAGA Payment will be paid out to each Aggrieved Employee proportionally, respective number of pay periods of each Aggrieved Employee.

13. The Settlement is a compromise of disputed claims. Plaintiffs and their counsel recognize the expense and length of continued proceedings necessary to litigate the disputes through trial and any possible appeals. Plaintiffs and their counsel have also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. Plaintiffs and their counsel are also aware of the burdens of proof necessary to establish liability, both generally and in response to Defendant's defenses, and the difficulties in establishing Defendant's liability for, and the right to recover, penalties on behalf of Plaintiffs and other Aggrieved Employees. Plaintiffs and their counsel have also taken into account Defendant's agreement to enter into a settlement that confers significant relief upon the LWDA and Aggrieved Employees. Plaintiffs and their counsel were also concerned with the financial viability of Defendant. The restaurateur emerged from bankruptcy twice, most recently in 2018. The ability of Defendant to pay weighed in favor of reaching a settlement, as pursuing this case through verdict and appeals would also have the separate risk that the company could declare a third bankruptcy if Plaintiff prevailed. There is also no well-settled precedent on whether PAGA penalties are dischargeable in bankruptcy.

14. Considering all of the facts in this case, Plaintiffs and their counsel have determined that the Settlement represents a fair, adequate, and reasonable resolution of the PAGA claim, and that it is in the best interests of the LWDA and Aggrieved Employees.

15. The parties reached the proposed Settlement through arm's-length negotiations between counsel that occurred over the course of this litigation.

16. The proposed Settlement is presumptively fair because: (1) it is the product of non-collusive, arm's-length negotiations; (2) it was negotiated by counsel with significant experience in similar wage-and-hour litigation; and (3) it occurred after counsel for the parties engaged in investigation to evaluate the strength and potential value of the PAGA claim, and the risks of litigating this claim through trial.

1 17. PAGA Counsel obtained informal discovery, which included all the relevant
2 personnel policies and a sampling of time data for the aggrieved employees, as well as all time,
3 pay and policy documents specific to Plaintiffs. PAGA Counsel also obtained information as to
4 Defendant's financial condition as part of the mediation.

5 18. PAGA Counsel have used its experience and skills in litigating complex wage-
6 and-hour actions to bring this matter to a successful conclusion. PAGA Counsel reviewed and
7 analyzed Plaintiffs' records as well as a sampling of the aggrieved employee's time and pay
8 data as well as Defendant's employment policies. PAGA Counsel also performed other work
9 including case strategy and analysis, drafting, reviewing, and revising pleadings and motions,
10 attending court proceedings, undertaking calculations of the value of the claims, and engaging
11 in extensive settlement negotiations.

12 19. Plaintiffs' core allegations are that Defendant have systematically violated the
13 California Labor Code by failing to pay all regular and overtime wages, failing to provide all
14 required meal and rest breaks, failing to reimburse all business-related expenses, and failing to
15 provide accurate wage statements and timely payment of wages.

16 20. Although there is no manageability requirement for PAGA lawsuits, defendants
17 can still make the general argument that any particular person was paid correctly and provided
18 complaint breaks, or even if there were a policy violation, no harm resulted because a particular
19 person on a particular pay period did not work more than five hours (entitling them to a lunch),
20 or 3.5. hours (entitling them to a rest) or more than 8 hours (entitling them to overtime).

21 21. Defendant also argued that an important feature of PAGA is that a court retains
22 discretion to lower the penalties if, based on the facts and circumstances of the particular case,
23 to do otherwise would result in an award that is "unjust, arbitrary and oppressive, or
24 confiscatory." Defendant maintains and continues to maintain that it had legally-compliant
25 employment policies and practices throughout the statutory period at all of its California
26 locations. Defendant denies that it ever violated any provision of the California Labor Code,
27 including, but not limited to, those sections for which Plaintiffs seek penalties under the PAGA.
28 Even if, arguendo, such violations occurred, which Defendant denies, Defendant contend that

1 said violations would only be considered to be “initial violations” and thus heightened
2 “subsequent violation” penalties were not warranted. Finally, Defendant’s financial condition
3 would be a factor mitigating against imposition of maximum penalties.

4 **THE REQUESTED FEE, COSTS AND INCENTIVE PAYMENT ARE REASONABLE**

5 22. Yoon Law, APC has spent a total of 94.9 hours, performing tasks on behalf of
6 Plaintiff and the aggrieved employees, including anticipated time. I was the primary attorney
7 on this matter, and the vast majority of the time was performed by myself. Approximately 70%
8 of the work was performed prior to settlement and the remaining 30% was spent negotiating and
9 drafting the settlement documents, and preparing the settlement motion, declarations, etc. This
10 30% includes anticipated time attending the hearing and communicating with aggrieved
11 employees and ensuring the Settlement Administrator follows through on its responsibilities.
12 Most of the work was performed in investigating facts and reviewing data and documents and
13 communicating with the client and witnesses and communicating with Defendant and
14 Defendant’s counsel and communicating with Gutierrez’s counsel.

15 23. Although a percentage of the recovery fee award is proper, it should be noted
16 that the requested attorneys’ fees award is also justified under a simple lodestar analysis. In this
17 instance, based on the hours worked on this matter, and utilizing our current rates, the total
18 lodestar for work performed by this firm is \$99,057.50.

19 24. Although my firm was retained by Plaintiff on a pure contingency fee basis, with
20 my firm advancing the litigation costs, my firm does maintain records for time and “bill” our
21 cases like hourly retained attorneys. My billing rate for 2025 is \$1,075.00 per hour, which is my
22 rate for not only lodestar cross checks such as in this case, but for hourly work I perform as an
23 arbitrator. Based on my experience I know that this hourly rate is a reasonable hourly rate for
24 this type of litigation. I have been approved at my 2025 rate in Los Angeles County Superior
25 Court, and at prior slightly lower rates in several state and federal courts in California.

26 25. As stated above, also associated with my office is Stephanie E. Yasuda, who
27 assisted various tasks as needed. Ms. Yasuda’s billing rate for 2025 is \$875 per hour and she
28

has been approved at this rate in Los Angeles County Superior Court, and at her prior rates in several state and federal courts in California.

26. The work performed in this particular case, the background of our firm, as well as the individual backgrounds, training, and experience of the attorneys who worked on this matter, in litigating complex wage-and-hour class and PAGA representative actions, support a reasonable hourly rate of compensation for the work performed. The Settlement Agreement provides for litigation costs in the amount up to \$25,000 for reimbursement of litigation costs and expenses.

27. Yoon Law, APC has incurred total costs in this matter as set forth in the below chart.

Cost	Amount
Court Services	\$1,568.29
LWDA Fees	75.00
Mileage	9.63
Mediator Fee	7,700
Expert Data Consultant	1,500.00
Postage	91.26
Anticipated Costs (Filing Fees, etc.)	300.00
Total	\$11,244.18

These costs include anticipated costs, which include filing fees, electronic service fees, printing and mailing/delivery fees, that often arise after approval, including post approval filing with the Court. In my experience, due to delayed billing, it is normal we also incur fees from prior e-filing and e-service that are delayed a few months, such that we receive billings after the anticipating hearing date. These anticipated are my reasonable estimate as to these future costs.

28. It should be noted that PAGA Counsel have borne all of the risks and costs of litigation to date and will not receive any compensation until a recovery is obtained with respect to the PAGA claim. PAGA Counsel have litigated this dispute with Defendant about two years, with the very real possibility of an unsuccessful outcome and no fee or costs recovery of any kind.

29. PAGA Counsel also respectfully request that the Court approve Enhancement Payments in the amount of \$10,000 total to both Plaintiffs, to be paid out of the Gross

1 Settlement Amount. The proposed Enhancement Payment is fair and appropriate. By initiating
2 this action, Plaintiffs stepped into the shoes of the California Labor and Workforce
3 Development Agency and undertook the risks of initiating the lawsuit and serving in a
4 representative capacity. Plaintiffs have spent a substantial amount of time and effort gathering
5 and producing relevant documents and information, providing the facts and evidence necessary
6 to attempt to prove the allegations, speaking with other aggrieved employees about the case, and
7 discussing their employment with their counsel. Mr. Armenta was available whenever my firm
8 needed him and he actively tried to obtain information that would benefit the prosecution of the
9 PAGA claim. Accordingly, it is appropriate and just for Plaintiff to receive a reasonable
10 Enhancement Payment, in addition to his share as an Aggrieved Employee, for his services on
11 behalf of the California Labor and Workforce Development Agency as well as the other
12 aggrieved employees.

13
14 30. The negotiated terms of the Settlement are substantively the same as the terms as
15 the Court's sample PAGA settlement. My firm believes although the standard form does not
16 include an enhancement as standard, this is due to the sample being a compromise form
17 between several employee-side and employer-side law firms. It is my belief and understanding
18 that incentive payments such as the one requested here are regularly sought and granted.

19 31. I submit that the Settlement is fair, reasonable, and adequate, and that it is in the
20 best interest of the State of California and the aggrieved employees. The Settlement is within
21 the accepted range of recoveries for this type of litigation, given the monetary benefits provided
22 for by the Settlement and the risk, delay, and uncertainty relating to the PAGA claim and its
23 continued litigation, and the financial condition of Defendant.

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct.

26 Executed this 5th day of May 2025, at Pasadena, California.

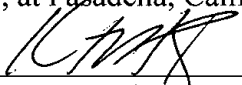
27
28 
Kenneth Yoon

EXHIBIT 1

1 RUTAN & TUCKER, LLP
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7 Attorneys for Defendant
 FM RESTAURANTS HQ, LLC

8
 KENNETH H. YOON (State Bar No. 198443)
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12 Attorneys for Plaintiff
 13 ROBERTO ARMENTA, ON BEHALF OF HIMSELF AND OTHER
 CURRENT AND FORMER EMPLOYEES

14 [Additional Counsel on Next Page]

15
 16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 FOR THE COUNTY OF LOS ANGELES, STANLEY MOSK COURTHOUSE

18 ROBERTO ARMENTA, an aggrieved
 employee, on behalf of himself and other
 19 current and former employees,

20 Plaintiffs,

21 vs.

22 FM RESTAURANTS HQ, LLC, an entity
 unknown; FM RESTAURANTS HOLDCO,
 LLC dba Xperience Restaurant Group, an entity
 23 unknown; FM RESTAURANTS CHEVY'S
 OPCO, LLC, an entity unknown; FM
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 an entity unknown; FM RESTAURANTS
 25 ACAPULCO OPCO, LLC, an entity unknown;
 FM RESTAURANTS LAS BRISAS OPCO,
 26 LLC, an entity unknown; and RESTAURANTS
 EL TORITO OPCO, LLC, an entity unknown;
 27 and DOES 1 through 50, inclusive,

28 Defendants.

Lead Case No. 23STCV25827

ASSIGNED FOR ALL PURPOSES TO:
 HON. GAIL KILLEFER; DEPT. 37

**STIPULATION AND AGREEMENT FOR
 PAGA REPRESENTATIVE ACTION
 SETTLEMENT**

Action Filed On: October 20, 2023
 Trial Date: Unassigned

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6 Attorneys for Plaintiff
LUIS GUTIERREZ, INDIVIDUALLY AND
7 ON BEHALF OF OTHER PERSONS
SIMILARLY SITUATED AND SIMILARLY
8 AGGRIEVED EMPLOYEES
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This Stipulation and Agreement for PAGA Representative Action Settlement is made and entered into by and between Plaintiffs Roberto Armenta and Luis Gutierrez (“**Plaintiffs**”), on behalf of themselves and as representatives of the State of California and the Aggrieved Employees (as defined in Paragraph 2, below), on the one hand, and Defendant FM Restaurants HQ, LLC (“**Defendant**”), on the other hand (collectively, the “**Parties**”), and is made in compromise of disputed claims. The Parties agree that the above-entitled representative action shall be settled on the terms and conditions set forth in this Stipulation, subject to the approval of the Court pursuant to Section 2699(1) of the California Private Attorneys’ General Act of 2004, Labor Code §§ 2698, *et seq.* (“**PAGA**”).

DEFINITIONS

1. “**Actions**” means and refers to the PAGA representative claims pending in (1) *Roberto Armenta v. FM Restaurants HQ, LLC, et al.*, Los Angeles County Superior Court, Case No. 23STCV25827 (“**Armenta Action**”), and (2) *Luis Gutierrez v. FM Restaurants HQ, LLC, et al.*, Los Angeles County Superior Court, Case No. 25STCV00629 (“**Gutierrez Action**”) (formerly Orange County Superior Court Case No. 30-2023-01368014-CU-OE-CXC prior to the case being transferred to Los Angeles County Superior Court).

2. “**Aggrieved Employees**” means all non-exempt employees of Defendant who worked at any of Defendant’s restaurants in the State of California (including Acapulco, Chevys Fresh Mex, El Torito, El Torito Grill, Las Brisas, SOL, and Solita) at any time during the PAGA Period (the “**Aggrieved Employees**”).

3. “**Agreement**,” “**Settlement**,” and “**Settlement Agreement**” mean this Stipulation and Agreement for PAGA Representative Action Settlement, which the Parties acknowledge sets forth all material terms and conditions of the Settlement between them, and which is subject to Court approval pursuant to Section 2699(1) of the California Private Attorneys’ General Act of 2004, Labor Code §§ 2698, *et seq.*

4. “**Court**” means the California Superior Court, County of Los Angeles.

5. “**Defendant**” means FM Restaurants HQ, LLC.

6. “**Effective Date**” of this Agreement shall be the later of: (i) the 61st day after service

1 of notice of entry of the Final Order and Judgment, if no appeal, review, or writ has been filed; or
 2 (ii) if an appeal, review, or writ is sought from the Final Order and Judgment, the day after the Final
 3 Order and Judgment is affirmed or the appeal, review, or writ is dismissed or denied, and the Final
 4 Order and Judgment are no longer subject to further judicial review. The Effective Date is
 5 conditioned upon all of the following occurring: (a) this Agreement has been signed by the Parties,
 6 PAGA Counsel, and Defendant's counsel; and (b) the Court has entered the Final Order and
 7 Judgment.

8 7. **"Enhancement Award"** means the amount the Court authorizes to be paid to each
 9 of the Representative Plaintiffs in addition to their respective Individual PAGA Payments, in
 10 recognition of their efforts and work in prosecution of the Actions, up to \$5,000.00 each.

11 8. **"Final Order and Judgment"** means the proposed order granting approval of the
 12 Settlement and entering Judgment, in the form substantially similar to that attached to this
 13 Agreement as Exhibit B.

14 9. **"Gross Settlement Amount"** means a maximum total of \$345,000.00, which
 15 includes all payments owing as a result of this Agreement and includes: the Net Settlement Amount;
 16 Settlement Administration Costs; Plaintiffs' Enhancement Award; and PAGA Counsel Attorneys'
 17 Fees and Costs as awarded by the Court.

18 10. **"LWDA Payment"** means a payment to the California Labor Workforce and
 19 Development Agency ("LWDA") in an amount equal to 75% of the Net Settlement Amount.

20 11. **"Net Settlement Amount"** is the Gross Settlement Amount less (1) PAGA
 21 Counsel's Attorneys' Fees and Costs; (2) Plaintiffs' Enhancement Award; and (3) Settlement
 22 Administration Costs.

23 12. **"PAGA Aggrieved Employee Payment"** means a payment of 25% of the Net
 24 Settlement Amount, which the Parties have agreed to pay the Aggrieved Employees in connection
 25 with the settlement of the PAGA Claim.

26 13. **"PAGA Claim"** means the claim for civil penalties under the PAGA alleged in the
 27 Actions and stated in Plaintiffs' August 11, 2023, October 23, 2023, December 27, 2023, and
 28 February 21, 2025 notice letters to the LWDA, true and correct copies of which are attached as

1 Exhibit C.

2 14. “**PAGA Counsel**” means Kenneth Yoon and Stephanie Yasuda of Yoon Law, APC
3 and Zorik Mooradian and Haik Hacopian of Mooradian Law, APC.

4 15. “**PAGA Period**” means August, 16, 2022, through August 20, 2024.

5 16. “**Pay Period**” means any of Defendant’s standard two week designated pay periods
6 during the PAGA Period for which an Aggrieved Employee worked for Defendant for at least one
7 day in California.

8 17. “**Released Claims**” means all claims or causes of action for PAGA penalties that
9 were, or could have been, asserted in Plaintiffs’ August 11, 2023, October 23, 2023, December 27,
10 2023, and February 21, 2025 notice letters to the LWDA and operative complaints in the Actions,
11 pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698,
12 *et seq.*, based on the alleged violations of Labor Code §§ 200, 201, 202, 203, 204, 210, 216, 218.5,
13 221, 223, 225.5, 226, 226.3, 226.7, 226.8, 227.3, 245.5, 246, 246.5, 248, 248.1, 248.2, 248.3, 248.6,
14 256, 500, 510, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198,
15 1198.5, 1199, 2699, 2699.3, 2699.5, 2802, and all applicable IWC California Wage Orders, whether
16 for civil penalties or attorneys’ fees and costs arising out of the PAGA claims at issue, including for
17 failure to: pay all wages owed (including for any off-the-clock work and all minimum, overtime,
18 and double-time wages) and at the correct rate; pay for all hours worked; pay all vested vacation or
19 paid time off hours; provide meal periods or premium pay in lieu thereof; authorize and permit rest
20 breaks or premium pay in lieu thereof; reimburse for all necessary business expenses; pay reporting
21 time pay; pay split-shift premiums; provide or report paid sick leave; maintain and issue accurate
22 itemized wage statements; timely pay all wages owed during employment and upon separation;
23 maintain and produce complete and accurate employment records upon demand; enforce maximum
24 hours worked; unlawful retaliation; and unlawful and willful misclassification.

25 18. “**Released Parties**” means Defendant and each of its subsidiaries, affiliates
26 (including, but not limited to: FM Restaurants Holdco, LLC; FM Restaurants Signature Opco, LLC;
27 FM Restaurants Acapulco Opco, LLC; FM Restaurants Chevys Opco, LLC; FM Restaurants El
28 Torito Opco, LLC; FM Restaurants Las Brisas Opco, LLC; and Z Capital Group, LLC), parent

companies, shareholders, members, owners, officers, employees, attorneys, representatives, agents, insurers, predecessors, successors, and assigns, and any individual or entity which could be jointly liable with Defendant.

19. “**Representative Plaintiffs**” means Plaintiffs Roberto Armenta and Luis Gutierrez.

20. “**Settlement Administrator**” shall mean CPT Group, Inc., a neutral third-party administrator chosen by the Parties, subject to approval by the Court.

RECITALS

21. On August 11, 2023, Plaintiff Roberto Armenta sent a PAGA Notice to the LWDA, with a copy to Defendant. On October 20, 2023, Plaintiff Roberto Armenta filed a PAGA representative action in the *Armenta* Action.

22. On October 23, 2023, Plaintiff Roberto Armenta sent an amended PAGA Notice to the LWDA, with a copy to Defendant. On February 21, 2025, Plaintiff Roberto Armenta sent a second amended PAGA Notice to the LWDA, with a copy to Defendant.

23. On December 18, 2023, Plaintiff Luis Gutierrez filed a class action complaint in the *Gutierrez* Action.

24. On December 27, 2023, Plaintiff Luis Gutierrez sent a PAGA Notice to the LWDA, with a copy to Defendant. On March 11, 2024, Plaintiff Luis Gutierrez filed his first amended complaint to include a PAGA representative claim in the *Gutierrez* Action.

25. The Parties have conducted a thorough investigation into the facts of the Actions. This included exchanging data and information as well as documents relating to the underlying alleged violations. After participating in a mediation with Mediator Lynn Frank on August 20, 2024, the Parties accepted a mediator’s proposal.

26. On or around August 27, 2024, Defendant filed notices of related cases in both the *Armenta* and *Gutierrez* Actions.

27. On September 26, 2024, the Court in the *Gutierrez* Action entered an order dismissing the class action allegations and claims from the operative complaint in the *Gutierrez* Action.

28. On October 8, 2024, as part of the settlement, the Court in the *Gutierrez* Action

1 entered an order transferring the *Gutierrez* Action from Orange County Superior Court to Los
2 Angeles County Superior Court where the *Armenta* Action is pending.

3 29. The Parties agree that they will take all actions necessary to ensure that the PAGA
4 representative claim pending in the *Armenta* Action is consolidated with the *Gutierrez* Action for
5 purposes of settlement, with the *Armenta* Action serving as the lead case.

6 30. The Parties agree that after the consolidation of the *Gutierrez* Action is complete,
7 Plaintiff Roberto Armenta will file a consolidated first amended complaint alleging the wage-and-
8 hour violations set forth in Representative Plaintiffs' August 11, 2023, October 23, 2023, December
9 27, 2023, and February 21, 2025 notice letters to the LWDA and the operative complaints in the
10 *Armenta* Action and *Gutierrez* Action.

11 31. Representative Plaintiffs believe that the Settlement is fair, reasonable, and adequate.
12 The Parties understand, acknowledge, and agree that this Settlement Agreement constitutes a
13 compromise of Representative Plaintiffs' and the Aggrieved Employees' PAGA Claim, and that it
14 is the desire and intention of the Parties to effect a final and complete resolution of the PAGA Claim
15 that the Representative Plaintiffs and the Aggrieved Employees have against Defendant or any
16 persons or companies affiliated with Defendant based on employment with Defendant. A
17 substantial factor favoring this Settlement being fair, reasonable, and adequate is the financial
18 condition of the Defendant. Defendant provided information on its historical finances and financial
19 condition at the time of the mediation.

20 32. The Parties enter into this Settlement Agreement on a conditional basis. In the event
21 the Court does not enter a Final Order and Judgment as defined in this Settlement Agreement, this
22 Settlement Agreement will be deemed null and void *ab initio* and will be of no force or effect
23 whatsoever, and will not be referred to or utilized for any purpose whatsoever.

24 33. Defendant denies that it engaged in any misconduct in connection with the wage-
25 and-hour practices associated with the Aggrieved Employees. Defendant further denies that it has
26 any liability of any kind associated with the claims alleged in the Actions. Defendant contends that
27 it has complied with both federal and state wage-and-hour laws, and all other laws regulating its
28 relationship with the Aggrieved Employees, including the Representative Plaintiffs.

34. Defendant denies all of the claims in the Actions, and does not waive, but rather expressly reserves, all rights to challenge all such claims and allegations upon all legal, procedural and factual grounds should this Settlement Agreement not become final. This Settlement Agreement reflects a compromise reached to end litigation.

35. The Parties stipulate and agree to the following terms of this Settlement Agreement with the intent that this Agreement finally disposes of the Actions with prejudice as set forth in this Agreement.

TERMS AND CONDITIONS

36. **Settlement Payments and Calculation of Claims.** Subject to final Court approval and the conditions specified in this Agreement, and in consideration of the mutual covenants and promises set forth in this Agreement, Defendant agrees to pay the Gross Settlement Amount of **\$345,000.00**. For the avoidance of doubt, except for the employer taxes necessary to effectuate the settlement, Defendant shall not be required to pay any amount over \$345,000.00 for this Settlement. The Gross Settlement Amount includes, but is not limited to, payments to be made to PAGA Counsel's attorneys' fees and costs, the LWDA Payment and Aggrieved Employee Payment, Plaintiffs' Enhancement Awards, and Settlement Administration Costs. The following table summarizes the allocation of the Gross Settlement Amount:

Gross Settlement Amount of \$345,000.00 Is Broken Down As Follows:
• PAGA Counsel Attorneys' Fees not to exceed 35% (or \$120,750.00). • PAGA Counsel's Costs not to exceed \$25,000.00. • Plaintiffs' Enhancement Awards not to exceed \$10,000.00 (combined). • Settlement Administration Costs, not to exceed \$28,000.00. • Approximately \$161,250.00 for the Net Settlement Amount: ○ 25% of the Net Settlement Amount for the PAGA Aggrieved Employee Payment (approximately \$40,312.50). ○ 75% of the Net Settlement Amount for the LWDA Payment (approximately \$120,937.50).

37. **Settlement Escalator.** The Settlement is based on the assumption that there were no more than 153,000 pay periods worked by the Aggrieved Employees during the PAGA Period. Should the actual number of pay periods during the PAGA Period exceed that amount by more than 10% (i.e., by more than 15,300 pay periods), Defendant will have the choice of either: (a) paying a

proportional increase in the Gross Settlement Amount for each additional pay period over 168,300; or (b) modifying the end date of the PAGA Period to a date prior August 20, 2024, to avoid incurring the pro rata increase. The Parties agree that any increase to the Gross Settlement Amount made pursuant to this provision will increase the applicable attorneys' fees payable to PAGA Counsel such that the attorneys' fees remains 35% of the adjusted Gross Settlement Amount.

38. **Apportionment of Gross Settlement Amount.** The Parties agree, subject to Court approval and the conditions specified in this Agreement, that the Gross Settlement Amount shall be apportioned as follows:

a. **Settlement Administration Fees and Costs:** The fees and costs associated with settlement administration (*e.g.*, preparing and mailing payments to the Aggrieved Employees, tax documentation, etc.) (the "**Settlement Administration Costs**") will be paid from the Gross Settlement Amount and are estimated to be up to **\$28,000.00**. The Parties agree to use CPT Group, Inc. as the Settlement Administrator. To the extent Settlement Administration Costs are not approved by the Court in the amounts set forth above, and the order becomes final, then the non-approved amount will be added to the Net Settlement Amount to be distributed based on the formula set forth in Paragraph 37.d.

b. **PAGA Counsel's Attorneys' Fees and Costs:** The Parties agree that, subject to the Court's review and approval, PAGA Counsel will be paid from the Gross Settlement Amount an amount that is up to 35% of the Gross Settlement Amount for attorneys' fees (**\$120,750.00**), plus actual litigation costs, not to exceed **\$25,000.00**. PAGA Counsel Yoon Law, APC will be entitled to a share of the awarded fees in an amount equal to 70% (currently estimated at \$84,525.00) and actual litigation costs, not to exceed \$17,000.00. PAGA Counsel Mooradian Law, APC will be entitled to a share of the awarded fees in an amount equal to 30% (currently estimated at \$36,225.00) and actual litigation costs, not to exceed \$8,000.00. Except as provided in this Paragraph 37.b, each party will bear its own attorneys' fees, costs, and expenses incurred in the prosecution, defense, or settlement of the Actions. To the extent attorneys' fees and costs are not approved by the Court in the amounts set forth above, and the order becomes final, then the non-approved amounts will be added to the Net Settlement Amount to be distributed based on the formula set forth in Paragraph

1 37.d.

2 c. Representative Plaintiffs' Enhancement Awards. The Parties agree that,
3 subject to the Court's review and approval, Representative Plaintiffs will each receive an
4 enhancement award of **\$5,000.00** each (\$10,000.00 total) for their services in bringing the Actions
5 on behalf of the Aggrieved Employees, which will be paid from the Gross Settlement Amount. To
6 the extent the Enhancement Awards are not approved by the Court in the amounts set forth above,
7 and the order becomes final, then the non-approved amount will be added to the Net Settlement
8 Amount to be distributed based on the formula set forth in Paragraph 37.d.

9 d. Net Settlement Amount: After deducting PAGA Counsel's Attorneys' Fees
10 and Costs, Plaintiffs' Enhancement Awards, and the Settlement Administration Costs from the
11 Gross Settlement Amount, the remaining amount will comprise the Net Settlement Amount. The
12 Net Settlement Amount is comprised of the LWDA Payment and the PAGA Aggrieved Employee
13 Payment. The Net Settlement Amount shall be allocated 75% to the LWDA Payment. The
14 remaining 25% of the Net Settlement Amount shall be allocated to the PAGA Aggrieved Employee
15 Payment to be paid to the Aggrieved Employees on a *pro rata* basis as noted below, which shall be
16 referred to as the Aggrieved Employee's "**Individual PAGA Payment.**"

17 Example:

18 Aggrieved Employee A was actively employed during the PAGA Period for 25 pay periods.
19 All Aggrieved Employees were actively employed a combined total of 153,000 pay periods during
20 the PAGA Period. Aggrieved Employee A's Individual PAGA Payment would be calculated as
21 follows:

- 22 ➤ 25 pay periods for Aggrieved Employee A ÷ 153,000 total pay periods for all Aggrieved
23 Employees = 0.016%.
- 24 ➤ Aggrieved Employee A is entitled to an Individual PAGA Payment in an amount that is
25 0.016% of the PAGA Aggrieved Employee Payment.¹

26 e. Taxes and Reporting: The Individual PAGA Payments will be treated as non-
27

28 ¹ The Individual PAGA Payment will be rounded to the nearest penny with .5 rounded up.

wage income to the Aggrieved Employees and reported by the Settlement Administrator on IRS Form 1099. PAGA Counsel will each be reported by the Settlement Administrator on IRS Form 1099.

39. **Release By Aggrieved Employees and the State of California.**

a. **Terms of Release.** Upon the Funding Date, as defined below, in exchange for the consideration recited in this Settlement Agreement, Representative Plaintiffs, as the representatives for the State of California and all Aggrieved Employees, and on behalf of their current, former, and future heirs, executors, administrators, attorneys, agents, and assigns will forever completely release and discharge the Released Parties of any and all Released Claims, as defined in Paragraph 16. The Aggrieved Employees and the State of California are deemed by operation of the Final Order and Judgment to have agreed not to sue or otherwise make a claim against any of the Released Parties for any Released Claims. The release will not be effective until Defendant has made all payments due under the terms of this Settlement Agreement.

b. **No Claims Based on Stipulation and Agreement.** No Aggrieved Employee will have any claim against any of the Released Parties, Defendant's counsel, the Representative Plaintiffs, or PAGA Counsel, based on errors in administering claims or performing the mailing and skip-tracing requirements of the Settlement Administrator under this Agreement.

40. **General Releases By Representative Plaintiffs.**

a. **Terms of Release.** Upon the Funding Date, as defined below, in exchange for the consideration recited in this Settlement Agreement, including the Representative Plaintiffs' Enhancement Awards, the Representative Plaintiffs, on behalf of themselves and on behalf of their current, former, and future heirs, executors, administrators, attorneys, agents, and assigns, does hereby and forever release, waive, acquit and discharge the Released Parties from all claims (known or unknown) which they have, had or might otherwise have had against the Released Parties, from the beginning of time to the date they sign this Agreement, regarding any aspect of their employment including, but not limited to, the Released Claims, any common law or statutory torts, any federal, state or governmental constitution, statute, regulation or ordinance, and any claim for wages or any other compensation or benefit.

b. California Civil Code Section 1542. Upon the Funding Date, as defined below, and in exchange for consideration recited in this Settlement Agreement, the Representative Plaintiffs will be deemed to have, and by operation of the Final Order and Judgment will have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of section 1542 of the California Civil Code which provides as follows:

“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.”

c. No Other Actions. The Representative Plaintiffs are deemed by operation of the Final Order and Judgment to have agreed not to sue or otherwise make any claim against any of the Released Parties based upon any action, event, or occurrence prior to the date the Representative Plaintiffs sign this Settlement Agreement.

41. Release by PAGA Counsel. Upon the Funding Date, as defined below, PAGA Counsel releases on behalf of their present and former attorneys, employees, agents, successors and assigns, the Released Parties from all claims for attorneys’ fees and costs incurred in connection with the facts and theories alleged in the Complaints in the Actions, the PAGA Notices, and the Released Claims.

42. Request For Final Order and Judgment.

a. Upon execution of this Agreement, the Representative Plaintiffs shall promptly file a stipulation or unopposed motion with the Court requesting approval of this Settlement by submitting a proposed Final Order and Judgment, in a form substantially similar to Exhibit B.

b. The Parties will cooperate in obtaining, through written stipulation or unopposed motion if a motion is required, an order from the Court approving the Settlement. The Parties agree to use their best efforts to expedite the preparation and submission of the Settlement and related 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, shall take all steps

1 that may be requested by the Court or that are otherwise necessary to the approval and
2 implementation of this Settlement, and shall otherwise use their respective best efforts to obtain
3 Court approval of this Settlement.

4 c. On the date Representative Plaintiffs file the stipulation or unopposed motion
5 discussed in this Paragraph, Plaintiffs will also submit to the LWDA a notice of the Settlement
6 enclosing a copy of the Settlement Agreement. Plaintiffs' notice of the Settlement to the LWDA
7 shall comply with the notice requirement of PAGA.

8 43. **Settlement Funding.**

9 a. On or before November 5, 2024, the Settlement Administrator shall send
10 Defendant's counsel electronic wiring instructions to fund the Gross Settlement Amount.

11 b. The Gross Settlement Amount shall be funded in two installments. The first
12 installment of \$150,000.00 shall be paid by Defendant into a Qualified Settlement Fund ("QSF") to
13 be established by the Settlement Administrator by November 12, 2024 (i.e., within 60 days of the
14 date the Parties' Memorandum of Understanding was fully executed by the Parties). The second
15 and final installment of \$195,000.00 shall be paid by Defendant into the QSF within 60 days of the
16 Court granting approval of the Parties' Settlement and entry of the Final Order and Judgment (this
17 is the "**Funding Date**"). Any interest earned on the installment payments between funding and
18 distribution shall be included as part of the NSA.

19 c. If the Court should fail to approve the Parties' Settlement or entry the Final
20 Order and Judgment, all amounts placed by Defendant into the QSF shall be returned to Defendant
21 within thirty (30) calendar days.

22 d. Within thirty (30) calendar days after the Effective Date, the Settlement
23 Administrator shall issue all payments required by this Agreement (the "**Payment Date**").

24 44. **PAGA List.**

25 Within ten (10) calendar days after the Effective Date, Defendant will provide a PAGA List
26 to the Settlement Administrator which will identify all Aggrieved Employees by name, social
27 security number, and last known home address ("**PAGA List**"). The PAGA List will also contain
28 the number of pay periods credited to each Aggrieved Employee.

1 45. **List Of Individual Settlement Amounts.**

2 Within ten (10) calendar days after the Settlement Administrator receives the PAGA List,
3 the Settlement Administrator will provide to PAGA Counsel and Defendant's counsel a Proceeds
4 List reflecting the Individual PAGA Payment and pay periods for each Aggrieved Employee
5 ("Proceeds List"), for approval by PAGA Counsel and Defendant's counsel prior to distribution.
6 The Proceeds List provided to PAGA Counsel will not include the Aggrieved Employees' names,
7 social security numbers or contact information. The Settlement Administrator shall also indicate
8 whether the Settlement Escalator has been triggered.

9 46. **PAGA Payments to Aggrieved Employees.**

10 a. On the Payment Date, the Settlement Administrator will mail to each
11 Aggrieved Employee, via first-class United States Mail, the following: (a) the PAGA Settlement
12 Notice, attached as Exhibit A to this Agreement and (b) their Individual PAGA Payment
13 (collectively, the "PAGA Packet"). The PAGA Settlement Notice shall be accompanied by a
14 certified Spanish language translation of same.

15 b. Prior to mailing, the Settlement Administrator will update all addresses using
16 the National Change of Address System (NCOA). In the event that a PAGA Packet is returned to
17 the Settlement Administrator with a forwarding address, the Settlement Administrator will re-send
18 the PAGA Packet to the forwarding address identified. If no forwarding address is provided, then
19 the Settlement Administrator will promptly, and not more than five (5) days after receiving a
20 returned PAGA packet, conduct a "standard search," sometimes called, "Skip Trace" or "Credit
21 Header" searches, to locate a better address. If a better address is found, the Settlement
22 Administrator will promptly, and not more than five (5) after a better address is located, re-send the
23 PAGA Packet. If a better address is not found or the PAGA Packet is ultimately returned without a
24 forwarding address, neither the Settlement Administrator, Defendant, or PAGA Counsel shall be
25 required to take further action.

26 c. Aggrieved Employees shall have 180 calendar days after the date the PAGA
27 Packet is mailed to them to cash their settlement payment checks. If any Aggrieved Employee's
28 check is not cashed within that period, the settlement payment check will be voided and a stop-

payment will be issued. Neither Defendant, Defendant's counsel, Representative Plaintiffs, nor
PAGA Counsel will have any liability for lost or stolen settlement payment checks, forged
signatures on settlement payment checks, unauthorized negotiation of settlement payment checks
or failure to timely cash a settlement payment check within the 180-day period.

d. Any unpaid cash residue or unclaimed Aggrieved Employee funds, plus any
accrued interest that has not otherwise been distributed pursuant to order of the Court, shall be
transmitted to State Controller's Unclaimed Property Fund.

47. **Payments Of Attorneys' Fees And Costs, and the LWDA Settlement Payment.**

a. On the Payment Date, the Settlement Administrator will pay from the Gross
Settlement Amount the Representative Plaintiffs' Enhancement Awards as awarded by the Court.
These payments will be made by sending directly to PAGA Counsel, checks payable to "Roberto
Armenta" and "Luis Gutierrez" in the amounts of the Court-approved Enhancement Awards. These
payments are conditioned upon PAGA Counsel providing Defendant's counsel with a completed
Form W-9 for the Representative Plaintiffs.

b. On the Payment Date, the Settlement Administrator will pay from the Gross
Settlement Amount to PAGA Counsel its Court-approved Attorneys' Fees and Costs. Such payment
is conditional upon PAGA Counsel providing the Settlement Administrator with a completed Form
W-9.

c. On the Payment Date, the Settlement Administrator will pay the LWDA
Payment from the Net Settlement Amount by issuing a check payable to "California Labor
Workforce and Development Agency."

48. **Deadlines.**

If any deadline specified in this Agreement falls on a Saturday, Sunday, or Court holiday,
the deadline will be automatically extended to the next regular business day. Unless specified
otherwise, all references to "days" shall mean calendar days.

49. **Enforcement and Continuing Jurisdiction of the Court.**

Pursuant to the Parties agreement, this Settlement Agreement will be approved by the Court
and will be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6.

1 Even after the entry of the Final Order and Judgment, this Court will have and retain continuing
2 jurisdiction over the Actions and over all Parties and the Aggrieved Employees, to the fullest extent
3 necessary or convenient to enforce and effectuate the terms and intent of this Settlement Agreement
4 and all matters provided for in it, and to interpret it.

5 50. **Mutual Full Cooperation.**

6 The Parties will fully cooperate with each other to accomplish the terms of this Settlement
7 Agreement, including, but not limited to, execution of such documents and taking such other action
8 as may be reasonably necessary or convenient to implement it.

9 51. **Non-Admission Of Liability.**

10 The Parties enter into this Agreement to resolve the dispute that has arisen between them
11 and to avoid the burden, expense, and risk of continued litigation. In entering into this Agreement,
12 Defendant does not admit, and specifically denies, that it has violated any federal, state, or local
13 law; violated any regulations or guidelines promulgated pursuant to any statute or any other
14 applicable laws, regulations or legal requirements; violated or breached any duty; engaged in any
15 misrepresentation or deception; or engaged in any other unlawful conduct with respect to the
16 Actions. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations
17 connected with it, shall be construed as an admission or concession by Defendant of any such
18 violations or failures to comply with any applicable law. Except as necessary in a proceeding to
19 enforce the terms of this Agreement, this Agreement and its terms and provisions shall not be offered
20 or received as evidence in any action or proceeding to establish any liability or admission on the
21 part of Defendant or to establish the existence of any condition constituting a violation of, or a non-
22 compliance with, federal, state, local or other applicable law.

23 52. **Effective Date Of Defendant's Obligations Under This Agreement.**

24 Defendant's obligations under this Settlement Agreement will become final and effective
25 only upon the occurrence of the Effective Date. In the event that any of the conditions specified in
26 this Settlement Agreement are not satisfied, or in the event that this Settlement does not obtain
27 approval of the Court for any reason, all matters covered by this Agreement will be null and void.
28 In such event, neither this Agreement, nor any negotiations leading to this Settlement, will be used

1 or construed by or against any Party as a determination, admission, or concession of any issue of
2 law or fact in the litigation; and the Parties do not waive, and instead expressly reserve, their
3 respective rights regarding the prosecution and defense of the Actions, including all available
4 defenses and affirmative defenses, and to challenge any claim, as if this Settlement Agreement never
5 existed. To the extent the Settlement is not approved by the Court, the Parties will endeavor to
6 amend the Settlement to the Court's satisfaction.

7 53. **Nullification.**

8 If: (1) the Court should for any reason fail to enter the Final Order and Judgment; or (2) the
9 Court's Final Order and Judgment is reversed or modified as to any material term as defined above,
10 or declared or rendered void as to any material term as defined above, then (a) the Settlement
11 Agreement shall become null and void; (b) the Parties will revert to their respective positions
12 immediately prior to reaching the settlement; and (c) Defendant will be responsible for any
13 Settlement Administration Costs.

14 54. **Invalidation.**

15 Invalidation of any material term of this Settlement Agreement will invalidate this
16 Agreement in its entirety unless the Parties subsequently agree in writing that the remaining
17 provisions will remain in full force and effect.

18 55. **Confidentiality/No Publicity.**

19 Representative Plaintiffs and PAGA Counsel agree that the terms of this Settlement
20 Agreement (including, but not limited to, the Gross Settlement Amount), the negotiations leading
21 to the execution of this Settlement Agreement, and the Settlement Agreement itself, shall not be
22 discussed with or publicized or promoted to the media (including, without limitation, legal
23 periodicals and publications such as "Jury Verdicts," disclosure of the Settlement Agreement on any
24 web site of Representative Plaintiffs' counsel or any other website, or on any blogs, articles, or on
25 any social media platforms or channels), or the public at large, without the advance written consent
26 of Defendant. The Parties intend this Paragraph to prohibit Plaintiffs and their counsel from
27 discussing, answering questions about, promoting or publicizing the Settlement Agreement, its
28 terms, or the negotiations leading to the Settlement Agreement with anyone other than the Court or

1 those individuals necessary to effectuate the terms of the Agreement. Notwithstanding the
2 foregoing, Representative Plaintiffs and their counsel (1) may tell the public in general only that
3 certain claims “have been resolved by the Parties;” and (2) may disclose the terms of the Settlement
4 Agreement (a) in appropriate filings with the Court in this case; (b) where required by law (*e.g.*,
5 income tax returns); and (c) to accountants or other tax professionals for the purpose of preparing
6 tax returns. In addition, PAGA Counsel may respond to questions received from, and discuss any
7 aspect of this Agreement with Aggrieved Employees or the LWDA. Nothing shall prevent PAGA
8 Counsel from referring to the Actions in a declaration before the courts relating to the adequacy of
9 counsel.

10 56. **Entire Agreement.**

11 This Settlement Agreement constitutes the entire integrated agreement between the Parties
12 relating to the Actions, and no oral representations, warranties, or inducements have been made to
13 any party concerning this Settlement Agreement other than the representations, warranties, and
14 covenants contained and memorialized in this Settlement Agreement.

15 57. **Authorization To Act.**

16 PAGA Counsel warrant and represent that they are authorized by the Representative
17 Plaintiffs, and counsel of record for Defendant warrants that they are authorized by Defendant, to
18 take all appropriate action required or permitted to be taken by such Parties pursuant to this
19 Settlement Agreement to effectuate its terms, and to execute any other documents required to
20 effectuate the terms of this Settlement Agreement, except for any documents, including but not
21 limited to this Settlement Agreement, that are required to be executed by the Parties.

22 58. **Modification Only In Writing.**

23 This Settlement Agreement may be amended or modified only by a written instrument signed
24 by all Parties or their successors in interest.

25 59. **Binding On Successors.**

26 This Settlement Agreement is binding upon and will inure to the benefit of the Parties to this
27 Agreement, as well as their respective attorneys, past, present, and future predecessors, successors,
28 shareholders, officers, directors, employees, agents, trustees, representatives, administrators,

1 fiduciaries, assigns, insurers, executors, partners, parent corporations, subsidiaries, and related or
2 affiliated entities.

3 60. **No Prior Assignments.**

4 The Aggrieved Employees are deemed by operation of the Final Order and Judgment to
5 represent, covenant, and warrant that they have not directly or indirectly assigned, transferred,
6 encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any
7 liability, claim, demand, cause of action, or rights released and discharged by this Agreement.

8 61. **Governing Law.**

9 All terms of this Settlement Agreement will be governed by and interpreted according to the
10 laws of the State of California, without giving effect to conflicts of laws principles.

11 62. **Counterparts.**

12 This Settlement Agreement may be executed in one or more counterparts. All executed
13 counterparts and each of them will be deemed to be one and the same instrument. Counsel for the
14 Parties will exchange among themselves any signed counterparts.

15 63. **Headings For Convenience Only.**

16 The descriptive headings of any paragraphs or sections of this Settlement Agreement are
17 inserted for convenience of reference only and do not constitute a part of this Settlement Agreement.

18 64. **Construction Of This Agreement.**

19 The Parties agree that the terms and conditions of this Settlement Agreement are the result
20 of arms-length negotiations between the Parties and that this Settlement Agreement will not be
21 construed in favor of or against any Party by reason of the extent to which any Party, or her or its
22 counsel participated in the drafting of this Agreement. This Settlement Agreement constitutes the
23 entire agreement between the Parties. Except as expressly provided in this Agreement, this
24 Settlement Agreement has not been executed in reliance upon any other oral or written
25 representations or terms and no such extrinsic oral or written representations or terms will modify,
26 vary or contradict the terms of this Settlement Agreement. In entering this Settlement Agreement,
27 the Parties explicitly recognize California Civil Code section 1625 and California Code of Civil
28 Procedure section 1856(a), which provide that a written agreement is to be construed according to

its terms and may not be varied or contradicted by extrinsic evidence. The Representative Plaintiffs and Defendant had available to them the advice and assistance of independent counsel. As such, neither Representative Plaintiffs nor Defendant may claim that any ambiguity in this Settlement Agreement should be construed against the other.

65. **Corporate Signatories.**

Any person executing this Settlement Agreement or any related document on behalf of a corporate signatory warrants and promises for the benefit of all Parties that such person has been duly authorized by such corporation to execute this Settlement Agreement or any related document.

66. **Representation By Counsel.**

All of the Parties hereto acknowledge that they have been represented by counsel throughout all negotiations which preceded the execution of this Settlement Agreement and that this Agreement has been executed with the consent and advice of counsel.

67. **Attorneys' Fees And Costs.**

Except as otherwise provided in this Agreement, the Parties will bear responsibility for their own attorneys' fees and costs, taxable or otherwise, incurred by them or arising out of this Action and will not seek reimbursement thereof from any Party to this Settlement Agreement. In the event of a proven breach of this Agreement, the breaching party will be required to pay the prevailing Party's reasonable attorneys' fees and costs incurred in enforcing this Agreement.

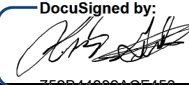
[SIGNATURE PAGE TO FOLLOW]

IT IS SO AGREED:

Dated: _____

Representative Plaintiff Roberto Armenta

Dated: 4/3/2025

DocuSigned by:

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Representative Plaintiff Luis Gutierrez

Dated: _____

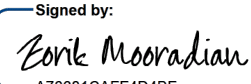
APPROVED AS TO FORM AND AGREEMENT TO BE
BOUND BY PARAGRAPHS 41 & 55:

By: _____

Kenneth Yoon
YOON LAW, APC
Attorneys for PLAINTIFF ROBERTO ARMENTA,
ON BEHALF OF HIMSELF AND OTHER
CURRENT AND FORMER EMPLOYEES

Dated: 4/3/2025

APPROVED AS TO FORM AND AGREEMENT TO BE
BOUND BY PARAGRAPHS 41 & 54:

Signed by:

A76684CAFF4D48F

By: _____

Zorik Mooradian
MOORADIAN LAW, APC
Attorneys for PLAINTIFF LUIS GUTIERREZ,
INDIVIDUALLY AND ON BEHALF OF OTHER
PERSONS SIMILARLY SITUATED AND
SIMILARLY AGGRIEVED EMPLOYEES

Dated: March 21, 2025

APPROVED AS TO FORM:

By: _____

Maria Z. Stearns
Kenneth J. Zielinski
Jonas Trevethan
RUTAN & TUCKER, LLP
Attorneys for Defendant FM Restaurant HQ, LLC

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IT IS SO AGREED:

Dated: 03/24/2025 _____



Roberto Armenta Jr (Mar 24, 2025 15:25 PDT)
Representative Plaintiff Roberto Armenta

Dated: _____

Representative Plaintiff Luis Gutierrez

Dated: _____

APPROVED AS TO FORM AND AGREEMENT TO BE
BOUND BY PARAGRAPHS 41 & 55:

By: _____
Kenneth Yoon
YOON LAW, APC
Attorneys for PLAINTIFF ROBERTO ARMENTA,
ON BEHALF OF HIMSELF AND OTHER
CURRENT AND FORMER EMPLOYEES

Dated: _____

APPROVED AS TO FORM AND AGREEMENT TO BE
BOUND BY PARAGRAPHS 41 & 54:

By: _____
Zorik Mooradian
MOORADIAN LAW, APC
Attorneys for PLAINTIFF LUIS GUTIERREZ,
INDIVIDUALLY AND ON BEHALF OF OTHER
PERSONS SIMILARLY SITUATED AND
SIMILARLY AGGRIEVED EMPLOYEES

Dated: March 21, 2025

APPROVED AS TO FORM:

By: _____
Maria Z. Stearns
Kenneth J. Zielinski
Jonas Trevethan
RUTAN & TUCKER, LLP
Attorneys for Defendant FM Restaurant HQ, LLC

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IT IS SO AGREED:

Dated: 03/24/2025

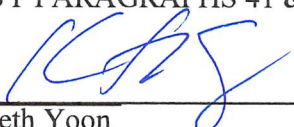

Roberto Armenta Jr (Mar 24, 2025 15:25 PDT)
Representative Plaintiff Roberto Armenta

Dated: _____

Representative Plaintiff Luis Gutierrez

Dated: 4/5/2025

APPROVED AS TO FORM AND AGREEMENT TO BE
BOUND BY PARAGRAPHS 41 & 55:

By: 
Kenneth Yoon
YOON LAW, APC
Attorneys for PLAINTIFF ROBERTO ARMENTA,
ON BEHALF OF HIMSELF AND OTHER
CURRENT AND FORMER EMPLOYEES

Dated: _____

APPROVED AS TO FORM AND AGREEMENT TO BE
BOUND BY PARAGRAPHS 41 & 54:

By: _____
Zorik Mooradian
MOORADIAN LAW, APC
Attorneys for PLAINTIFF LUIS GUTIERREZ,
INDIVIDUALLY AND ON BEHALF OF OTHER
PERSONS SIMILARLY SITUATED AND
SIMILARLY AGGRIEVED EMPLOYEES

Dated: March 21, 2025

APPROVED AS TO FORM:

By: _____
Maria Z. Stearns
Kenneth J. Zielinski
Jonas Trevethan
RUTAN & TUCKER, LLP
Attorneys for Defendant FM Restaurant HQ, LLC

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IT IS SO AGREED:

Dated: _____ Representative Plaintiff Roberto Armenta

Dated: _____ Representative Plaintiff Luis Gutierrez

Dated: _____ APPROVED AS TO FORM AND AGREEMENT TO BE BOUND BY PARAGRAPHS 41 & 55:

By: _____
Kenneth Yoon
YOON LAW, APC
Attorneys for PLAINTIFF ROBERTO ARMENTA,
ON BEHALF OF HIMSELF AND OTHER
CURRENT AND FORMER EMPLOYEES

Dated: _____ APPROVED AS TO FORM AND AGREEMENT TO BE BOUND BY PARAGRAPHS 41 & 54:

By: _____
Zorik Mooradian
MOORADIAN LAW, APC
Attorneys for PLAINTIFF LUIS GUTIERREZ,
INDIVIDUALLY AND ON BEHALF OF OTHER
PERSONS SIMILARLY SITUATED AND
SIMILARLY AGGRIEVED EMPLOYEES

Dated: May 1, 2025 APPROVED AS TO FORM:

By:  _____
Maria Z. Stearns
Kenneth J. Zielinski
Jonas Trevethan
RUTAN & TUCKER, LLP
Attorneys for Defendant FM Restaurant HQ, LLC

Dated: May 1, 2025 Defendant FM Restaurants HQ, LLC

Signed by: 
By: _____
Title: President

EXHIBIT A

[Date]

CPT Group, Inc.
[CPT Street Address]
[City, State Zip]

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

Re: PAGA Settlement Payment

Dear Current or Former FM Restaurants HQ, LLC (“FM”) Employee:

You have received this notice because FM’s records indicate that you have worked for FM at some time between August 16, 2022 through August 20, 2024. This notice relates to the settlement of related lawsuits styled *Roberto Armenta, et al. v. FM Restaurants HQ, LLC*, Los Angeles County Superior Court, Case No. 23STCV25827, and *Luis Gutierrez, et al. v. FM Restaurants HQ, LLC*, Los Angeles County Superior Court, Case No. 25STCV00629 (collectively, the “Lawsuit”).

In the Lawsuit, Plaintiffs Roberto Armenta and Luis Gutierrez (“Plaintiffs”) seek civil penalties pursuant to the California Private Attorneys General Act (“PAGA”). PAGA allows employees to recover penalties on behalf of the State of California and on behalf of other employees “aggrieved” by wage and hour violations of an employer. Here, Plaintiffs seek penalties on behalf of themselves and other employees, including you, for alleged wage and hour violations on the part of FM, including claims premised on the alleged: failure pay all wages owed (including for any off-the-clock work and all minimum, overtime, and double-time wages) and at the correct rate; failure to pay for all hours worked; failure to pay all vested vacation or paid time off hours; failure to provide meal periods or premium pay in lieu thereof; failure to authorize and permit rest breaks or premium pay in lieu thereof; failure to reimburse for all necessary business expenses; failure to pay reporting time pay; failure to pay split-shift premiums; failure to provide or report paid sick leave; failure to maintain and issue accurate itemized wage statements; failure to timely pay all wages owed during employment and upon separation; failure to maintain and produce complete and accurate employment records upon demand; failure to enforce maximum hours worked; unlawful retaliation; and unlawful and willful misclassification

FM strongly disputes Plaintiffs’ allegations and maintains that it has fully complied with all applicable law. The Court has not issued any ruling regarding the merits of the Lawsuit. Nonetheless, to avoid the cost and distraction of litigation, FM has made a business decision to settle the Lawsuit, which settlement has been approved by the Court. As part of the Settlement, FM agreed to pay a certain amount of penalties under PAGA. Under the PAGA statute, penalties are divided between the State of California and aggrieved employees, with the State receiving 75 percent of the penalties. Under the Settlement, Plaintiffs and the State have released the following claims on behalf of the State and aggrieved employees:

All claims or causes of action for PAGA penalties that were, or could have been, asserted in Plaintiffs' August 11, 2023, October 23, 2023, December 27, 2023, and February 21, 2025 notice letters to the LWDA and operative complaints in the Actions, pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*, based on the alleged violations of Labor Code §§ 200, 201, 202, 203, 204, 210, 216, 218.5, 221, 223, 225.5, 226, 226.3, 226.7, 226.8, 227.3, 245.5, 246, 246.5, 248, 248.1, 248.2, 248.3, 248.6, 256, 500, 510, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2699.5, 2802, and all applicable IWC California Wage Orders, whether for civil penalties or attorneys' fees and costs arising out of the PAGA claims at issue, including for failure to: pay all wages owed (including for any off-the-clock work and all minimum, overtime, and double-time wages) and at the correct rate; pay for all hours worked; pay all vested vacation or paid time off hours; provide meal periods or premium pay in lieu thereof; authorize and permit rest breaks or premium pay in lieu thereof; reimburse for all necessary business expenses; pay reporting time pay; pay split-shift premiums; provide or report paid sick leave; maintain and issue accurate itemized wage statements; timely pay all wages owed during employment and upon separation; maintain and produce complete and accurate employment records upon demand; enforce maximum hours worked; unlawful retaliation; and unlawful and willful misclassification.

The Released Parties include FM and its subsidiaries, affiliates (including, but not limited to: FM Restaurants Holdco, LLC; FM Restaurants Signature Opco, LLC; FM Restaurants Acapulco Opco, LLC; FM Restaurants Chevys Opco, LLC; FM Restaurants El Torito Opco, LLC; FM Restaurants Las Brisas Opco, LLC; and Z Capital Group, LLC), parent companies, shareholders, members, owners, officers, employees, attorneys, representatives, agents, insurers, predecessors, successors, and assigns, and any individual or entity which could be jointly liable with FM.

As part of the settlement, FM agreed to pay \$345,000.00 which includes the following payments: \$120,937.50 to the State of California; \$40,312.50 to the aggrieved employees; \$120,750.00 to Plaintiffs' counsel for attorneys' fees; \$25,000.00 to Plaintiffs' counsel for costs; \$5,000.00 for each Plaintiff's Enhancement Award; and \$28,000.00 for settlement administration costs. The enclosed settlement check represents your *pro-rata* portion of the Court-approved PAGA settlement to the aggrieved employees based on the number of pay periods you worked during the PAGA period.

You will not be retaliated against for cashing your check. Checks that are not cashed within 180 days of issuance will be voided and the funds will be distributed to State Controller's Unclaimed Property Fund. Regardless of what you do with the settlement check, you will have released claims for penalties arising under PAGA as asserted in the Lawsuit.

If you have any questions about this notice, please contact the Settlement Administrator, CPT Group, Inc., at [REDACTED].

THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE MERITS OF THE CLAIMS OR DEFENSES BY EITHER SIDE IN THE LAWSUIT. PLEASE DO NOT CONTACT THE COURT REGARDING THE CASE.

EXHIBIT B

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

ROBERTO ARMENTA, an aggrieved
employee, on behalf of himself and other
current and former employees,

Plaintiffs,

vs.

FM RESTAURANTS HQ, LLC, an entity
unknown; FM RESTAURANTS HOLDCO,
LLC dba Xperience Restaurant Group, an entity
unknown; FM RESTAURANTS CHEVY'S
OPCO, LLC, an entity unknown; FM
RESTAURANTS SIGNATURE OPCO, LLC,
an entity unknown; FM RESTAURANTS
ACAPULCO OPCO, LLC, an entity unknown;
FM RESTAURANTS LAS BRISAS OPCO,
LLC, an entity unknown; and RESTAURANTS
EL TORITO OPCO, LLC, an entity unknown;
and DOES 1 through 50, inclusive,

Defendants.

AND CONSOLIDATED ACTION.

Lead Case No. 23STCV25827
Consolidated with Case No. 25STCV00629

ASSIGNED FOR ALL PURPOSES TO:
HON. GAIL KILLEFER; DEPT. 37

**[PROPOSED] ORDER GRANTING
APPROVAL OF PAGA SETTLEMENT
AND ENTERING JUDGMENT**

Action Filed On: October 20, 2023
Trial Date: Unassigned

[PROPOSED] ORDER AND JUDGMENT

These consolidated matters came on for hearing on May 29, 2025, at 8:30 a.m. in Department 37 of the above-captioned Court on Plaintiffs Luis Gutierrez's and Roberto Armenta's ("Plaintiffs") unopposed motion for approval of a PAGA Settlement Agreement (the "Settlement" or "Settlement Agreement"), pursuant to the California Labor Code Private Attorneys General Act ("PAGA").

Having received and considered the Settlement Agreement, the supporting papers filed by Plaintiffs, and the evidence and argument received by the Court, the Court grants approval of the Settlement and HEREBY ORDERS AND MAKES THE FOLLOWING DETERMINATIONS:

1. Except as otherwise defined in this Order and Judgment ("Order"), all capitalized terms have the same meaning as defined in the Settlement Agreement that is attached as Exhibit 1 to the Yoon declaration in support of the motion for approval of the Settlement.

2. Pursuant to PAGA, California Labor Code § 2699(1)(2), (1)(4), the Labor Workforce and Development Agency ("LWDA") has been provided notice of the Settlement. In particular, on the date Plaintiffs filed the motion seeking approval of the Settlement with the Court, Plaintiffs submitted to the LWDA a notice of the Settlement enclosing a copy of the Settlement Agreement. Plaintiffs' notice of the Settlement complied with the requirements of PAGA.

3. The Court approves the release of claims Plaintiffs bring under PAGA in conformity with the Settlement Agreement. The Court finds that each Aggrieved Employee, in accordance with the Settlement, releases all Released Claims against the Released Parties. The Released Parties are Defendant and each of its subsidiaries, affiliates (including, but not limited to: FM Restaurants Holdco, LLC; FM Restaurants Signature Opco, LLC; FM Restaurants Acapulco Opco, LLC; FM Restaurants Chevys Opco, LLC; FM Restaurants El Torito Opco, LLC; FM Restaurants Las Brisas Opco, LLC; and Z Capital Group, LLC), parent companies, shareholders, members, owners, officers, employees, attorneys, representatives, agents, insurers, predecessors, successors, and assigns, and any individual or entity which could be jointly liable with Defendant.

4. The Court confirms approval of the Settlement as to the LWDA and the Aggrieved Employees.

5. The Court has jurisdiction over the subject matter of this litigation, over all

1 Aggrieved Employees, and over those persons undertaking affirmative obligations under the
2 Settlement.

3 6. The Settlement is approved under Labor Code § 2699(1)(2).

4 7. The PAGA Settlement Notice to Aggrieved Employees, attached as Exhibit A to the
5 motion for approval of the Settlement, fairly and adequately describes the consolidated Actions, the
6 approved settlement, and is the best notice practicable under the circumstances.

7 8. The Court finds that each Aggrieved Employee, in accordance with the Settlement,
8 releases all Released Claims against the Released Parties.

9 9. The Gross Settlement Amount, Net Settlement Amount, and the methodology used
10 to calculate the PAGA Aggrieved Employee Payment (which is comprised of the Individual PAGA
11 Payments) and the LWDA Payment, in accordance with the Settlement, is approved under Labor
12 Code § 2699(1)(2).

13 10. The Court approves CPT Group, Inc. to act as the Settlement Administrator. The
14 Court awards the Settlement Administrator in these consolidated Actions its actual fees and costs in
15 accordance with the terms of the Settlement Agreement, not to exceed \$28,000.00.

16 11. The Court approves Yoon Law, APC and Mooradian Law, APC as PAGA Counsel

17 12. The Court awards PAGA Counsel attorneys' fees in the amount of \$120,750.00
18 (\$84,525.00 to Yoon Law, APC and \$36,225.00 to Mooradian Law, APC) and actual litigation costs
19 of \$16,511.22 (\$11,244.18 to Yoon Law, APC and \$5,267.04 to Mooradian Law, APC), both of
20 which the Court finds to be fair and reasonable. The Court authorizes the Settlement Administrator
21 to make these payments, in accordance with the terms of the Settlement Agreement.

22 13. The Court authorizes the Settlement Administrator to calculate and pay the Net
23 Settlement Amount, inclusive of the LWDA Payment and PAGA Aggrieved Employee Payment
24 (which is comprised of the Individual PAGA Payments), in accordance with the terms of the
25 Settlement.

26 14. The Court finds that the LWDA Payment is fair and reasonable. The Court
27 authorizes the Settlement Administrator to pay the LWDA Payment, in accordance with the terms
28 of the Settlement Agreement.

1 15. The Court finds the Enhancement Awards to Plaintiffs in the total sum of \$10,000.00
2 (\$5,000.00 to each Representative Plaintiff) to be fair and reasonable. The Court authorizes the
3 Settlement Administrator to pay the Representative Plaintiffs' Enhancement Awards, in accordance
4 with the terms of the Settlement Agreement.

5 16. Checks for Individual PAGA Payments sent to Aggrieved Employees shall be valid
6 for 180 days after issuance. Funds remaining from any checks for Individual PAGA Payments
7 uncashed after 180 days will be transmitted to the State Controller's Unclaimed Property Fund in
8 the names of the Aggrieved Employees who did not cash their settlement checks.

9 17. Upon completion of the Settlement, the Settlement Administrator will provide
10 written certification of the completion to the Court and counsel for the Parties which shall be filed
11 with the Court on or before .

12 18. Without affecting the finality of this order and entry of judgment, the Court retains
13 exclusive and continuing jurisdiction over these consolidated Actions for purposes of supervising,
14 administering, implementing, and enforcement of this Order and the Settlement.

15 19. Nothing in this Order or the Settlement shall be construed as an admission or
16 concession by any party. The Settlement and this resulting Order and entry of judgment simply
17 represent a compromise of disputed allegations.

18 20. The Court enters final judgment in accordance with the terms of the Settlement
19 Agreement and this Order.

20 Plaintiffs are directed to submit a copy of this Order and entry of judgment to the LWDA
21 within 10 days of the date of this Order and entry of judgment.

22 **IT IS SO ORDERED:**

23 Dated: _____

24 _____
25 HON. GAIL KILLEFER
26 Los Angeles County Superior Court

EXHIBIT C



751 N. FAIR OAKS AVENUE, SUITE 102
PASADENA, CA 91103
TEL 213-612-0988
FAX 213-947-1211

February 21, 2025

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAFilings@dir.ca.gov
State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55

Sacramento, California 95814

Re: *Roberto Armenta v. FM Restaurants HQ, LLC et al.*

Dear Representative:

This letter shall serve as a supplemental follow-up to our client's, Roberto Armenta ("Plaintiff"), August 11, 2023 PAGA Notice and October 20, 2023 PAGA Notice (the "Notices") setting forth the facts and theories underlying Plaintiff's PAGA claims against FM Restaurants HQ, LLC, FM Restaurants HoldCo, LLC dba Xperience Restaurant Group, FM Restaurants Chevy's Opco, LLC, FM Restaurants Signature Opco, LLC, FM Restaurants Acapulco Opco, LLC, FM Restaurants Las Brisas Opco, LLC, and FM Restaurants El Torito Opco, LLC) ("Defendants") for violations of California wage-and-hour laws, brought on behalf of the State of California and all Aggrieved Employees.

Since the date of the Notices, Plaintiff has become aware of new information and hereby amends the Notices. Plaintiff specifically incorporates by reference the law, facts, allegations, and analysis provided in the Notices and amends the Notices to include the additional allegations and claims set forth below.

Legal Violations Alleged

As a pattern and practice, Defendants failed to properly pay Mr. Armenta and other hourly-paid or non-exempt aggrieved employees for all hours worked (including for straight time, minimum wages, overtime wages, and double-time wages), failed to authorize and permit rest breaks (or issue premium pay in lieu thereof), failed to provide meal periods (or issue premium pay in lieu thereof), failed to reimburse necessary work-related expenses, failed to pay reporting time pay, failed to provide paid sick leave, failed to issue compliant wage statements, failed to timely pay all wages due and owing during employment and upon termination, and unlawfully and willfully misclassified employees, thus resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Mr. Armenta has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees of Defendants.

Defendants have violated and/or continue to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 200, 201, 202, 203, 204, 210, 216, 218.5, 221, 223, 225.5, 226, 226.3, 226.7, 226.8, 227.3, 245.5, 246, 246.5, 248, 248.1, 248.2, 248.3, 248.6, 256, 500, 510, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2699.5, 2802, and all applicable IWC California Wage Orders, including IWC Wage Order 5-2001 § 5.

California Labor Code sections 1194, 1197 and 1197.1 provide the applicable minimum and overtime wage to be paid to employees, and further provide that the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, Defendants failed to compensate Mr. Armenta and other aggrieved employees for work performed off-the-clock, including time Defendants “shaved” time off of the recorded hours worked, time Defendants required to be worked off-the-clock and time records Defendants refused to correct after employees forgot to clock in. Thus, Defendants did not provide aggrieved employees with the minimum and overtime wages to which they were entitled despite constructive and actual knowledge of off-the-clock work. In addition, Defendants violated Labor Code section 223 by trying to secretly pay lower wages while purporting to pay the wages designated by statute or contract.

California Labor Code sections 1199 and 2699.5 *et seq.* make employers liable for PAGA penalties if they (a) require or cause any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pay or cause to be paid to any employee a wage less than the minimum fixed by an order of the commission; or (c) violate or refuse or neglect to comply with any provision of this chapter or any order or ruling of the commission. Similarly, Labor Code section 1198 provides that “[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Defendant has violated these sections by requiring Plaintiff and the aggrieved employees to work longer hours than those fixed, refuses to comply with Labor Code provisions regarding employees’ wages, hours, and working conditions, and failing to enforce the maximum hours of work.

California Labor Code sections 226.7, 512 and 558 require employers to authorize and permit one 30-minute meal breaks for each five (5) hours worked and 10-minute rest

breaks for every four (4) hours worked or major fraction thereof. During the relevant time period, Defendants failed to relieve employees of duty for all required rest breaks. Plaintiff contends he and aggrieved employees are entitled to penalties in the amount of \$50 for each first violation and \$100 for each subsequent violation, in addition to an amount sufficient to recover unpaid wages under Labor Code § 558. Mr. Armenta will seek to hold all owners, directors, officers and managing agents of Defendants personally liable for said violations to the extent permitted under Labor Code § 558 and/or Labor Code § 558.1.

California Labor Code section 246 requires employers to provide employees with 24 hours or three days of sick time per year. Defendants have violated and continue to violate Labor Code § 245.5 (definition of employee) and § 246 (mandated amounts of accrual of sick time) by failing to allow aggrieved employees to accrue sick time in the amount required by law including Covid-19 sick pay pursuant to California Labor Code section 248 et seq. (inclusive of sections including, but not limited to, 248.1, 248.2, 248.3, and 248.6) As well, the Defendants have violated and continue to violate Labor Code § 246.5 by failing to permit aggrieved employees from using their accrued sick time for the purposes set forth under California law. During the relevant time period, Defendants failed to provide sick leave pay to its employees. Plaintiff contends that he and other aggrieved employees are entitled to penalties in the amount of \$100 for each first violation and \$250 for each subsequent violation pursuant to Labor Code section 2699. Defendants further violated Labor Code section 204 by failing to make timely payments of all wages due to Mr. Armenta and other aggrieved employees who were sick and not paid sick pay. Plaintiff contends that pursuant to Labor Code section 210, he and other aggrieved employees are entitled to recover penalties of \$100 for the first violation of section 204 and \$200 for each subsequent violation, plus 25 percent of the amount of wages unlawfully withheld.

Labor Code section 2802 requires employers to reimburse employees for necessary work-related expenses. During the relevant time period, Defendants failed to reimburse Mr. Armenta and other aggrieved employees for business expenses, including but not limited to phone application software costs. Plaintiff contends that he and other aggrieved employees are entitled to penalties in the amount of \$100 for each first violation and \$250 for each subsequent violation pursuant to Labor Code section 2699. Plaintiff and other aggrieved employees are further entitled to recover an amount sufficient to recover unreimbursed business expenses pursuant to Labor Code section 2802(d).

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, Defendants failed to pay Mr. Armenta and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204, including as outlined above. Plaintiff contends that pursuant to Labor Code section 210, he and other aggrieved employees are entitled to recover penalties of \$100 for the first violation of section 204 and \$200 for each subsequent violation, plus 25 percent of the amount of wages unlawfully withheld.

California Labor Code sections 201 to 203 require that employers pay their employees all wages due and owing upon termination of employment within specified time periods. During the relevant time period, Defendants failed to pay Mr. Armenta and other aggrieved employees all wage due them within the time periods specified by California Labor Code sections 201 to 203 as outlined above. Plaintiff contends that he and other aggrieved employees are entitled to penalties in the amount of \$100 for each first violation and \$250 for each subsequent violation pursuant to Labor Code sections 256 and 2699.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, Defendants did not provide Mr. Armenta and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from Defendants were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Mr. Armenta and other aggrieved employees, (2) total hours worked by Mr. Armenta and other aggrieved employees, (3) all deductions for Mr. Armenta and other aggrieved employees, (4) net wages earned by Mr. Armenta and other aggrieved employees, and (5) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Mr. Armenta and other aggrieved employees. Labor Code sections 226(c) and 1198.5(b)(1) require employers to maintain and produce copies of each employee's wage statements and personnel file/employment records upon demand from the employee. Defendants also failed to maintain accurate and complete employment records, and also failed respond to Plaintiff's and aggrieved employees' requests for their employment records within the time set forth in Labor Code section 226(c) and 1198.5(b)(1). Defendants also failed to maintain accurate pay and time records. Plaintiff asserts he and aggrieved employees are entitled to recover penalties in the amount of two hundred fifty dollars (\$250) per employee per initial violation and one thousand dollars (\$1,000) per employee for each subsequent violation.

California Wage Order 5-2001, section 5, requires employers to compensate their employees for half the usual or scheduled day's work in the event the employee reports for work but is not put to work or is furnished less than half the day's work. As a pattern and practice, Defendants would send employees home at the start of the shift when business was slow, or would remove them from the schedule immediately before the start of the shift, but would fail to pay employees for half the day's work. This resulted in a

failure to pay reporting time pay. Plaintiff asserts he and aggrieved employees are entitled to recover penalties in the amount of one hundred dollars (\$100) per employee per initial violation and two hundred dollars (\$200) per employee for each subsequent violation.

California Labor Code section 558 allows recovery of penalties, including penalties equal to the amount of unpaid wages:

- (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:
 - (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
 - (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
 - (3) Wages recovered pursuant to this section shall be paid to the affected employee.

Mr. Armenta and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years. During the relevant time period, Defendants failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Mr. Armenta and other aggrieved employees. Defendants' failure to keep such records was willful in violation of Labor Code section 1174.5.

California Labor Code section 1102.5 prohibits employers from retaliating against employees for exercising their rights under the Labor Code and for disclosing information to a person with authority over the employee to investigate or correct violations of the Labor Code. We believe that Mr. Armenta and other current and former aggrieved employees were retaliated against in violation of Labor Code section 1102.5.

We believe that Mr. Armenta and other current and former California-based hourly-paid or non-exempt employees of Defendants are entitled to penalties and wages as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 200, 201, 202, 203, 204, 210, 216, 218.5, 221, 223, 225.5, 226, 226.3, 226.7, 226.8, 227.3, 245.5, 246, 246.5, 248, 248.1, 248.2, 248.3, 248.6, 256, 500, 510, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2699.5, 2802, and all applicable IWC California Wage Orders, including IWC Wage Order 5-2001 § 5.

Conclusion

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor Code section 2699. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We also write to inform you of our intent to file an amended complaint in Plaintiff's current PAGA action against Defendants to seek penalties for the above-referenced violations. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Mr. Armenta will seek these penalties and wages on his own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees employed by Defendants within one year prior to the filing of his first PAGA Notice, as allowed by law.

If you have any questions or require additional information, please do not hesitate to contact us.

Sincerely,



Kenneth H. Yoon

KHY:rd

cc:

FM Restaurants HQ, LLC
c/o CT Corporation (Agent for Service)
330 N. Brand Blvd.,
Glendale, California 91203

FM Restaurants HoldCo, LLC
c/o CT Corporation (Agent for Service)
330 N. Brand Blvd.,
Glendale, California 91203

FM Restaurants Chevy's Opco, LLC,
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FM Restaurants El Torito Opco, LLC
c/o CT Corporation (Agent for Service)
330 N. Brand Blvd.,
Glendale, California 91203



751 N. FAIR OAKS AVENUE, SUITE 102
PASADENA, CA 91103
TEL 213-612-0988
FAX 213-947-1211

August 11, 2023

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov
State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

Re: *Roberto Armenta v. FM Restaurants HQ, LLC et al.*

Dear Representative:

We have been retained to represent Roberto Armenta against FM Restaurants HQ, LLC, FM Restaurants HoldCo, LLC dba Xperience Restaurant Group, FM Restaurants Chevy's Opco, LLC, FM Restaurants Signature Opco, LLC, FM Restaurants Acapulco Opco, LLC, FM Restaurants Las Brisas Opco, LLC, and FM Restaurants El Torito Opco, LLC) ("Defendants") for violations of California wage-and-hour laws, Mr. Armenta submits this correspondence within one year of the termination of his employment.

Background

Mr. Armenta is pursuing his California Labor Code section 2698 *et seq.* (the Private Attorneys General Act of 2004 ("PAGA")) claim on a representative basis. Therefore, Mr. Armenta may seek penalties for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Defendants are Delaware corporations that are headquartered at 11065 Knott Avenue, Suite A, Cypress California 90630.

Defendants employed Mr. Armenta as an hourly-paid, non-exempt employee. Mr. Armenta seeks to represent other aggrieved employees who worked for Defendants in their California restaurants, including Acapulco Restaurant y Cantina, Chevy's Fresh Mex, El Torito Mexican Restaurant, El Torito Grill, Las Brisas, SOL Mexican Cocina, and Solita Tacos and Margaritas restaurants.

Legal Violations Alleged

As a pattern and practice, Defendants failed to properly pay Mr. Armenta and other hourly-paid or non-exempt aggrieved employees for all hours worked, failed to authorize and permit rest breaks, failed to reimburse necessary work-related expenses, failed to pay reporting time pay, failed to provide paid sick leave, failed to issue compliant wage statements, and failed to pay all wages due and owing upon termination, thus resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Mr. Armenta has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees of Defendants.

Defendants have violated and/or continue to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 216, 225.5, 226(a), 226.3, 226.7, 510, 512, 558, 1174(d), 1194, 1197, 1197.1, 1198, 1198.5, and 2802, and IWC Wage Order 5-2001 § 5.

California Labor Code sections 1194, 1197 and 1197.1 provide the and overtime wage to be paid to employees, and further provide that the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, Defendants failed to compensate Mr. Armenta and other aggrieved employees for work performed off-the-clock, including time Defendants “shaved” time off of the recorded hours worked, time Defendants required to be worked off-the-clock and time records Defendants refused to correct after employees forgot to clock in. Thus, Defendants did not provide aggrieved employees with the minimum and overtime wages to which they were entitled despite constructive and actual knowledge of off-the-clock work.

California Labor Code sections 226.7, 512 and 558 require employers to authorize and permit one 30-minute meal breaks for each five (5) hours worked and 10-minute rest breaks for every four (4) hours worked or major fraction thereof. During the relevant time period, Defendants failed to relieve employees of duty for all required rest breaks. Plaintiff contends he and aggrieved employees are entitled to penalties in the amount of \$50 for each first violation and \$100 for each subsequent violation, in addition to an amount sufficient to recover unpaid wages under Labor Code § 558.

California Labor Code section 246 requires employers to provide employees with 24 hours or three days of sick time per year. During the relevant time period, Defendants failed to provide sick leave pay to its employees. Plaintiff contends that he and other aggrieved employees are entitled to penalties in the amount of \$100 for each first violation and \$250 for each subsequent violation pursuant to Labor Code section 2699. Defendants further violated Labor Code section 204 by failing to make semimonthly

payments of all wages due to Plaintiff and other aggrieved employees who were sick and not paid sick pay. Plaintiff contends that pursuant to Labor Code section 210, he and other aggrieved employees are entitled to recover penalties of \$100 for the first violation of section 204 and \$200 for each subsequent violation, plus 25 percent of the amount of wages unlawfully withheld.

Labor Code section 2802 requires employers to reimburse employees for necessary work-related expenses. During the relevant time period, Defendants failed to reimburse Plaintiff and other aggrieved employees for business expenses, including but not limited to phone application software costs. Plaintiff contends that he and other aggrieved employees are entitled to penalties in the amount of \$100 for each first violation and \$250 for each subsequent violation pursuant to Labor Code section 2699. Plaintiff and other aggrieved employees are further entitled to recover an amount sufficient to recover unreimbursed business expenses pursuant to Labor Code section 2802(d).

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, Defendants failed to pay Mr. Armenta and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204, including as outlined above. Plaintiff contends that pursuant to Labor Code section 210, he and other aggrieved employees are entitled to recover penalties of \$100 for the first violation of section 204 and \$200 for each subsequent violation, plus 25 percent of the amount of wages unlawfully withheld.

California Labor Code sections 201 to 203 require that employers pay their employees all wages due and owing upon termination of employment within specified time periods. During the relevant time period, Defendants failed to pay Mr. Armenta and other aggrieved employees all wage due them within the time periods specified by California Labor Code sections 201 to 203 as outlined above. Plaintiff contends that he and other aggrieved employees are entitled to penalties in the amount of \$100 for each first violation and \$250 for each subsequent violation pursuant to Labor Code section 2699.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, Defendants did not provide Mr. Armenta and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received

from Defendants were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Mr. Armenta and other aggrieved employees, (2) total hours worked by Mr. Armenta and other aggrieved employees, (3) all deductions for Mr. Armenta and other aggrieved employees, (4) net wages earned by Mr. Armenta and other aggrieved employees, and (5) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Mr. Armenta and other aggrieved employees. Labor Code sections 226(c) and 1198.5(b)(1) require employers produce copies of each employee's wage statements and personnel file upon demand from the employee. Defendants also failed to respond to Plaintiff's and aggrieved employees' requests for their employment records within the time set forth in Labor Code section 226(c) and 1198.5(b)(1). Plaintiff asserts he and aggrieved employees are entitled to recover penalties in the amount of two hundred fifty dollars (\$250) per employee per initial violation and one thousand dollars (\$1,000) per employee for each subsequent violation.

California Wage Order 5-2001, section 5, requires employers to compensate their employees for half the usual or scheduled day's work in the event the employee reports for work but is not put to work or is furnished less than half the day's work. As a pattern and practice, Defendants would send employees home at the start of the shift when business was slow, or would remove them from the schedule immediately before the start of the shift, but would fail to pay employees for half the day's work. This resulted in a failure to pay reporting time pay. Plaintiff asserts he and aggrieved employees are entitled to recover penalties in the amount of one hundred dollars (\$100) per employee per initial violation and two hundred dollars (\$200) per employee for each subsequent violation.

California Labor Code section 558 allows recovery of penalties, including penalties equal to the amount of unpaid wages:

- (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:
 - (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
 - (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
 - (3) Wages recovered pursuant to this section shall be paid to the affected employee.

Mr. Armenta and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years. During the relevant time period, Defendants failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Mr. Armenta and other aggrieved employees.

We believe that Mr. Armenta and other current and former California-based hourly-paid or non-exempt employees of Defendants are entitled to penalties and wages as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 216, 225.5, 226(a), 226.3, 226.7, 510, 512, 558, 1174(d), 1194, 1197, 1197.1, 1198, 1198.5, and 2802, and IWC Wage Order 5-2001 § 5.

Conclusion

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor Code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Mr. Armenta will seek these penalties and wages on his own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees employed by Defendants within one year of his demand for wages, as allowed by law.

If you have any questions or require additional information, please do not hesitate to contact us.

Sincerely,



Kenneth H. Yoon

SEY:jr

cc:

FM Restaurants HQ, LLC
c/o CT Corporation (Agent for Service)
330 N. Brand Blvd.,
Glendale, California 91203

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751 N. FAIR OAKS AVENUE, SUITE 102
PASADENA, CA 91103
TEL 213-612-0988
FAX 213-947-1211

October 20, 2023

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California

Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

Re: *Roberto Armenta v. FM Restaurants HQ, LLC et al.*

Dear Representative:

We have been retained to represent Roberto Armenta against FM Restaurants HQ, LLC, FM Restaurants HoldCo, LLC dba Xperience Restaurant Group, FM Restaurants Chevy's Opco, LLC, FM Restaurants Signature Opco, LLC, FM Restaurants Acapulco Opco, LLC, FM Restaurants Las Brisas Opco, LLC, and FM Restaurants El Torito Opco, LLC) ("Defendants") for violations of California wage-and-hour laws, Mr. Armenta submits this correspondence within one year of the termination of his employment.

This letter amends Mr. Armenta's prior notice submitted on August 11, 2023.

Background

Mr. Armenta is pursuing his California Labor Code section 2698 *et seq.* (the Private Attorneys General Act of 2004 ("PAGA")) claim on a representative basis. Therefore, Mr. Armenta may seek penalties for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Defendants are Delaware corporations that are headquartered at 11065 Knott Avenue, Suite A, Cypress California 90630.

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EXHIBIT C

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payments of all wages due to Plaintiff and other aggrieved employees who were sick and not paid sick pay. Plaintiff contends that pursuant to Labor Code section 210, he and other aggrieved employees are entitled to recover penalties of \$100 for the first violation of section 204 and \$200 for each subsequent violation, plus 25 percent of the amount of wages unlawfully withheld.

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from Defendants were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Mr. Armenta and other aggrieved employees, (2) total hours worked by Mr. Armenta and other aggrieved employees, (3) all deductions for Mr. Armenta and other aggrieved employees, (4) net wages earned by Mr. Armenta and other aggrieved employees, and (5) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Mr. Armenta and other aggrieved employees. Labor Code sections 226(c) and 1198.5(b)(1) require employers produce copies of each employee's wage statements and personnel file upon demand from the employee. Defendants also failed to respond to Plaintiff's and aggrieved employees' requests for their employment records within the time set forth in Labor Code section 226(c) and 1198.5(b)(1). Plaintiff asserts he and aggrieved employees are entitled to recover penalties in the amount of two hundred fifty dollars (\$250) per employee per initial violation and one thousand dollars (\$1,000) per employee for each subsequent violation.

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Conclusion

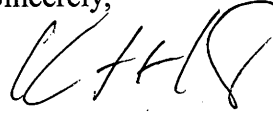
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Mr. Armenta will seek these penalties and wages on his own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees employed by Defendants within one year of his demand for wages, as allowed by law.

If you have any questions or require additional information, please do not hesitate to contact us.

Sincerely,



Kenneth H. Yoon

KHY:no

cc:

FM Restaurants HQ, LLC
c/o CT Corporation (Agent for Service)
330 N. Brand Blvd.,
Glendale, California 91203

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Glendale, California 91203

MOORADIAN LAW, APC

24007 Ventura Blvd., Suite 210

Calabasas, California 91302

Mooradianlaw.com

Telephone 1-818-487-1998

Facsimile 1-888-783-1030

HAIK HACOPIAN

E-mail: haik@mooradianlaw.com

DECEMBER 27, 2023

VIA USPS CERTIFIED MAIL

FM RESTAURANTS HQ, LLC
11065 Knott Avenue, Suite A
Cypress, CA 90630
7019 0700 0002 2582 3989

FM RESTAURANTS HOLDCO, LLC
11065 Knott Avenue, Suite A
Cypress, CA 90630
7014 1820 0000 6212 5005

FM RESTAURANTS SIGNATURE OPCO,
LLC
11065 Knott Avenue, Suite A
Cypress, CA 90630
7022 1670 0001 3547 3466

FM RESTAURANTS ACAPULCO OPCO,
LLC
11065 Knott Avenue, Suite A
Cypress, CA 90630
7022 1670 0001 3547 3459

FM RESTAURANTS CHEVYS OPCO, LLC
11065 Knott Avenue, Suite A
Cypress, CA 90630
7022 1670 0001 3547 3442

FM RESTAURANTS EL TORITO OPCO,
LLC
11065 Knott Avenue, Suite A
Cypress, CA 90630
7022 1670 0001 3547 3435

FM RESTAURANTS LAS BRISAS OPCO,
LLC
11065 Knott Avenue, Suite A
Cypress, CA 90630
7022 1670 0001 3547 3473

VIA ONLINE SUBMISSION

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, CA 95814
www.dir.ca.gov

Re: *California Wage & Hour Violations*
FM RESTAURANTS HQ, LLC; FM RESTAURANTS HOLDCO,

EXHIBIT C

LLC; FM RESTAURANTS SIGNATURE OPCO, LLC; FM RESTAURANTS ACAPULCO OPCO, LLC; FM RESTAURANTS CHEVYS OPCO, LLC; FM RESTAURANTS EL TORITO OPCO, LLC; FM RESTAURANTS LAS BRISAS OPCO, LLC

To Whom It May Concern:

This office represents Luis Gutierrez with respect to Private Attorneys General Act (“PAGA”) claims that he intends to pursue against FM RESTAURANTS HQ, LLC; FM RESTAURANTS HOLDCO, LLC; FM RESTAURANTS SIGNATURE OPCO, LLC; FM RESTAURANTS ACAPULCO OPCO, LLC; FM RESTAURANTS CHEVYS OPCO, LLC; FM RESTAURANTS EL TORITO OPCO, LLC; FM RESTAURANTS LAS BRISAS OPCO, LLC (hereinafter “Employers”) based upon their illegal wage and hour practices in the State of California as to their non-exempt employees. This letter constitutes the notice required by Labor Code Section 2699.3.

Facts

Employers are engaged in the business of owning and operating eateries and restaurants including those branded as “Chevy’s,” “El Torito,” “Acapulco,” and “Las Brisas.” Mr. Gutierrez worked as a non-exempt employee of Employers at the El Torito restaurant located at 15042 Goldenwest Street in Westminster, California 92683 which was owned and operated by Employers, as well as other such restaurants. Employers employ numerous non-exempt, hourly paid employees such as Mr. Gutierrez (“Aggrieved Employees”). Unfortunately, Employers have engaged in the following practices with respect to their Aggrieved Employees:

Identity and Capacity of Employers/Joint Employers

Mr. Gutierrez intends to pursue a PAGA action against Employers and their parent companies, subsidiaries, successors, owners, officers, directors, and managing agents (collectively referred to as “Employers” as well). Mr. Gutierrez will seek to hold all owners, directors, officers and managing agents of his Employers personally liable for said violations to the extent permitted under Labor Code § 558 and/or Labor Code § 558.1.

All business entities referenced herein were the alter-egos of each and every other entity and individual referenced herein and there exists, and at all times herein mentioned has existed, a unity of interest and ownership between said entities and individuals such that any separateness between them ceased to exist in that said individuals and other entities have completely controlled, dominated, managed, and operated the business entities and have intermingled the assets of each

to suit convenience. Further, each of the business entities are, and at all times mentioned herein were, mere shells, instrumentalities, and conduits through which the other above-referenced entities/individuals carried out their business while exercising complete control and dominance of the business such that individuality or separateness did not truly exist. Therefore, in the PAGA action, Mr. Gutierrez will seek to hold each said individual and/or entity jointly and severally liable for any and/or all violations committed by the other above-referenced individuals and/or entities.

It should further be noted that Employers and their parent companies, subsidiaries, successors, owners, officers, directors, and/or managing agents have been engaged in a joint enterprise. Moreover, said persons/individuals are joint employers of Aggrieved Employees for the following reasons: 1) Said entities/individuals directly and/or indirectly exercised control over the wages, hours or working conditions of Aggrieved Employees; 2) Said entities/individuals had knowledge (either personally or through officers, directors and/or managing agents) of the work Aggrieved Employees were doing for them while supposedly being employed by another entity/individual and failed to prevent the work from occurring; and 3) Said entities retained or assumed a general right of control over hiring, direction, supervision, discipline, discharge, and relevant day-to-day aspects of the workplace behavior of Aggrieved Employees.

Failure to Pay Wages

Employers implemented the policy and practice of failing to pay Aggrieved Employees for all hours worked. This included Aggrieved Employees being forced to work off the clock in order to avoid triggering overtime. Managers directed employees to clock out at the end of their shifts and continue completing their tasks. Each such affected employee worked anywhere from fifteen to thirty minutes without compensation. Additionally, employees continued working despite being clocked out for meal breaks. The foregoing resulted in underpayment of wages, including underpayment of overtime, and double-time to the extent applicable. This is in addition the underpayment of overtime and/or double-time due to misapplication of an Aggrieved Employee's regular rate of compensation.

Meal Breaks

Employers engage in the practice of not allowing mandated meal breaks and not compensating Aggrieved Employees for any missed, late, or short meal breaks. Aggrieved Employees did not receive premium pay for any missed, late, or short meal period. Time punches were regularly adjusted by management to make it appear that a meal break was taken or taken timely. Moreover, Aggrieved Employees are owed wages for off-the-clock work resulting from meal periods being on-duty as described above. To the extent any premium wages were paid, they

were not calculated in accordance with an Aggrieved Employee's correct regular rate of compensation.

Rest Breaks

Employers engage in the practice of not allowing mandated rest breaks and not compensating Aggrieved Employees for any missed, late, or short rest breaks. Specifically, Aggrieved Employees were never afforded an opportunity to take rest breaks every four hours, or major fraction thereof, they worked. Moreover, employees did not receive premium pay for these missed rest breaks. To the extent any premium wages were paid, they were not calculated in accordance with an Aggrieved Employee's correct regular rate of compensation.

Split Shifts

Employers engage in the practice of not paying split shift premiums to employees who worked two shifts (lunch and dinner) which were separated by a non-paid and non-working time period longer than a meal period. (Industrial Welfare Commission Wage Orders 1-15, Section 4).

Waiting Time and Unpaid Vacation

At the time of an Aggrieved Employee's separation (whether it be by termination or resignation) Employers have failed to provide the employee with all monies owed, including meal break premiums, rest break premiums, split shift premiums, and unpaid wages for work performed, including overtime and double-time wages to the extent applicable.

Employers maintained a separate vacation/PTO benefit for Aggrieved Employees and vacation wages would be owed to the extent that the benefit was not properly effectuated and/or any unpaid compensation was not factored into the accrual of the vacation benefit. Correspondingly, a vacation balance would be owed and/or any vacation balance paid to an Aggrieved Employee upon separation would not be full and complete.

Sick Leave

Employers were required to maintain a sick leave benefit with mandated amounts of accrual of sick time but failed to allow Aggrieved Employees to accrue sick time in the amount required by law. As well, the Employers failed to permit Aggrieved Employees from using their accrued sick time for the purposes set forth under California law including requiring the use of unpaid vacation in lieu of accrued sick time.

Noncompliant Wage Statements

Employers have adopted a custom and practice of failing to provide wage statements which reflect all hours worked during any pay period, whether or not Aggrieved Employees all wages entitled to, including meal and rest break premiums, split shift premiums, and payment of vacation and sick leave benefits.

Additional Penalties

Mr. Gutierrez and all other similarly aggrieved California employees intend to seek all civil penalties for the violations described above.

Code Provisions Violated and Legal Theories

The specific provisions of the California Labor Code which Employers have violated, and applicable legal theories which establish the violations, are as follows:

Labor Code Section 201: Employers violated, and continue to violate, Labor Code Section 201 or other applicable law, wage order, regulation, by failing to pay the Aggrieved Employees they have discharged the complete and correct amount of all wages owing at the time of termination. The wages earned but not paid at termination include uncompensated work time, including overtime and double-time as applicable, and premium wages for missed meal and rest breaks.

Labor Code Section 202: Employers violated, and continue to violate, Labor Code Section 202 or other applicable law, wage order, regulation, by failing to pay Aggrieved Employees who quit the correct amount of all wages, within 72 hours of the termination. As already stated, the wages earned but not paid at termination include the above.

Labor Code Section 203: Employers violated, and continue to violate, Labor Code Section 203 or other applicable law, wage order, regulation, by failing to pay 30 days of continuing wages to Aggrieved Employees owed wages (explained above) whose employment ended.

Labor Code Sections 204 and 210: Employers violated, and continue to violate, Labor Code Sections 204 and 210 or other applicable law, wage order, regulation, by failing to pay wages to Aggrieved Employees for all hours worked as explained above including failing timely pay regular wages after the close of applicable payroll periods.

Labor Code Section 226: Employers violated, and continue to violate, Labor Code Section 226(a), or other applicable law, wage order, regulation by failing to provide Aggrieved Employees with accurate and compliant itemized wage statements.

Labor Code Section 226.7: FM violated, and continue to violate, Labor Code Section 226.7 or other applicable law, wage order, regulation, by failing to provide meal periods and/or rest periods to Aggrieved Employees that are in accordance and in compliance with the IWC's applicable wage order.

Labor Code Section 227.3: Employers violated, and continue to violate, Labor Code Section 227.3 by failing to promptly pay all vested vacation or PTO benefits to Aggrieved Employees upon their separation.

Labor Code Sections 245.5, 246, and 246.5: Employers have violated and continue to violate Labor Code § 245.5 (definition of employee) and § 246 (mandated amounts of accrual of sick time) by failing to allow Aggrieved Employees to accrue sick time in the amount required by law. As well, the Employers have violated and continue to violate Labor Code § 246.5 by failing to permit Aggrieved Employees from using their accrued sick time for the purposes set forth under California law.

Labor Code Sections 500, 510 and 1198: Employers violated, and continue to violate, Labor Code Sections 500, 510, 1198, or other applicable law, wage order, regulation by failing to pay minimum wage or overtime compensation to Aggrieved Employees required by law.

Labor Code Section 512: Employers violated, and continue to violate, Labor Code Section 512 or other applicable law, wage order, regulation by not providing Aggrieved Employees with legally compliant meal periods.

Labor Code Sections 1182.12, 1194, and 1198: Employers have violated and continue to violate Labor Code §§ 1182.12, 1194, 1198 or other applicable law, wage order, regulation by failing to pay Aggrieved Employees at least the minimum wage required under the law.

Conclusion

Please inform us if you intend to investigate this matter. We look forward to prompt administrative action so that the identified unlawful practices can be rectified. In the absence of

such action, we intend to file an appropriate action pursuant to Labor Code Section 2698 *et seq.*
Should you require any additional information, do not hesitate to contact the undersigned.

Very truly yours,
MOORADIAN LAW, APC

A handwritten signature in black ink that reads "/s/ Haik Hacopian". The signature is written in a cursive, flowing style.

HAIK HACOPIAN

EXHIBIT 2

CASE NAME: GUTIERREZ V. FM

Requesting Attorney: Jonas Trevethan
Plaintiff or Defense: Defense
Firm Name: Rutan & Tucker
Telephone: (714) 641-3447
Email: jtrevethan@rutan.com

Date: October 16, 2024
Prepared By: Ryan Schley, Esq.
 50 Corporate Park, Irvine CA 92606
 Ryan@CPTGroup.com
Direct Number: (949) 358-0404
Main Number: (800) 542-0900

PROJECT ASSUMPTIONS & ADMINISTRATIVE COSTS

Number of Aggrieved Employees: 8,500
Language Translation Services: Yes
Settlement Website: No
Payment Option: Check
Undeliverable Check Rate: 6%

Check Reminder Postcard: No
Unclaimed Funds: SCO
Postage Total: \$5,833.44
Grand Total: \$39,477.19
CPT'S DISCOUNTED FEE: \$28,000.00

The services and numbers reflected herein are estimates based on the information provided by counsel at the time of this Bid. If the actual services and numbers are different, our cost estimate will change accordingly. Client expressly acknowledges and agrees that estimated fees and costs may fluctuate and agrees to pay for any such increases to such estimates as if set forth herein.

The attached Terms and Conditions are included as part of and incorporated by reference to our cost proposal. By accepting our cost proposal for this matter, you are thereby agreeing to the Terms and Conditions.

CASE SETUP

After receiving the data, CPT will scrub all records to eliminate duplicates and anomalies; this process is designed to achieve a higher success percentage in delivering the distribution proceeds. Each aggrieved employee will receive a unique mailing ID that will be utilized for all administrative purposes. CPT will perform an address update via NCOA and, if necessary, conduct an additional skip trace in order to ensure that mail is delivered to the most current address possible. If necessary, CPT will translate the court approved Notice documents into Spanish.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Case Intake & Review	\$95.00	8	\$760.00
Project Manager: Format Documents	\$95.00	1	\$95.00
Programming: Data Base Setup	\$150.00	8	\$1,200.00
National Change of Address Search (NCOA)	\$350.00	1	\$350.00
XML Lex ID Skip Trace	\$0.50	850	\$425.00
Spanish Translation	\$250.00	1	\$250.00
Sub Total:			\$3,080.00

AGGRIEVED EMPLOYEE SUPPORT

CPT will establish a toll-free telephone number equipped with interactive voice response (IVR) capabilities and live customer support representatives. Live support will be available during regular business hours, Monday to Friday, 9:00 AM to 5:30 PM, Pacific Time (PT). The dedicated case phone number shall be operational for a maximum of 120 days following the disbursement.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Toll-Free Number Establish/Setup	\$150.00	2	\$300.00
Live Call Center Support Reps.	\$2.50	850	\$2,125.00
Sub Total:			\$2,425.00

SSN VERIFICATION

Authenticate Social Security Number for validity using IRS verification processes and/or IRS backup withholdings processes.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: SSN Selection	\$150.00	1	\$150.00
Department Manager: Analysis & Reporting	\$95.00	3	\$285.00
IRS SSN Verification	\$0.10	8,500	\$850.00
Sub Total:			\$1,285.00

DISTRIBUTION SERVICES

CPT will establish a 26 CFR § 1.468B-1 compliant Qualified Settlement Fund (QSF). Upon approval, CPT will perform the required payment calculations, and once approved by the parties, CPT will print a one-page notice and issue a (MICR) check to all eligible employees. CPT will also issue an IRS Form 1099 when applicable. CPT utilizes the bank's Payee Positive Pay to prevent check fraud and performs monthly account reconciliations for the QSF bank account. Undeliverable checks are skip-traced to obtain a current address and are remailed accordingly. Requests for check reissues will be processed throughout the check cashing period. CPT's administration of the QSF will continue for a maximum duration of one year following the initial distribution of funds.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: Calculation Totals	\$150.00	3	\$450.00
Project Supervisor: Review of Distribution	\$150.00	9	\$1,350.00
Project Manager: Correspondence w/Parties	\$95.00	5	\$475.00
Programming: Setup & Printing of Checks	\$150.00	7	\$1,050.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Print & Mail Notice, Checks & 1099	\$1.75	8,500	\$14,875.00
First-Class Postage (up to 1 oz.)*	\$0.62	8,500	\$5,270.00
Project Supervisor: Account Reconciliation	\$150.00	6	\$900.00
Update Undeliverable Checks Database	\$0.50	510	\$255.00
Clerical Staff	\$60.00	1	\$60.00
Skip Trace for Best Address	\$0.50	510	\$255.00
Remail Undeliverable Checks	\$2.75	464	\$1,276.00
First-Class Postage (up to 1 oz.)	\$0.69	464	\$320.16
Re-Issue Checks as Required	\$4.00	340	\$1,360.00
First-Class Postage (up to 1 oz.)	\$0.69	340	\$234.60
Sub Total:			\$28,580.76

*Postage costs are subject to change at anytime. The final rate will be determined at the time of mailing.

TAX REPORTING & SETTLEMENT CONCLUSION

CPT prepares annual tax reporting on behalf of the QSF and Federal and State taxes in accordance with current state and federal regulations.

All parties will be furnished with weekly and final reports. A declaration attesting to due process will be provided to all parties.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Supervisor: Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming: Weekly & Final Reports	\$150.00	2	\$300.00
Project Supervisor: Final Declaration	\$150.00	2	\$300.00
Project Manager: Account Files Sent to Atty	\$95.00	2	\$190.00
CA Tax Preparation*	\$600.00	1	\$600.00
Annual Tax Reporting to IRS*	\$1,000.00	1	\$1,000.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
Sub Total:			\$3,040.00

*CPT will file Federal and California taxes in accordance with current state and federal regulations. Additional charges will apply if the Settlement/Order/parties require(s) multiple state tax filings.

SCO ESCHEATMENT PROCESSING

Escheatment Processing to the State Controller Unclaimed Property Division / Uncashed Check Rate 21%

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
UPEnterprise Reporting Services	\$0.15	1,785	\$267.75
Project Manager: Reporting & Remittance	\$95.00	2	\$190.00
Project Supervisor: Review of Report	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.68	1	\$8.68
Add'l Account Recons	\$150.00	3	\$450.00
Sub Total:			\$1,066.43

Total Administration Costs: \$39,477.19

Courtesy Discount: -\$11,477.19

CPT'S DISCOUNTED FLAT FEE: \$28,000.00

TERMS AND CONDITIONS

These Terms and Conditions (“**Terms and Conditions**”) are made a part of, and incorporated by reference into, any Bid presented by CPT Group, Inc. (“**CPT**”) to Client. Each of Client and CPT is a “**Party**” to this Agreement, and collectively, the “**Parties**”.

1. Definitions.

- a) “**Affiliate**” means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with another party.
 - b) “**Agreement**” means these Terms and Conditions and the Bid.
 - c) “**Applicable Laws**” means all applicable local, state and federal laws, ordinances, rules and regulations.
 - d) “**Approved Bank**” means any financial institution that is insured by the Federal Deposit Insurance Corporation.
 - e) “**Bid**” means a proposal, statement of work, order form, and/or schedule for Services (including any and all addendums, exhibits, or amendments thereto) provided by CPT to Client.
 - f) “**Case**” means the case referred to in the attached Bid and/or the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the caption of the applicable Court Order.
 - g) “**Class**” means Members and putative Members collectively.
 - h) “**Client**” means the party or parties engaging CPT for Services as set forth in the Bid, namely Plaintiff Counsel and/or Defense Counsel.
 - i) “**Confidential Information**” means any non-public information of CPT or Client disclosed by either Party to the other Party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other Party may have access, which a reasonable person would consider confidential and/or which is marked “confidential” or “proprietary” or some similar designation by the disclosing Party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient’s prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
 - j) “**Court Order**” means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more Parties To The Case to carry out a legal obligation pursuant to the Case.
 - k) “**Defendant**” means the named Party and/or Parties in the Case against whom action is brought.
 - l) “**Defense Counsel**” means the attorney(s) of record for the Defendant(s) in the Case.
 - m) “**Intellectual Property Right**” means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
 - n) “**Member**” means an individual who is eligible under the Case or Class to receive a communication about their pending legal rights under the matter and/or designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons or other parties in the representative action so designated or addressed therein.
 - o) “**Member Content**” means all Member written document communications relating to the Case, including claim forms, opt-out forms, and/or objections, which may contain Member Data.
 - p) “**Member Data**” means proprietary or personal data regarding Members under this Agreement.
 - q) “**Parties To The Case**” shall mean collectively Defendant(s) and Plaintiff(s) as defined in the Settlement Agreement or Court Order.
 - r) “**Plaintiff**” means the named party and/or parties in the Case who are bringing the action.
 - s) “**Plaintiff Counsel**” means the attorney(s) of record for Plaintiff(s) in the Case, and/or upon certification by the Court the attorney(s) of record designated to represent the Class.
 - t) “**Products**” means any and all CPT Services and work product resulting from Services.
 - u) “**Qualified Settlement Fund**” or “**QSF**” means a bank account established pursuant to U.S. Department of Treasury Regulations §1468B-1.
 - v) “**Service**” means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Members; (ii) setting up a QSF with an Approved Bank; (iii) management of disbursement of funds from the QSF to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
 - w) “**Settlement Agreement**” means the contract between Parties To The Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Members.
 - x) “**Settlement Amount**” means the total dollar amount agreed to between Parties To The Case to resolve the Case to mutual satisfaction.
 - y) “**Software**” means any and all of CPT’s software applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
 - z) “**Transmission Methods**” means the secure authorized manner to send Member Data and/or Wire Information as specified on a schedule or exhibit hereto.
 - aa) “**Term**” means the period commencing on the date set forth on the Bid and continuing until the date of final judgment (if a settlement) or upon completion of all Services as set forth in the Bid.
 - bb) “**Wire Information**” means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.
- ## 2. Client Obligations. Client will ensure that it has obtained all necessary consents and approvals for CPT to access and use Member Data for the purposes permitted under this Agreement and shall only transmit Member Data and/or Wire Information to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Member Data provided under this Agreement. Client further warrants that any Member Data, Wire Information, or other content, data, materials or information it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disabling codes which could adversely affect Member Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.
- ## 3. CPT Obligations. CPT will (i) maintain appropriate safeguards designed to protect Member Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Member Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Parties To The Case, Members, Plaintiff Counsel or Defense Counsel as applicable.
- ## 4. Security. Client and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any Member Data in its possession or control under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such Member Data; (c) protect against unauthorized access to or use of such Member Data that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such Member Data in connection with its disposal.
- a) Incident Notification. In the event a Party discovers that Member Data relating to the Case is the subject of (i) any unauthorized acquisition, loss, access or use and/or (ii) an actual or suspected breach concerning such Party’s systems (items (i) and/or (ii) a “**Security Incident**”), or a Party has a reasonable belief that a Security Incident has occurred or is at risk of occurring, such Party will promptly but no later than forty-eight (48) hours of its discovery of such circumstances, inform the other Parties in the event of such Security Incident, and shall utilize best efforts to assist the other Parties to mitigate the effects of such Security Incident.
 - b) Response Procedures. In the event of a Security Incident, the breached party shall (i) cooperate with any reasonable investigation concerning the Security Incident by the other Parties, regulators and/or law enforcement; and (ii) cooperate with the other Parties to comply with Applicable Laws concerning such Security Incident, including any notification to affected individuals. The Parties acknowledge that the breached party in any Security Incident shall be the Party responsible for

any and all remedies and costs under Applicable Laws concerning such Security Incident, unless such breach occurred due to another Party's actions hereunder, in which instance such party shall be comparatively responsible for all remedies and costs. In no event will any Party serve notice or otherwise publicize a Security Incident without the prior written consent of the other Parties. The Parties shall reasonably cooperate and coordinate with each other to respond to the Security Incident, including with regard to the content of notification to affected individuals.

6. Qualified Settlement Fund Account. When the Case has a Settlement Amount CPT shall be authorized to establish one or more QSF bank accounts at an Approved Bank if and as applicable to the Services as set forth in the Bid. The amounts held at the Approved Bank under this Agreement are at the sole risk of Defendant. Without limiting the generality of the foregoing, CPT shall have no responsibility or liability for any diminution of the funds that may result from the deposit thereof at the Approved Bank, including deposit losses, credit losses, or other claims made against the Approved Bank. It is acknowledged and agreed that CPT has acted reasonably and prudently in depositing funds at an Approved Bank, and CPT is not required to conduct diligence or make any further inquiries regarding such Approved Bank.
7. Fees and Payment. Pricing for Services is as stated on the Bid, and Client agrees to pay CPT in the amounts set forth on the Bid. Client will be invoiced per the schedule set forth in the Bid, and payment of fees will be due within 30 days after the date of the invoice, except where the Bid or terms of the Settlement Agreement or Court Order expressly prescribes other payment dates. All fees set forth in a Bid are in U.S. dollars, must be paid in U.S. dollars, and are exclusive of taxes and applicable transaction processing fees. Late payments hereunder will incur a late charge of 1.5% per month (or the highest rate allowable by law, whichever is lower) on the outstanding balance from the date due until the date of actual payment, which such late charge(s) may be charged against the QSF account if incurred in connection with Services provided pursuant to administration of a settlement. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse CPT for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation. In connection with CPT's administration of a QSF, unless otherwise stated in the Settlement Agreement or Court Order concerning disbursement of unclaimed funds in the QSF account, CPT reserves the right, after one (1) year of issuance of disbursements to Members, to classify any remaining balance in such QSF account as additional administrative fees payable to CPT until such time as the QSF account balance becomes zero (\$0.00), and thereafter close such account.
8. Term and Termination.
 - a) Term. The Term is set forth in the Bid. The Agreement may be renewed by mutual written agreement of the parties.
 - b) Termination for Cause. Either Party may immediately terminate this Agreement if the other Party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching Party's receipt of written notice describing the breach in reasonable detail.
 - c) Bankruptcy Events. A Party may immediately terminate this Agreement if the other Party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.
 - d) Effect of Termination. Immediately following termination of this Agreement, upon written request, Member Data may be retrieved via the secure FTP site in the same format in which the Member Data was originally inputted into the Software, at no additional charge. Alternatively, Member Data can be returned in a mutually agreed format at a scope and price to be agreed upon. CPT will maintain a copy of Member Data and Member Content for no more than four (4) years following the date of the final check cashing deadline for Members under the Settlement Agreement, after which time any Member Data and Member Content not retrieved will be destroyed.
 - e) Final Payment. If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination," Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.
9. Confidentiality. Each Party agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such Party's rights and responsibilities under this Agreement; and (iii)

to keep the Confidential Information confidential using the same degree of care such Party uses to protect its own confidential information; provided, however, that such Party shall use at least reasonable care. These obligations shall survive termination of this Agreement.

- a) Compelled Disclosure. If receiving Party is compelled to disclose any Confidential Information by judicial or administrative process or by other requirements of law, such Party shall (i) promptly notify the other Party, (ii) reasonably cooperate with the other Party in such Party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each Party is advised by its counsel in writing is legally required to be disclosed.
- b) Remedies. If either Party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other Party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.
10. Intellectual Property. CPT retains all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. CPT does not claim any ownership rights to Member Data.
11. Indemnification. Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, "**Covered CPT Parties**") from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "**Damages**") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Member Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.
12. Warranties. Each Party represents and warrants to the other Party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such Party; (iii) the Agreement is a legally valid and binding obligation of such Party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE
13. Liability.
 - a) Liability Cap. EXCEPT FOR A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL FEES PAID OR PAYABLE BY CLIENT AND/OR THE PARTIES TO THE CASE TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.
 - b) Exclusion of Consequential Damages. NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
14. Communications. CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and

certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.

15. Miscellaneous Provisions.

- a) Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California and the federal laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.
- b) Force Majeure. Neither Party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such Party's reasonable control, provided that the delayed Party: (i) gives the other Party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
- c) Counterparts. This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
- d) Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the Parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
- e) Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by the Parties.
- f) Assignment. Neither Party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other Party's prior written consent; provided, however, either Party, without the consent of the other Party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such Party, where the responsibilities or obligations of the other Party are not increased by such assignment and the rights and remedies available to the other Party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
- g) No Third-Party Beneficiaries. The representations, warranties, and other terms contained herein are for the sole benefit of the Parties hereto and their respective successors and permitted assigns and shall not be construed as conferring any rights on any other persons.
- h) Statistical Data. Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical data ("**Statistical Data**") derived from the operation of the Software, and

nothing herein shall be construed as prohibiting CPT from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third-party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.

- i) Export Controls. Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such Applicable Laws, including the Export Administration Regulations maintained by the U.S. Department of Commerce and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
- j) Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
- k) Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other Party as set forth on the Bid or at such other address as may hereafter be furnished in writing by either Party hereto to the other Party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
- l) Independent Contractors. Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each Party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither Party may make any statement that would contradict anything in this section.
- m) Subcontractors. CPT may use subcontractors to perform Client-specific Services; provided however, that CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
- n) Headings. The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret, or construe its meaning, scope or intent.
- o) Waiver. No failure or delay on the part of either Party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power, or remedy.
- p) Acceptance. If, when requested in writing by Client, CPT then provides any Service to Client, whether or not such Services were specified in the original Bid, these Terms and Conditions shall apply to the provision of such Services and be deemed accepted and approved by Client concerning such Services.
- q) Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.