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SUPERIOR COURT OF THE STATE OF CALIFORNIA

**FOR THE COUNTY OF SANTA CLARA
(UNLIMITED JURISDICTION)**

SAHID IRAD MAGANA SEGURA,

Plaintiff,

vs.

DWH RESTAURANTS, INC.; DANIEL
WILLIAM HOLDER.; and DOES 1 to 25,
inclusive,

Defendants.

Case No.: 24CV428664

**DECLARATION OF HAROUT
MESSRELIAN IN SUPPORT OF
PLAINTIFF'S MOTION FOR APPROVAL
OF PAGA SETTLEMENT**

Action filed: January 5, 2024

Hearing Date: October 2, 2025

Hearing Time: 1:30 p.m.

Hearing Dept: 7, Hon. Charles F. Adams

DECLARATION OF HAROUT MESSRELIAN IN SUPPORT OF
PLAINTIFF'S MOTION FOR APPROVAL OF PAGA SETTLEMENT

I, HAROUT MESSRELIAN, declare and state as follows:

1. I am an attorney duly licensed to practice before all the Courts of the State of California. I am the managing attorney of Messrelian Law Inc. and the attorney of record for Plaintiff Sahid Irad Magana Segura (individually, "Segura" or "Plaintiff") in his lawsuit against Defendants DWH Restaurants, Inc. and Daniel William Holder ("Defendants" or "DWH"). Except as otherwise indicated, I have personal knowledge of all matters set forth herein and, if called as a witness, could and would competently testify thereto under oath.

2. I am experienced handling employment law matters and specifically wage and hour representative and individual actions. My qualifications are as follows: I received my JD from Loyola Law School in 2010. I started my own law firm in 2011 – the Law Offices of Harout Messrelian. Since 2016, I have been the founder and principal attorney at Messrelian Law, Inc. Since 2011, I have filed and handled over 350 civil actions and/or claims involving representative actions under the Private Attorneys General Act ("PAGA") and/or wage and hour claims on behalf of my clients and have been appointed Class Counsel in various class action cases, including, *Zohrab Mekhitarian v. Triple Play Motors dba Bob Smith Toyota*, Los Angeles Superior Court Case No. 19STCV22411 (ADR Services, Inc., Case Number 20-2668-RWT), *Carina Camberos, on behalf of herself and others similarly situated, v. Great American Chicken Corp, Inc.*, Los Angeles Superior Court Case No. 21STCV32015, *Robert Garcia, on behalf of himself and others similarly situated v. HD Supply Management Inc.*, San Bernardino Superior Court Case No. CIVSB2028067, and *Alfredo Betancourt v. L3 Technologies, Inc.*, San Mateo County Superior Court, Case no. 23-CIV-05704.

3. I have a practice that encompasses cases in the Los Angeles Superior Courts, the Orange County Superior Courts, the Riverside County Superior Courts, the San Bernardino County Superior Courts, the Alameda County Superior Courts, Santa Clara County Superior Courts, San Mateo County Superior Courts, and the Monterey County Superior Courts.

4. A true and correct copy of the PAGA Settlement Agreement (the "Settlement or

1 “Agreement”) is attached hereto as **Exhibit 1**. A true and correct copy of the parties agreed upon
2 notice to the below-defined Aggrieved Employees (the “Notice of PAGA Settlement”) is attached
3 hereto as **Exhibit 2**.

4 ***Factual and Procedural Background***

5 5. Plaintiff started working for DWH at its Jack Holders Bar & Grill on or around
6 mid-2023. Plaintiff’s employment with DWH ended on or around September 2023.

7 6. Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit
8 under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq.
9 (“PAGA”). On September 26, 2023, Plaintiff, on behalf of himself and Defendant’s other
10 California non-exempt hourly employees (hereafter collectively the “Aggrieved Employees”)
11 gave written notice by electronic service to the California Labor and Workforce Development
12 Agency (“LWDA”) and via certified mail to Defendant of the specific provisions of the
13 California Labor Code alleged to have been violated, including the facts and theories to support
14 the alleged violations. A true and correct copy of Plaintiff’s letter to the LWDA is attached
15 hereto as **Exhibit 3**.

16 7. On January 5, 2024, Plaintiff filed a Complaint alleging the following relevant
17 causes of action against Defendant: 1) Failure To Compensate For All Hours Worked; 2) Failure
18 To Pay Minimum Wages; 3) Failure To Pay Overtime; 4) Failure To Provide Accurate Itemized
19 Wage Statements; 5) Failure To Pay Wages Owed Every Pay Period; 6) Failure To Pay Wages
20 When Employment Ends; 7) Failure To Give Rest Breaks; 8) Failure To Give Meal Breaks; 9)
21 Failure To Reimburse Business Expenses; 10) Private Attorneys General Act (“Paga”); 11)
22 Failure To Provide Personnel Records; 12) Failure To Provide Pay Records; 13) Discrimination
23 On The Basis Of Physical Disability In Violation Of Fair Employment And Housing Act
24 (“FEHA”); 14) Failure To Accommodate Physical Disability In Violation of FEHA; 15) Failure
25 To Engage In Interactive Process To Determine Reasonable Accommodation Of FEHA; 16)
26 harassment Based On Race/Ethnicity/National Origin/Ancestry In Violation Of FEHA; 17)
27 Retaliation In Violation of FEHA; 18) Failure To Prevent Discrimination, Harassment, And
28 Retaliation In Violation Of FEHA; 19) Wrongful Termination In Violation Of Public Policy;

20) Harassment On The Basis Of Physical Disability In Violation Of FEHA; 21) Violation Of California Business And Professions Code Section 17200. A true and correct copy of Plaintiff's Lawsuit is attached hereto as **Exhibit 4**. On July 3, 2024 Defendant filed its Answer to Plaintiff's Lawsuit. A true and correct copy of Defendant's Answer is attached hereto as **Exhibit 5**.

8. The parties met and conferred and agreed that it may be in their mutual interests to discuss Plaintiff's allegations informally, rather than through litigation, and scheduled private mediation.

9. On March 12, 2025, the parties attended a full day mediation session with mediator Kael Briski, Esq. At the mediation, the parties agreed to settle Plaintiff's PAGA Claim for violation of Labor Code § 2698, et seq. Before agreeing to the terms of the Settlement, the Parties engaged in informal discovery regarding Defendant's policies, practices, operations, time and payroll information and other topics. In advance of mediation, Defendant produced Plaintiff's personnel file, including time and payroll data through data sampling. Moreover, prior to the mediation, Defense counsel provided Plaintiff's counsel with information and documents relating to other Aggrieved Employees, including time and payroll data. At all times, the negotiations were adversarial and contentious, although still professional in nature. Through extensive arm's length negotiations at the mediation and only after discovery and investigation were performed, the parties agreed to settlement terms. Now that the parties have finalized the PAGA Settlement, Plaintiff submits it to this Court for approval.

10. Defendant denies any liability or wrongdoing of any kind whatsoever associated with the lawsuit. It is the desire of the parties to fully, finally, and forever compromise, and discharge all claims known or unknown related to those alleged in Plaintiff's lawsuit.

11. Counsel for the Parties have further investigated the applicable law as applied to the facts discovered regarding Plaintiff's claims, the defenses thereto, and the Labor Code violations claimed by Plaintiff. I am experienced in prosecuting PAGA lawsuits. Counsel for the Defendant are experienced in defending PAGA cases. Based on the parties' own independent investigations and evaluations, the parties and their respective counsel are of the opinion that the Settlement for the consideration and on the terms set forth in the Agreement are fair, reasonable

1 and adequate and are in the best interests of Plaintiff, the Aggrieved Employees, the State, and
2 Defendant in light of all known facts and circumstances and the risks inherent in litigation,
3 especially in this post pandemic era, where businesses are struggling to remain afloat, much less
4 prosper and make a large profit.

5 12. The Settlement of a PAGA claim requires court approval. Lab. Code §2699(1)(2).
6 The Court necessarily has broad discretion in making the decision to approve or reject a
7 settlement for civil penalties as the statutory scheme authorizes the Court to determine whether,
8 in certain circumstances, penalties should be assessed and, if so assessed, the appropriate amount
9 of penalties based on the facts and circumstances of the particular case. Although the PAGA
10 does not set forth the particular standards against which a PAGA settlement should be evaluated,
11 the LWDA has provided guidance for approval that mirrors the standards for evaluating class
12 action settlements.

13 13. PAGA imposes two requirements for the settlement of a PAGA claim. Both are
14 met here. First, any civil penalties recovered, whether by judgment or settlement, must be
15 distributed as follows: 75 percent to the LWDA, and the remaining 25 percent to the aggrieved
16 employees. *See Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742; Cal. Lab.
17 Code, § 2699(i). The parties' Settlement so provides (*See Exhibit 1*). Second, the LWDA must
18 be given notice of the settlement so that it may be heard before the Court decides whether to
19 grant approval. Cal. Lab. Code § 2699(1)(2). Here, notice is being given to the LWDA
20 concurrently with the filing of this motion. A true and correct copy of Plaintiff's submission with
21 the LWDA and a confirmation email is attached as **Exhibit 10**. As a result, Plaintiff has met all
22 procedural statutory requirements for settling a PAGA action.

23 14. The PAGA Settlement warrants a presumption of fairness for several reasons: (1)
24 The parties reached the Settlement through arm's-length bargaining with the aid of a respected
25 mediator; (2) The parties conducted sufficient investigation and discovery to allow Counsel and
26 the Court to act intelligently. Plaintiff requested and Defendant provided the number Aggrieved
27 Employees, the number of total pay periods during the PAGA Period, all policies in effect during
28 the PAGA Period, and a sampling of time records; and (3) Counsel for the Parties are experienced

1 with PAGA cases. Moreover, neither Plaintiff nor I have any conflicts of interest with the absent
2 Aggrieved Employees and there are no issues of ascertainability.

3 15. I considered various sources of information in the lead-up to the mediation of
4 March 12, 2025 that enabled Plaintiff to achieve the Settlement at issue. Among other things,
5 Plaintiff considered the following:

- 6 • Defendant produced and Plaintiff's counsel reviewed Plaintiff's personnel file.
- 7
- 8 • Plaintiff's counsel requested that Defendant provide any and all policies regarding
9 overtime and double-time wages, off the clock work, expense reimbursement, meal
10 periods, rest breaks, meal period waivers and agreements, compensation plans, and
11 complaints about working conditions in effect during the relevant time period beginning
12 in September of 2022. Defendant produced those policies as part of its employee
13 handbook.
- 14 • Plaintiff's counsel requested that Defendant provide the total number of employees,
15 paychecks, and the pay cycles during the relevant period. Defendant provided the
16 answers to each of these questions.
- 17 • Plaintiff's counsel requested a 20% sample of time and payroll records for the relevant
18 time period. The Parties agreed to a sampling of time and pay records for 20% of the Pay
19 Periods in the PAGA Period.
- 20 • Plaintiff's counsel then retained a professional data analyst, James Toney, to examine
21 the records and determine the meal period violation rates, if there was any pay
22 discrepancy in timesheet hours versus paid hours, and if there was any rounding/time
23 shaving issues. Plaintiff is prepared to provide the Court with the data analysis for *in*
24 *camera* inspection upon its request.
- 25 • Plaintiff's counsel analyzed the state of caselaw on PAGA claims, meal and rest break
26 violations, claims for "off the clock" work and business expense reimbursement,
27 especially as it relates to "manageability" arguments brought up by the defense.
- 28

16. Defendant estimated for purposes of mediation there were approximately 109
24 Aggrieved Employees who worked approximately 4500 pay periods during the PAGA Period.
25 Based on this information, Plaintiff's counsel prepared an estimate of the maximum possible civil
26 penalties under the PAGA. The maximum possible civil penalties under the PAGA is the total
27 number of pay periods with one or more violations multiplied by the maximum possible civil
28 penalty amount per pay period.

1 17. Under the civil penalty formulas applicable under PAGA, Plaintiff's counsel
2 estimated a maximum possible exposure of approximately \$316,600 for civil penalties for
3 Plaintiff's strongest disputed claims of failure to provide meal and rest periods. Plaintiff's
4 analysis, which Defendant vehemently disputes, revealed a 54.3% violation rate for either late,
5 short, or no meal periods for shifts over 6 hours. Since the total number of pay periods in the
6 PAGA period was 4,500 and since approximately 93.8% of the shifts in the sample analysis were
7 over 3.5 hour and 72% of the shifts in the sample analysis were over 6 hours, the total number of
8 pay periods to consider for potential meal break violations was 3,240 (72% x 4,500 pay periods)
9 and for rest break violations was 4,221 (93.8% x 4,500 pay periods). As such, with the 54.2%
10 violation rate, the maximum exposure for meal violations would be \$87,800, which is calculated
11 as \$50 penalty multiplied by 1,756 pay periods (54.2% of the 3,240 pay periods). Plaintiff
12 extrapolated the same 54.2% rate for rest break violations, which would equate to a maximum
13 exposure of \$228,800 (\$100 penalty per pay period multiplied by 2,288 pay periods, which is
14 54.2% x 4,221 pay periods). As such, the aggregate maximum exposure for meal break and rest
15 break claims would be \$316,600. Assuming that Plaintiff's calculations and analysis are accurate,
16 the maximum exposure presumes that the Court will not reduce the penalty award as unjust,
17 arbitrary, oppressive, or confiscatory. For the rest period violations, it also presumes that the meal
18 and rest period violation rates were identical.

19 18. There are risks to Plaintiff's meal and rest period claims. Defendant contends
20 that, to establish a violation for missed meal periods, a plaintiff must do more than show that a
21 meal break was not taken. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004.
22 So long as an employer provides employees with a "reasonable opportunity" to take a duty-free
23 meal period, it has no further duty to "police meal breaks and ensure no work thereafter is
24 performed." *Id.* at 1040-41. Instead, a plaintiff must show the employer impeded, discouraged,
25 or prohibited the employee from taking a proper break, or otherwise failed to release the
26 employee of all control. *Id.* "Thus, the crucial issue with regard to the meal break claim is the
27 reason that a particular employee may have failed to take a meal break." *Washington v. Joe's*
28 *Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. Determining by a review of Defendants' time

1 records the exact reasons why a meal period appears to be short or late would be difficult and
2 pinpointing those days in which Plaintiff and the Aggrieved Employees worked during their meal
3 periods will be a challenge. Additionally, Defendant provided evidence that they provide
4 employees with the opportunity to take meal and rest breaks and paid meal premium payments
5 throughout the PAGA Period. Moreover, meal period premium payments were observed in the
6 sample records. In addition, DWH's Handbook contains legally compliant meal period and rest
7 break policies.

8 19. Defendant contends they provided their non-exempt employees with the
9 opportunity to take rest periods in accordance with California law, and, accordingly, Plaintiff's
10 rest break claim has no support. Additionally, there are other risks to Plaintiff's rest period claim.
11 Employers are not required to record rest periods and such periods are paid. Unlike meal periods,
12 where there are often records showing whether an employee clocked out or not, there is no such
13 evidence to prove a missed rest period or that the employer refused to authorize and permit one.

14 20. As it relates to Plaintiff's other claims, and unlike the arguments for meal/rest
15 period violations, there would be issues with proof. The sampling did not reveal any rounding as
16 hours were paid to the second decimal point. There would be no regular rate issue, since there
17 were no bonus payments seen in the sample. As it relates to any overtime issues, the data showed
18 the average workday was 6.3 hours, which means that overtime pay was not an issue. Regardless,
19 when employees worked over 8.0 hours, they were paid 1.5 times their regular rate. Moreover,
20 Defendant provided overall strong written policies as it related to wage and hour practices and
21 showed that Plaintiff acknowledged the policies. There are also risks to Plaintiff's claim for
22 unreimbursed expenses. Plaintiff alleges that Defendant did not reimburse him or the other
23 Aggrieved Employees for uniform items. Defendant provided evidence at mediation that it
24 provided its employees with all uniform items. Moreover, there is a risk that the Court may
25 consider Plaintiff's claims as to Defendant's alleged failure to indemnify for business expenses
26 to be individual in nature. As such, Plaintiff's Counsel had to significantly discount the value of
27 this claim during settlement negotiations. Plaintiff's other claims for violations of Labor Code
28 sections 203, 204, and 226 (for not being paid all wages owed every pay period or at the end of

1 employment as well as not receiving accurate, itemized wage statements) would not be triggered
2 since they are derivative claims, and no rounding/overtime issues were identified. Based on the
3 above calculations, Plaintiff's aggregate exposure for the strongest disputed claims would be
4 \$316,600. Assuming that Plaintiff's calculations and analysis are accurate, the maximum
5 exposure presumes that the Court will not reduce the penalty award as unjust, arbitrary,
6 oppressive, or confiscatory. Based on the above analysis, a gross settlement in the amount of
7 \$157,500, which represents approximately 49.75% of the maximum penalty calculation for the
8 strongest claims for meal and rest break violations, is a very strong result, especially in light of
9 the risk factors as discussed above.

10 21. Moreover, I am unaware of any California State court decision awarding a
11 plaintiff and the other Aggrieved Employees he represents multiple civil penalties for the same
12 pay period under different Labor Code provisions. As such, one of the risks Plaintiff faces is that
13 the Court would refuse to "stack" civil penalties arising under the various Labor Code statutes.
14 Plaintiff's counsel had to substantially discount the value of these claims in the settlement
15 negotiations for this and a variety of other reasons. At best, Plaintiff could hope to recover one
16 penalty for each pay period (regardless of the different Labor Code violations that potentially
17 occurred for the same employee, during the same pay periods).

18 22. Additionally, PAGA states a court has discretion to award a lesser amount than
19 the maximum penalty. *See Lab. Code* § 2699(e)(2) ("...a court may award a lesser amount than
20 the maximum civil penalty amount specified by this part if, based on the facts and circumstances
21 of the particular case, to do otherwise would result in an award that is unjust, arbitrary and
22 oppressive, or confiscatory."); *see also Thurman v. Bayshore Transit Management, Inc.* (2012)
23 203 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that the Court
24 could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff's evidence
25 of willful and intentional conduct. *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504
26 ("Carrington") illustrates this. In that case, the Court of Appeal affirmed a trial court's heavily
27 discounted award of only \$5 per violation because it was within the Court's discretion to
28 significantly reduce PAGA penalties even when there is a finding that a violation of the

1 California Labor Code occurred. The plaintiff in *Carrington* had requested penalties in excess of
2 \$70 million and was successful in proving the PAGA claim during a bench trial. However, the
3 trial court reduced the total award after trial to only \$150,000 (30,000 violations x \$5) and stated
4 that this reduction was warranted because imposing the maximum penalty would be “unjust,
5 arbitrary, and oppressive”, based on Starbucks’s “good faith attempts” to comply with meal break
6 obligations and because the Court found the violations were minimal. Applying the same formula
7 here and assuming there was one violation during each pay period, the award of civil penalties
8 could not exceed \$22,500 in PAGA penalties (4,500 violations x \$5). As such, this Settlement is
9 a great result based solely on the risk the Court chooses to apply the *Carrington* formula.
10 Defendants have also posed formidable defenses to the Labor Code claims underlying Plaintiff’s
11 allegations. Thus, the chance of Plaintiff recovering a higher amount than the Gross Settlement
12 Amount is uncertain.

13 23. The Parties further recognize that the issues presented in the representative PAGA
14 claim are likely only to be resolved with extensive and costly pretrial and trial proceedings, and
15 that further litigation will cause inconvenience, distraction, disruption, delay, and expense
16 disproportionate to the maximum potential benefits to the Aggrieved Employees and Plaintiff
17 from continued litigation, especially in the post pandemic era where further and extensive
18 litigation may cause businesses to shut down, resulting in no monetary compensation to Plaintiff,
19 Plaintiff’s attorneys, other Aggrieved Employees, and the State of California.

20 24. The settlement of the representative PAGA claim involves monetary relief to all
21 Aggrieved Employees, Plaintiff, his attorneys, and the State of California. The Settlement is
22 reasonable given the uncertainties this lawsuit entails. It is also reasonable given the structure
23 and purpose of the PAGA, since the PAGA is not a restitution statute. Rather, it is essentially a
24 punishment statute. It provides for civil penalties only. Within the PAGA framework he is bound
25 by, Plaintiff, considering the evidence he faced, achieved a great result for the employees
26 concerned. Furthermore, any employees who are dissatisfied with the amount they received in
27 civil penalties can pursue any damages they believe they are owed by the Defendants. The
28 Settlement does not require them to opt out to do so.

25. Furthermore, Plaintiff recognizes that continued litigation presents significant risks that support a significant downward departure from Plaintiff's estimated civil penalties amount. In view of the risks, the Settlement represents a fair, adequate, and reasonable compromise amount for these claims and is in the best interest of Plaintiff and Aggrieved Employees and thus, warrants approval. *See Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014 WL 2465049, * 3. The PAGA settlement and its terms are fair, just, reasonable, adequate, and equitable to Defendants, Plaintiff, and the State, especially in light of the current economic climate, and are the product of good faith, and informed arms-length negotiations between the Parties consistent with public policy and fully comply with applicable provisions of law.

26. As such, the settlement of PAGA penalties in the gross sum of 157,500, of which 75% of the net amount after attorney's fees, litigation costs, and settlement administration costs (\$70,532.69), will be paid to the LWDA and 25% (\$23,510.90) will be distributed to the Aggrieved Employees, is reasonable and appropriate under the circumstances.

Individual PAGA Payments

27. Defendants represent that at the time of mediation there were approximately 109 Aggrieved Employees during the PAGA Period. After deducting the requested Court-approved PAGA Counsel's Fees (\$52,500) and PAGA Counsel's Litigation Costs (\$7,006.42), and the Settlement Administrator's Costs (\$3,950), the NSA will be approximately \$94,043.58. Seventy five percent (75%) of the NSA will be paid to the Labor and Workforce Development Agency ("LWDA Payment") (\$70,532.69), and twenty five percent (25%) (\$23,510.90) of the NSA will be paid to the Aggrieved Employees on a pro-rata basis based upon their respective number of pay periods during the PAGA Period. Agreement, ¶¶ 1.22; 3.2.3-3.2.3.1. With a total of 109 Aggrieved Employees, the average estimated individual PAGA payment for each Aggrieved Employee is approximately \$215.70 (\$23,510.90 [25% of the estimated PAGA Penalties] / 109 Aggrieved Employees). This is a great result given the uncertainties this lawsuit entails.

Plaintiff's Individual Settlement

28. Plaintiff negotiated an individual settlement agreement separate from the PAGA

1 Settlement. The parties agreed that the consideration Plaintiff received pursuant to the individual
2 settlement agreement was to settle his individual wage and hour claims, disability
3 discrimination, harassment, retaliation, and wrongful termination claims. Plaintiff's individual
4 settlement agreement does not provide for any additional attorney's fees or costs to my firm.

5 29. As part of this confidential agreement, Plaintiff also provided Defendant with a
6 general release of all claims, whether known or unknown, including unknown claims covered
7 by Civil Code Section 1542. Plaintiff has no conflict of interest with the absent Aggrieved
8 Employees and is adequate to represent the Aggrieved Employees. Plaintiff has maintained
9 contact with my office and helped me gather information and evidence to prove the alleged
10 claims and has agreed to remain involved as a PAGA representative even if the Court does not
11 approve the Settlement. While Plaintiff and I believe that Plaintiff's individual settlement has
12 no bearing on his adequacy as a PAGA Representative, he is willing to present that Settlement
13 to the Court *in camera* for review if the Court requests. It represents a fair resolution for
14 Plaintiff's individual wage and hour claims and claims for disability discrimination/retaliation
15 and wrongful termination. *See generally* Declaration of Sahid Irad Magana Segura.

16 30. The PAGA statute does not forbid service awards. Courts frequently award them
17 in PAGA-only cases as well. *See Mancini v. W. & S. Life Ins. Co.* (S.D. Cal. Sept.18, 2018),
18 2018 WL 4489590, at *2 (approving an incentive award of \$5,000 to named plaintiff in a PAGA-
19 only settlement); *see also Kinney v. Harvest Al Mgmt. Sub LLC*, (E.D. Cal. Sept. 6, 2013) 2013
20 WL 12415482, at *2 (awarding an incentive award of \$3,000 to a named plaintiff in a PAGA-
21 only settlement). The work Plaintiff has done on this case includes hiring my firm, speaking
22 with our office on many occasions by phone, explaining what his employment at DWH was
23 like, explaining what his employment at DWH had in common with other employees who
24 worked for DWH, explaining his claims to me and my staff, and communicating with me and
25 my staff about the settlement agreement and related documents. Despite this, Plaintiff is **not**
26 asking for a service award for his involvement and the time he spent assisting my firm with the
27 PAGA action. *See generally* Declaration of Sahid Irad Magana Segura.

28 ///

Attorneys' Fees and Costs

31. I represent Plaintiff on a straight contingency basis. My firm's request for \$52,500 in attorney fees and \$7,006.42 in litigation costs is fair and reasonable. "[R]egardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." (See *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn.11 ("*Chavez*")); *In re Pacific Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 379 ("*Pacific*") [affirming 33% fee award]; *Williams v. MGM-Pathe Communications Co.* (9th Cir. 1997) 129 F.3d 1026, 1027 ("*MGM*") (awarding 33% of total fund amount).) This is also consistent with my experience in wage and hour class and PAGA settlements.

32. Should the Court elect to use Plaintiff's Counsel's lodestar as the method for awarding fees, notwithstanding courts' clear preference for the percentage method, my request for attorneys' fees of \$52,500 (1/3 of the Gross Settlement Amount) is fair and reasonable based on my firm's lodestar as cross-checked against the percentage of the recovery.

33. To date, I have investigated and prosecuted this matter for approximately 29.6 hours, including initial investigation, drafting the initial PAGA notice and evidence preservation letter; drafting the lawsuit; reviewing Defendant's informal document production, including wage and hour policies; sending and receiving emails on the case with defense counsel, including substantive discussions; reviewing the expert's findings/conclusions; preparing for and attending a full day mediation, reviewing the settlement agreement, and reviewing this PAGA Approval Motion. I also expect to perform additional work on this case if the Court grants final approval of the Settlement, including supervision of the Settlement Administrator's disbursement of the settlement funds to the Aggrieved Employees.

34. In this case, my firm has a total lodestar of approximately \$47,680 without the use of any multiplier, which results in a multiplier of 1.10 when compared against the \$52,500 request for attorneys' fees.¹ A general summary showing of the pre-multiplier lodestar and the

¹The multiplier of 1.10 is supported by California case law. Under California law, lodestar multipliers can range from 2 to 4 or even higher. See *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 49; *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th at p. 255; *Natural Gas Anti-Trust Cases I, II, III & IV* (Cal. Sup. Ct. 2006) 2006 WL 5377849, *4 ("This Court and numerous cases have applied multipliers of between 4 and 12 to counsel's lodestar in awarding fees."); *In re California Indirect Purchases* (Cal. Sup. Ct., 1998) 1998 WL 1031494, *10 (citing *Wilson v. Bank of*

total number of hours of work performed by my firm is set forth below with a total lodestar of approximately \$47,680. *See also* Declaration of Maralle Messrelian, ¶ 8-10.

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Pre-Multiplier Lodestar</u>
Harout Messrelian	29.6	\$750.00	\$22,200
Maralle Messrelian	39.2	\$650.00	\$25,480
Totals	68.8		\$47,680

I will make detailed copies of such time records available to the Court for inspection upon its request. I will have waited for over one and a half years to be awarded attorneys' fees for work performed since September of 2023, when Plaintiff first contacted my office, compared to Defendants' counsel who have been paid as they performed work during this case.

35. In addition, my firm incurred substantial costs, \$7,006.42 to date, which consist of mediator fees, data analysis fees, filing fees and attorney service fees. A true and correct summary of my firm's costs and expenses incurred to date is attached as **Exhibit 6** to this declaration. As the evidence submitted herewith shows, all of these costs are documented and reasonably incurred. Accordingly, they warrant the Court's approval.

36. My previous experience in litigating wage and hour actions also supports the reasonableness of the fee request. Based on past experience with similar matter, I was able to evaluate the strengths and weaknesses of this case and the reasonableness of the Settlement. Because it is reasonable to compensate me commensurate with my skill, reputation, and experience, attorney's fees of approximately one-third of the Gross Settlement Amount is reasonable. Likewise, the caliber and experience of opposing counsel in labor and employment litigation, Daniel J. Muller of Ventura Hersey & Muller, LLP, also supports the fairness and reasonableness of the requested fee award.

America Nat'l Trust & Sav. Ass'n., (Cal Sup. Ct. 1982) No. 643872 (multiplier of 10 times the hourly rate awarded) (cited in 3 Newberg & Conte, Newberg on Class Actions, section 1403, at 14-5 n. 21), and *Glendora Community Redevelopment Agency v. Demeter* (Cal. App. 2 Dist., 1984) 155 Cal. App. 3d 465, 479 (approving fee award 12 times estimated lodestar multiplier).

1 37. Plaintiff reiterates his request that the Court award his counsel one third of the
2 recovery as attorney fees. The award of attorney's fees sought is justified by the contingency
3 nature of the attorney-client relationship, my experience in litigating wage and hour cases, the
4 number of attorney and staff hours my firm has spent on this lawsuit, the high caliber of defense
5 counsel, the risks of non-payment and non-reimbursement, the delay in payment and cost
6 reimbursement, and the great results Plaintiff's Counsel has achieved for the Aggrieved
7 Employees.

8 ***Settlement Administration Costs***

9 38. With regard to the settlement administration costs provision, it is reasonable.
10 Before agreeing to ILYM Group, Inc. ("ILYM"), the parties sought and reviewed bids from
11 other reputable third-party administrator and ILYM's bid was comparable.

12 A. Simpluris, Inc. = \$3,000.00

13 B. ILYM Group, Inc.= \$3,950.00

14 C. Phoenix Class Action Administration Solutions = \$4,419.77.

15 A true and correct copy of the bid from Simpluris, Inc. is attached hereto as **Exhibit 7**. A true
16 and correct copy of the bid from Phoenix Class Action Administration Solutions is attached
17 hereto as **Exhibit 8**. A true and correct copy of the bid from ILYM Group, Inc. is attached hereto
18 as **Exhibit 9**. Thus, settlement administration costs provision should be given approval.

19 39. Furthermore, the Declaration of Lisa Mullins with attached exhibits, filed under
20 separate cover, sets forth ILYM's qualifications and costs to administer the settlement. *See*
21 *generally* Declaration of Lisa Mullins. Thus, the settlement administration costs provision
22 should be given approval.

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I declare under the penalty of perjury of the laws of the State of California that the foregoing is true and correct to the best of my knowledge.


HAROUT MESSRELIAN,
Declarant

EXHIBIT 1

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (“Agreement”) is made by and between: **(1)** Plaintiff Sahid Irad Magana Segura (“Plaintiff”), individually and in his representative capacity as a private attorney general on behalf of the State of California; and **(2)** DWH Restaurants, Inc. (“Defendant”). The Agreement refers to Plaintiff and Defendants collectively as “Parties,” or individually as “Party.”¹

1. DEFINITIONS

- 1.1. “Action” means the Plaintiff’s PAGA lawsuit alleging wage and hour violations against Defendants captioned *Sahid Irad Magana Segura v. DWH Restaurants, Inc., et al.* case number 24CV428664, initiated on January 5, 2024, and pending in the Superior Court of the State of California for the County of Santa Clara.
- 1.2. “Administrator” means the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.
- 1.4. “Aggrieved Employee” means all individuals who are, or were, employed by Defendant DWH Restaurants, Inc. as non-exempt employees in California during the PAGA Period.
- 1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in Defendant’s possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.
- 1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.
- 1.7. “Court” means the Superior Court of the State of California for the County of Santa Clara.
- 1.8. “Defense Counsel” means Ventura Hersey & Muller, LLP, the attorneys representing Defendant, DWH Restaurants, Inc.

¹ This Agreement is based on the Los Angeles County Superior Court’s [Model] PAGA Settlement Agreement (LASC CIV 298) (“Model Agreement”), with minor modifications to reflect the agreement by the Parties and the facts of the case.

- 1.9. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the day the Court enters Judgment.
- 1.10. “Gross Settlement Amount” means **\$157,500.00**, which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator’s Expenses Payment.
- 1.11. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.
- 1.12. “Judgment” means the judgment entered by the Court based upon the Approval Order.
- 1.13. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.14. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.15. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.
- 1.16. “PAGA Counsel” means Harout Messrelian and Maralle Messrelian, Of Counsel of Messrelian Law, Inc., the attorneys representing the Plaintiff in the Action.
- 1.17. “PAGA Counsel Fees Payment” and “PAGA Counsel Litigation Expenses Payment” mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.18. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant DWH Restaurants, Inc. for at least one day during the PAGA Period.
- 1.19. “PAGA Period” means the period from September 26, 2022, through March 12, 2025.
- 1.20. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

- 1.21. "PAGA Notice" means Plaintiff's letter(s) to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd. (a).
- 1.22. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees and the 75% to LWDA in settlement of PAGA claims.
- 1.23. "Plaintiff" means Sahid Irad Magana Segura, the named plaintiff in the Action.
- 1.24. "Approval Order" means the proposed Order Granting Approval of PAGA Settlement.
- 1.25. "Released PAGA Claims" means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.
- 1.26. "Released Parties" means: Defendant DWH Restaurants, Inc. and Daniel William Holder and each of their former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns, employees, parent and subsidiary companies, affiliates, holding companies, joint ventures, insurers and re-insurers, present and former spouses and heirs.
- 1.27. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

2. RECITALS

- 2.1. On January 5, 2024, Plaintiff filed a Complaint alleging the following relevant causes of action against Defendant: 1) Failure To Compensate For All Hours Worked; 2) Failure To Pay Minimum Wages; 3) Failure To Pay Overtime; 4) Failure To Provide Accurate Itemized Wage Statements; 5) Failure To Pay Wages Owed Every Pay Period; 6) Failure To Pay Wages When Employment Ends; 7) Failure To Give Rest Breaks; 8) Failure To Give Meal Breaks; 9) Failure To Reimburse Business Expenses; 10) Private Attorneys General Act ("Paga"); 11) Failure To Provide Personnel Records; 12) Failure To Provide Pay Records; 13) Discrimination On The Basis Of Physical Disability In Violation Of Fair Employment And Housing Act ("FEHA"); 14) Failure To Accommodate Physical Disability In Violation of FEHA; 15) Failure To Engage In Interactive Process To Determine Reasonable Accommodation Of FEHA; 16) harassment Based On Race/Ethnicity/National Origin/Ancestry In Violation Of FEHA; 17) Retaliation In Violation of FEHA; 18) Failure To Prevent Discrimination, Harassment, And Retaliation In Violation Of FEHA; 19) Wrongful Termination In Violation Of Public Policy; 20) Harassment On The Basis Of Physical Disability In Violation Of FEHA; 21) Violation Of California Business And Professions Code Section 17200. The Complaint is the operative complaint in the Action (the "Operative Complaint.")[. Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged. All of the Causes of

Action alleged in the Complaint have been, or will be, dismissed *with prejudice*, save for the 10th Cause of Action which asserts PAGA claims.

- 2.2. Pursuant to Labor Code section 2699.3, subd. (a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.
- 2.3. On March 12, 2025, the Parties participated in an all-day mediation presided over by professional neutral Kael Briski, Esq. which led to this Agreement to settle the Action.
- 2.4. Prior to mediation, Plaintiff obtained, through informal discovery, various documents and information that allowed both sides to evaluate the potential exposure and potential risk of proceeding to trial. Such items include, but are not limited to: the operative employee handbook; policies and procedures related to the claims alleged in the Operative Complaint; Plaintiff's personnel file, payroll and time records; and a sample of time and pay records for the Aggrieved Employees.
- 2.5. The Parties, PAGA Counsel, and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. **MONETARY TERMS**

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Defendant promises to pay **\$157,500.00**, and no more, as the Gross Settlement Amount. Defendant has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.
- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Approval Order:
 - 3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than one-third of the Gross Settlement Amount, which is currently estimated to be \$52,500.00 and a PAGA Counsel Litigation Expenses Payment of not more than \$8,000.00. Defendant will not oppose requests for these payments provided that they do not exceed these amounts. As part of the motion for approval of the Settlement or as a separate motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment, Plaintiff and/or PAGA Counsel will seek Court approval for any PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount to be distributed as PAGA Penalties. In the event the Court awards an amount for the PAGA Counsel

Fees Payment and/or the PAGA Counsel Litigation Expenses Payment less than the amount requested, the amount awarded shall not constitute a material change to the settlement. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's counsel arising from any claim to any portion of any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these payments.

3.2.2. To the Administrator: An Administrator Expenses Payment not to exceed \$4,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$4,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.3. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount currently estimated to be at least \$93,000 to be paid from the Gross Settlement Amount, with 75% (\$69,750) allocated to the LWDA PAGA Payment and 25% (\$23,250) allocated to the Individual PAGA Payments.

3.2.3.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$23,250) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period, and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.3.2. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. **SETTLEMENT FUNDING AND PAYMENTS**

4.1. Aggrieved Employee Pay Periods. Based on a review of its records at the time of the mediation, Defendant estimates there are 109 Aggrieved Employees who worked a total 4,500 PAGA Pay Periods.

4.2. Aggrieved Employee Data. Within 30 days of the Effective Date, Holder's will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect the Aggrieved Employees' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other

purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

- 4.3. Funding of Gross Settlement Amount. DWH Restaurants, Inc. shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 30 days after the Effective Date.
- 4.4. Payments from the Gross Settlement Amount. Within fifteen (15) days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fees Payment, and the PAGA Counsel Litigation Expenses Payment. Disbursement of the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.
 - 4.4.1. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than one hundred eighty (180) days after the date of mailing or any remailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database. Together with the Individual PAGA Payments, the Settlement Administrator will issue each Aggrieved Employee an explanatory letter in the form attached as **Exhibit A**.
 - 4.4.2. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within seven (7) days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

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

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

5. RELEASES OF CLAIMS

Effective on the date when Defendant fully funds the entire Gross Settlement Amount, Plaintiff, PAGA Counsel, and the Aggrieved Employees will release claims against all Released Parties as follows:

5.1 Plaintiff's Release. Plaintiff and his respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences during the PAGA Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the PAGA Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

5.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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.

5.2 Release by Aggrieved Employees. All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice, including California Labor Code sections 201, 202, 203, 204, 226, 226.3, 226.7, 351, 353, 510, 512,

558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802, and IWC Wage Order 5, §§ 7, 11-12.

5.3 Release by PAGA Counsel. PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

6. MOTION FOR APPROVAL OF SETTLEMENT

Plaintiff agrees to prepare and file a motion for approval of this Settlement.

- 6.1. Plaintiff's Responsibilities. Plaintiff will prepare all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2), including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (iv) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their declarations, Plaintiff and PAGA Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.
- 6.2. Responsibilities of PAGA Counsel. PAGA Counsel is responsible for expeditiously finalizing and filing the motion for approval of this Settlement no later than thirty (30) days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's Approval Order to the Administrator. PAGA Counsel shall provide copies of the motion for approval of this Settlement to Defense Counsel at least 10 days prior to filing it with the Court. Plaintiff and PAGA Counsel agree to provide any and all notices to the LWDA required to effectuate this Settlement, including but not limited to the notice required by California Labor Code section 2699 subdivision (l)(2).
- 6.3. Duty to Cooperate. If the Parties disagree on any aspect of the proposed motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement,

PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION

- 7.1. Selection of Administrator. The Parties will jointly select a provider to serve as the Administrator and will verify that, as a condition of appointment, they agree to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.2. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 7.4. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8. AGGRIEVED EMPLOYEE SIZE ESTIMATES AND ESCALATOR CLAUSE

Based on its records as of the date of the mediation, Defendant estimates that there are approximately 109 Aggrieved Employees who worked approximately 4,500 Pay Periods during the PAGA Period. If the number of pay periods worked by the Aggrieved Employees is greater than 15% above that estimated by Defendant(s), then the GSA shall be increased proportionately for each additional pay period above the 15% buffer.

9. CONTINUING JURISDICTION OF THE COURT

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

- 9.1. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties, their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to

perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10. **ADDITIONAL PROVISIONS**

- 10.1. **No Admission of Liability or Representative Manageability for Other Purposes.** This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).
- 10.2. **Integrated Agreement.** Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 10.3. **Attorney Authorization.** PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 10.4. **Cooperation.** The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 10.5. **No Prior Assignments.** The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

- 10.6. No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 10.7. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 10.8. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 10.9. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 10.10. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 10.11. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement. The Parties and their counsel agree to keep the settlement confidential, to the maximum extent permitted by law. Plaintiff and Plaintiff's counsel agree, to the maximum extent permitted by law, to refrain from publicizing the fact of the settlement and the terms of the settlement. Neither party will issue any press release or other public or non-public representation regarding the settlement other than as necessary to obtain Court approval and effectuate the terms of the settlement.
- 10.12. Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than ninety (90) days after the Administrator discharges its obligation to pay out all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from Defendant unless, prior to the Administrator's payment of all Settlement Funds, Defendant makes a written request to PAGA Counsel for the return, rather than the destructions, of Aggrieved Employee Data.
- 10.13. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

- 10.14. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 10.15. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

MESSRELIAN LAW, INC.
Maralle Messrelian, Esq.
500 N. Central Ave., Suite 840
Glendale, CA 91203
hm@messrelianlaw.com
Tel: 818-484-6533

To Defendant:

VENTURA HERSEY & MULLER, LLP
Daniel J. Muller
dmuller@venturahersey.com
Ph: (408) 512-3025
(EMAIL SERVICE ONLY)

- 10.16. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 10.17. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

APPROVAL AND EXECUTION BY PARTIES

PLAINTIFF:

Dated: 04/29/2025

Sahid Irad Magana Segura
Sahid Irad Magana Segura (Apr 29, 2025 22:34 PDT)

Sahid Irad Magana Segura
Plaintiff and Private Attorney General

DEFENDANT:

Dated: 5/7/2025

DWH Restaurants, Inc.

Signed by:
Daniel William Holder
8B2DF8D3195A497...

By: Daniel William Holder

Title: President

APPROVED AS TO FORM BY COUNSEL

PAGA COUNSEL:

Dated: 04-30-2025

MESSRELIAN LAW, INC.



Harout Messrelian
Maralle Messrelian
Attorneys for Plaintiff

DEFENSE COUNSEL:

Dated: 5/9/2025

VENTURA HERSEY & MULLER, LLP

Signed by:
Daniel J. Muller
299BE2A0D5994C0...

Daniel J. Muller
Attorneys for Defendant

EXHIBIT A

NOTICE OF PAGA SETTLEMENT

Sahid Irad Magana Segura v. DWH Restaurants, Inc., et al.
Santa Clara County Superior Court, Case No. 24CV428664

<<ILYM Group, Inc.>>

[]

[]

Telephone: []

«Barcode» «BarcodeString»

SIMID «SIMID»

«FirstName»

«LastName»

«Address1» «Address2»

«City» «State» «Zip»

You are receiving this notice as a result of a lawsuit brought on a representative basis under the Private Attorneys General Act, Labor Code § 2698 et seq. (“PAGA”) (“the Action”). The plaintiff in the Action is Sahid Irad Magana Segura (“Plaintiff”) and the Defendant is DWH Restaurants, Inc. (“Defendant”). The Action seeks civil penalties for purported violations of the California Labor Code on behalf of all non-exempt California employees who worked for Defendant DWH Restaurants, Inc. during the PAGA Period of September 26, 2022 through March 12, 2025 (the “Aggrieved Employees”). Defendant denies all claims and allegations in the Action, denies that it owes any penalties, and asserts that it has fully complied with all applicable Labor Code provisions. Nevertheless, to avoid further costs and time in defending the Action, the Parties have settled the case and the Court has approved the settlement and release of claims. By settling the Action, Defendant is not admitting that it has done anything wrong as of and subject to the occurrence of the Effective Date of the Settlement.

Effective on the date when Defendant fully funds the entire Gross Settlement Amount, Plaintiff, the State of California (including, but not limited to, the LWDA), and the Aggrieved Employees will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the PAGA Released Claims with respect to Defendant DWH Restaurants, Inc. and Daniel William Holder and each of their former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns, employees, parent and subsidiary companies, affiliates, holding companies, joint ventures, insurers and re-insurers, present and former spouses and heirs. The Released PAGA Claims shall include all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice, including but not limited to: California Labor Code Sections 201, 202, 203, 204, 226, 226.3, 226.7, 351, 353, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802, and IWC Wage Order 5, §§ 7, 11-12.

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

According to the Defendants' records, you are an Aggrieved Employee and therefore entitled to a share of the settlement based upon the Court approved allocation. Enclosed with this Notice is your check for your share. The settlement check shall remain valid for 180 days. Thereafter, all uncashed checks shall be distributed to California State Controller's Office Unclaimed Property Fund with an identification of the amount of unclaimed funds attributable to each Aggrieved Employee.

Please Note: One hundred percent (100%) of your individual PAGA payment under this Settlement will be considered penalties and may be subject to local, state, or federal tax withholdings and will be reported to the IRS and state tax authorities. You should rely on your own tax advisors as to the tax consequences of your individual PAGA payment. Neither Plaintiff nor Defendants have made any representations or warranties regarding the taxation of your individual PAGA payment. Nothing within this notice or any other communication shall constitute or be construed or relied upon as tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended). Enclosed are the appropriate tax forms pertaining to your payment.

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

EXHIBIT 2

NOTICE OF PAGA SETTLEMENT

Sahid Irad Magana Segura v. DWH Restaurants, Inc., et al.
Santa Clara County Superior Court, Case No. 24CV428664

<<ILYM Group, Inc.>>

[]

[]

Telephone: []

«Barcode» «BarcodeString»

SIMID «SIMID»

«FirstName»

«LastName»

«Address1» «Address2»

«City» «State» «Zip»

You are receiving this notice as a result of a lawsuit brought on a representative basis under the Private Attorneys General Act, Labor Code § 2698 et seq. (“PAGA”) (“the Action”). The plaintiff in the Action is Sahid Irad Magana Segura (“Plaintiff”) and the Defendant is DWH Restaurants, Inc. (“Defendant”). The Action seeks civil penalties for purported violations of the California Labor Code on behalf of all non-exempt California employees who worked for Defendant DWH Restaurants, Inc. during the PAGA Period of September 26, 2022 through March 12, 2025 (the “Aggrieved Employees”). Defendant denies all claims and allegations in the Action, denies that it owes any penalties, and asserts that it has fully complied with all applicable Labor Code provisions. Nevertheless, to avoid further costs and time in defending the Action, the Parties have settled the case and the Court has approved the settlement and release of claims. By settling the Action, Defendant is not admitting that it has done anything wrong as of and subject to the occurrence of the Effective Date of the Settlement.

Effective on the date when Defendant fully funds the entire Gross Settlement Amount, Plaintiff, the State of California (including, but not limited to, the LWDA), and the Aggrieved Employees will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the PAGA Released Claims with respect to Defendant DWH Restaurants, Inc. and Daniel William Holder and each of their former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns, employees, parent and subsidiary companies, affiliates, holding companies, joint ventures, insurers and re-insurers, present and former spouses and heirs. The Released PAGA Claims shall include all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice, including but not limited to: California Labor Code Sections 201, 202, 203, 204, 226, 226.3, 226.7, 351, 353, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802, and IWC Wage Order 5, §§ 7, 11-12.

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

EXHIBIT 3



MESSRELIAN LAW
ATTORNEYS AT LAW

500 N. Central Avenue, Suite 840
Glendale, California 91203

Tel: (818) 484-6531

Fax: (818) 956-1983

VIA ELECTRONIC FILING

September 26, 2023

California Labor & Workforce Development Agency (LWDA)
Attn. PAGA Administrator
800 Capitol Mall, MIC-55
Sacramento, California 95814

VIA U.S. CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

DWH RESTAURANTS, INC.
DANIEL WILLIAM HOLDER
c/o ANNA MARIA HOLDER
2916 AULIN DRIVE
SAN JOSE, CA 95125

SAHID MAGANA v. DWH RESTAURANTS, INC.; DANIEL WILLIAM HOLDER

RE: PRIVATE ATTORNEYS GENERAL ACT NOTICE

To Whom It May Concern:

Please be informed that our client, Mr. Sahid Magana (hereinafter “Mr. Magana” or “our client”) seeks penalties on behalf of the State of California and all current and former non-exempt or hourly paid California employees (“aggrieved employees”) who worked for DWH RESTAURANTS, INC. and DANIEL WILLIAM HOLDER (hereinafter collectively referred to as “DWH”) at all of their locations in the State of California, during the relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”). The purpose of this letter is to comply with the statutory requirements of California Labor Code section 2699.3 and shall constitute notice of the same. Individual DANIEL WILLIAM HOLDER is being included in this PAGA notice pursuant to Labor Code section 558.1 in that he was and is the owner, managing agent, and/or director of DWH RESTAURANTS, INC., was involved in the day-to-day operations of the business, and controlled the wages, hours, and/or working conditions of our client and other hourly, non-exempt employees.

Mr. Magana started working at DWH, and specifically, Jack Holders Bar & Grill on or around mid-2022 as a cook/prep. Mr. Magana was classified as an hourly, non-exempt employee. Mr. Magana’s employment ended on or around July 20, 2023.

In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018), Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas Security Services USA, Inc., an onsite security provider. After about a year of employment, Huff resigned. Huff



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then filed suit against Securitas under PAGA. In his claim, Huff specifically alleged violations to the Labor Code requiring immediate payment of wages upon termination of employment and weekly payment of wages to temporary employees. The trial court determined Huff was not a temporary employee, and therefore, lacked standing to bring the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the PAGA representative to sue for violations that the representative has personally suffered. The PAGA statute states that an “aggrieved employee” is able to file suit on behalf of themselves and others. The statute also states that an “aggrieved employee” is “any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.” Because at least one of the violations that Huff had alleged had affected him personally, the Court of Appeal denied Securitas’ motion.

In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and other employees, it allows for suits broader than the specific violations the named employee experienced. Therefore, even if the employee did not personally experience the Labor Code violations, the employer may still be liable to under PAGA. Consequently, it is our position that Mr. Magana can equivocally bring the following labor code violations on behalf of all other employees, including ALL hourly, non-exempt employees, irrespective of job title or job duties.

It is our position that DWH has violated the following Labor Code Sections against Mr. Magana and other similarly situated aggrieved employees, who include all non-exempt, hourly employees who worked for DWH at their various locations in the State of California during the relevant PAGA period.

DWH violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay our client and other similarly situated aggrieved employees for all hours worked, including the statutory minimum wage for all hours worked and for “off the clock” work. This is so because DWH had a company policy wherein they would disproportionately round down the number of hours worked, resulting in “time shaving” and further resulting in aggrieved employees not being paid for all hours worked. Furthermore, and to the extent that Mr. Magana and others worked through their meal periods while “off the clock”, they were not compensated for all hours worked, which would be akin to a minimum wage violation. In fact, Mr. Magana was specifically not paid his full and complete wages for all hours worked, including his final pay. Furthermore, Mr. Magana and others engaged in prep work prior to clocking in as well as clean up duties after clocking out for which they were not compensated in contravention of California law.

Due to the above “off the clock” violations, DWH also violated Labor Code §510 because it failed to pay our client and other aggrieved employees overtime compensation, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. Mr. Magana’s and other aggrieved employees’ actual work hours entitled them to overtime compensation, however, DWH did not compensate its hourly, non-exempt employees with the correct amount of overtime due to the “off the clock” work and time shaving as described



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above. Furthermore, DWH failed to include bonuses/incentive payments in calculating employees' regular rate of pay for use in deciphering the correct overtime rate of pay. Additionally, the incentive and bonus payments were also not factored into employees' regular rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews case.

DWH also violated Labor Code § 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 5 because it failed to provide our client and other similarly situated aggrieved employees with 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. DWH did not completely relieve our client and others of all duty during said rest periods. DWH did not pay to our client and others one additional hour of pay at our client's regular rate of compensation for each workday that one or more statutory rest periods was not provided. It was not part of the company policy for employees such as Mr. Magana to take at least two rest breaks per shift. The concept of rest breaks was not consistently implemented as it was not company policy. Moreover, it would not have been possible for employees such as Mr. Magana to take such rest breaks due to being understaffed and due to a heavy workload, especially in the fast-paced restaurant industry. As such, the culture as well as the policies and procedures of DWH did not lend itself to the employees receiving consistent statutory rest breaks wherein they were relieved of all work duties. The environment at DWH was not conducive to receiving multiple statutory rest breaks under California law and timely, statutory rest breaks were not authorized or enforced.

DWH violated Labor Code §§ 512 and 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 5 because it failed to provide hourly, non-exempt employees, including Mr. Magana and others, the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment. DWH did not completely relieve Mr. Magana and other employees of all duty during said meal periods. DWH did not pay to Mr. Magana and its hourly, non-exempt employees one additional hour of pay at their regular rate of compensation for each workday that one or more statutory meal periods was not provided. The hourly, non-exempt employees would often not be able to receive timely meal periods before the 5th hour worked that were actually uninterrupted. The latter was due to the workload and due to being in a fast-paced restaurant environment. In fact, the hourly employees did not really receive any meal breaks wherein they were relieved of all work duties. Like the rest breaks, receiving a thirty-minute uninterrupted and timely meal break was not part of the company culture and was not enforced by DWH. Consequently, it was the normal practice and custom of DWH not to authorize, permit, and enforce timely statutory meal periods. If DWH had our client sign a meal period waiver, it would not be valid and enforceable since our client and others generally worked more than a 6-hour shift. If DWH had our client sign an on-duty meal period agreement wherein our client agreed to work through the meal periods, it would be invalid and unenforceable because the nature of our client's job does not and did not prevent him from taking a meal period and the company could have hired "breakers" to relieve Mr. Magana of his job duties so that he can actually take a timely, uninterrupted meal period. Moreover, any such "on duty" meal period agreement did not allow for our client and others to revoke such an agreement even if it was signed. As such, our client and others did not receive statutory, timely meal periods during their employment. To the extent that



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DWH argues that Mr. Magana and others were paid to work through their meal period, this argument is not compelling due to the position that there was no valid meal period waiver in place and even if there was, it is still a violation to prevent an employee from taking a meal break in order to rest and recover. To the extent that DWH argues that employees receive meal break premium pay for missed meal periods, that argument is inconsequential for PAGA penalty purposes since the PAGA penalties are for the violations themselves, irrespective of whether an employee received the premium payment for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, “section 226.7 does not give employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour of pay.” See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the violation; the employer has still committed a violation even if the remedy for the violation has been paid. See *Wert v. U.S. Bancorp.*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work environment and culture at DWH was not conducive to receiving consistent, timely, statutory meal breaks under California law. Moreover, any meal or rest break premiums paid were not compensated at the weighted average regular rate, inclusive of bonuses and/or incentive payments as well as overtime compensation.

Furthermore, during the relevant time period, and due to the above labor code violations, DWH failed to pay our client and other similarly situated aggrieved employees all wages due to them within any time period specified by California Labor Code section 204. Since Mr. Magana was personally not compensated for all hours worked, DWH would have certainly violated section 204 as to Mr. Magana. DWH was also in violation of California Labor Code section 226(a) by failing to include pertinent information on the wage statements, including but not limited to, the correct hourly rate, all hours worked, overtime hours worked, correct overtime pay, gross wages earned, net wages earned, premium pay for missed meal and rest breaks, all deductions, the correct start and end of the pay period, all employee identifying information, the correct and complete name and address of the legal employer, and reimbursement for business expenses, among others. As such, DWH did not provide our client and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

During the relevant time period, DWH also failed to keep accurate and complete payroll records showing the actual hours worked per day and the wages paid to Mr. Magana and others pursuant to California Labor Code sections 1174(d).

DWH also violated Labor Code § 203 because it willfully failed to pay our client and other similarly situated aggrieved employees earned and due wages upon separation of employment, either immediately upon involuntary termination, or within 72 hours of resignation. These earned but unpaid wages include compensation for all hours worked, including minimum wages, overtime compensation, and premium pay for missed meal and rest breaks. Since Mr. Magana was shorted on his hours and was not paid his full wages, DWH would have unequivocally violated Labor Code section 203 as to Mr. Magana.

During the relevant time period, Mr. Magana and other aggrieved employees incurred necessary, business-related expenses and costs that were not reimbursed by DWH. These costs include, but



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are not limited to, uniforms. Accordingly, DWH was in violation of California Labor Code sections 2800 and 2802.

Additionally, DWH violated Labor Code Section 351 and 353 by taking some of the tips meant for employees and also deducting the tips from others' earned wages. DWH also deducted the credit card fee from others' tips and did not timely provide the credit card and even cash tips to other aggrieved employees. As such, other similarly situated employees were not given accurate tips to which they were entitled.

Furthermore, we believe your companies have also violated Labor Code Section 558 and has engaged in business practices which violate Business and Professions Code Section 17200.

In addition, Mr. Magana would have individual claims against DWH for harassment/discrimination/retaliation/wrongful termination under the Fair Employment and Housing Act based on physical disability/ethnicity in that management and the main chef, Elias, would bully Mr. Magana and make fun of him after Mr. Magana suffered serious injuries at the workplace due to a slip and fall incident. Moreover, the sub-chefs, Angel, and Esiquiel, would use derogatory phrases to refer to Mr. Magana, including "fucking terrorist Arab".

Each of the aforementioned violations, except the violations for inaccurate pay statements under Labor Code section 226(a), is among the enumerated serious violations set forth in Labor Code § 2699.5, for which there is no statutory right to cure.

Please take notice that, based upon the above-mentioned violations, and in addition to the penalties provided by those specific sections themselves, Mr. Magana also intends to seek penalties under the following Labor Code sections which themselves are inviolable but provide for recovery of penalties for violating one or more of the above-mentioned Labor Code sections: Labor Code §§ 558, 226.3, 1197.1.

Should your agency choose not to pursue this matter, this law office intends to vigorously prosecute the aforementioned Labor Code violations on its behalf and vindicate the rights of all employees who have been subjected to these same Labor Code violations by DWH.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you in advance for your attention to this matter.

Very Truly Yours,


Harout Messrelian, Esq.

EXHIBIT 4

1 **MESSRELIAN LAW INC.**
2 Harout Messrelian, Esq. (272020)
3 500 N. Central Ave., Suite 840
4 Glendale, California 91203
5 Telephone: (818) 484-6531
6 Facsimile: (818) 956-1983

7 Attorneys for Plaintiff SAHID MAGANA

E-FILED
1/5/2024 10:14 PM
Clerk of Court
Superior Court of CA,
County of Santa Clara
24CV428664
Reviewed By: R. Walker

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF SANTA CLARA**

10 **24CV428664**

11 SAHID IRAD MAGANA SEGURA,

12 Plaintiff,

13 vs.

14 DWH RESTAURANTS, INC.; DANIEL
15 WILLIAM HOLDER.; and DOES 1 to 25,
16 inclusive,

17 Defendants.

CASE NO.:

COMPLAINT FOR DAMAGES FOR:

- 1) **FAILURE TO COMPENSATE FOR ALL HOURS WORKED;**
- 2) **FAILURE TO PAY MINIMUM WAGES;**
- 3) **FAILURE TO PAY OVERTIME;**
- 4) **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;**
- 5) **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD;**
- 6) **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS;**
- 7) **FAILURE TO PROVIDE REST BREAKS;**
- 8) **FAILURE TO PROVIDE MEAL BREAKS;**
- 9) **FAILURE TO REIMBURSE BUSINESS EXPENSES;**
- 10) **PRIVATE ATTORNEYS GENERAL ACT ("PAGA")**
- 11) **FAILURE TO PROVIDE PERSONNEL RECORDS;**
- 12) **FAILURE TO PROVIDE PAY RECORDS;**
- 13) **DISCRIMINATION ON THE BASIS OF PHYSICAL DISABILITY IN VIOLATION OF FAIR EMPLOYMENT AND HOUSING ACT ("FEHA");**
- 14) **FAILURE TO ACCOMMODATE**

1) PHYSICAL DISABILITY IN
2) VIOLATION OF FEHA;
3) 15) FAILURE TO ENGAGE IN
4) INTERACTIVE PROCESS TO
5) DETERMINE REASONABLE
6) ACCOMMODATION IN
7) VIOLATION OF FEHA;
8) 16) HARASSMENT BASED ON
9) RACE/ETHNICITY/NATIONAL
10) ORIGIN/ANCESTRY IN
11) VIOLATION OF FEHA;
12) 17) RETALIATION IN VIOLATION OF
13) FEHA;
14) 18) FAILURE TO PREVENT
15) DISCRIMINATION, HARASSMENT,
16) AND RETALIATION IN
17) VIOLATION OF FEHA
18) 19) WRONGFUL TERMINATION IN
19) VIOLATION OF PUBLIC POLICY
20) 20) HARASSMENT ON THE BASIS OF
21) PHYSICAL DISABILITY IN
22) VIOLATION OF FEHA;
23) 21) VIOLATION OF BUSINESS AND
24) PROFESSIONS CODE SECTION
25) 17200

26) JURY TRIAL DEMANDED

27 COMES NOW Plaintiff, SAHID IRAD MAGANA SEGURA (hereinafter "Plaintiff"),
28 and alleges as follows:

PARTIES, JURISDICTION, and VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Santa Clara in this judicial district because Defendants DWH RESTAURANTS, INC.; DANIEL WILLIAM HOLDER; and DOES 1 to 25, inclusive (hereinafter collectively "DWH" or "Defendant(s)") do business in the County of Santa Clara, and because Defendants' obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Santa Clara is the subject of this action. Moreover, Plaintiff's damages sought herein exceed \$25,000.

1 2. Plaintiff is a male resident of the County of Santa Clara, State of California.

2 3. Plaintiff is informed and believes that at all times herein mentioned, Defendant
3 DWH RESTAURANTS, INC. is a California corporation, doing business in the County of
4 Santa Clara, State of California, and which employed Plaintiff.

5 4. Plaintiff is informed and believes that at all times herein mentioned, Defendant
6 DANIEL WILLIAM HOLDER is a male resident of the State of California, and the owner,
7 managing agent, and/or director DWH RESTAURANTS, INC. DANIEL WILLIAM
8 HOLDER is being included in this lawsuit pursuant to Labor Code Section 558.1 as he was
9 involved in the day-to-day operations of the business and controlled the hours, wages, and/or
10 working conditions of Plaintiff and other hourly, non-exempt employees. Defendants DWH
11 RESTAURANTS, INC. and DANIEL WILLIAM HOLDER are collectively referred to herein
12 as “Defendant(s)” (unless otherwise noted) or “DWH”.

13 5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
14 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
15 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
16 defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible
17 for the conduct alleged herein. Upon discovering the true names and capacities of these
18 fictitiously named defendants, Plaintiff will amend this complaint to show the true names and
19 capacities of these fictitiously named defendants.
20

21 6. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
22 that information and belief, alleges that at all times herein mentioned, each of the remaining
23 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
24 under the authority of their agency, employment, or representative capacity, with the consent of
25 his/her codefendants.
26

27 ///
28

GENERAL ALLEGATIONS

7. Plaintiff started working at DWH, and specifically, Jack Holders Bar & Grill on or around mid-2023 as a cook/prep. Plaintiff was classified as an hourly, non-exempt employee. Plaintiff's employment ended on or around September 2023.

8. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018), Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas Security Services USA, Inc., an onsite security provider. After about a year of employment, Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff specifically alleged violations to the Labor Code requiring immediate payment of wages upon termination of employment and weekly payment of wages to temporary employees. The trial court determined Huff was not a temporary employee, and therefore, lacked standing to bring the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the PAGA representative to sue for violations that the representative has personally suffered. The PAGA statute states that an "aggrieved employee" is able to file suit on behalf of themselves and others. The statute also states that an "aggrieved employee" is "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed." Because at least one of the violations that Huff had alleged had affected him personally, the Court of Appeal denied Securitas' motion.

9. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and other employees, it allows for suits broader than the specific violations the named employee experienced. Therefore, even if the employee did not personally experience the Labor Code violations, the employer may still be liable to under PAGA. Consequently, it is Plaintiff's position that Plaintiff can equivocally bring the following labor code violations on behalf of all other employees, including ALL hourly, non-exempt employees, irrespective of job title or job

duties.

10. It is Plaintiff's position that DWH has violated the following Labor Code Sections against Plaintiff and other similarly situated aggrieved employees, who include all non-exempt, hourly employees who worked for DWH at their various locations in the State of California during the relevant PAGA period.

11. DWH violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay Plaintiff and other similarly situated aggrieved employees for all hours worked, including the statutory minimum wage for all hours worked and for "off the clock" work. This is so because DWH had a company policy wherein they would disproportionately round down the number of hours worked, resulting in "time shaving" and further resulting in aggrieved employees not being paid for all hours worked. Furthermore, and to the extent that Plaintiff and others worked through their meal periods while "off the clock", they were not compensated for all hours worked, which would be akin to a minimum wage violation. In fact, Plaintiff was specifically, not paid his full and complete wages for all hours worked, including his final pay. Furthermore, Plaintiff and others engaged in prep work prior to clocking in as well as clean up duties after clocking out for which they were not compensated in contravention of California law.

12. Due to the above "off the clock" violations, DWH also violated Labor Code §510 because it failed to pay Plaintiff and other aggrieved employees overtime compensation, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. Plaintiff's and other aggrieved employees' actual work hours entitled them to overtime compensation, however, DWH did not compensate its hourly, non-exempt employees with the correct amount of overtime due to the "off the clock" work and time shaving as described above. Furthermore, DWH failed to include bonuses/incentive payments in calculating employees' regular rate of pay for use in deciphering the correct overtime rate of pay. Additionally, the incentive and bonus payments were also not factored into employees' regular rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews case.

1 13. DWH also violated Labor Code § 226.7 and the appropriate Industrial Welfare
2 Commission Wage Order no. 5 because it failed to provide Plaintiff and other similarly
3 situated aggrieved employees with 10-minute rest periods for every four hours of work, or
4 majority portion thereof, throughout their employment. DWH did not completely relieve
5 Plaintiff and others of all duty during said rest periods. DWH did not pay to Plaintiff and
6 others one additional hour of pay at Plaintiff's regular rate of compensation for each workday
7 that one or more statutory rest periods was not provided. It was not part of the company policy
8 for employees such as Plaintiff to take at least two rest breaks per shift. The concept of rest
9 breaks were not consistently implemented as it was not company policy. Moreover, it would
10 not have been possible for employees such as Plaintiff to take such rest breaks due to being
11 understaffed and due to a heavy workload, especially in the fast-paced restaurant industry. As
12 such, the culture as well as the policies and procedures of DWH did not lend itself to the
13 employees receiving consistent statutory rest breaks wherein they were relieved of all work
14 duties. The environment at DWH was not conducive to receiving multiple statutory rest breaks
15 under California law and timely, statutory rest breaks were not authorized or enforced.

16 14. DWH violated Labor Code §§ 512 and 226.7 and the appropriate Industrial Welfare
17 Commission Wage Order no. 5 because it failed to provide hourly, non-exempt employees,
18 including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods for
19 every five (5) hours of work throughout their employment. DWH did not completely relieve
20 Plaintiff and other employees of all duty during said meal periods. DWH did not pay to
21 Plaintiff and its hourly, non-exempt employees one additional hour of pay at their regular
22 rate of compensation for each workday that one or more statutory meal periods was not
23 provided. The hourly, non-exempt employees would often not be able to receive timely meal
24 periods before the 5th hour worked that were actually uninterrupted. The latter was due to the
25 workload and due to being in a fast-paced restaurant environment. In fact, the hourly
26 employees did not really receive any meal breaks wherein they were relieved of all work
27 duties. Like the rest breaks, receiving a thirty-minute uninterrupted and timely meal break was
28

1 not part of the company culture and was not enforced by DWH. Consequently, it was the
2 normal practice and custom of DWH not to authorize, permit, and enforce timely statutory
3 meal periods. If DWH had Plaintiff sign a meal period waiver, it would not be valid and
4 enforceable since Plaintiff and others generally worked more than a 6-hour shift. If DWH had
5 Plaintiff sign an on-duty meal period agreement wherein Plaintiff agreed to work through
6 the meal periods, it would be invalid and unenforceable because the nature of Plaintiff's job
7 does not and did not prevent him from taking a meal period and the company could have hired
8 "breakers" to relieve Plaintiff of his job duties so that he can actually take a timely,
9 uninterrupted meal period. Moreover, any such "on duty" meal period agreement did not allow
10 for Plaintiff and others to revoke such an agreement even if it was signed. As such, Plaintiff
11 and others did not receive statutory, timely meal periods during their employment. To the
12 extent that DWH argues that Plaintiff and others were paid to work through their meal
13 period, this argument is not compelling due to the position that there was no valid meal period
14 waiver in place and even if there was, it is still a violation to prevent an employee from taking
15 a meal break in order to rest and recover. To the extent that DWH argues that employees
16 receive meal break premium pay for missed meal periods, that argument is inconsequential for
17 PAGA penalty purposes since the PAGA penalties are for the violations themselves,
18 irrespective of whether an employee received the premium payment for a missed, short, or
19 interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, "section
20 226.7 does not give employers a lawful choice between providing *either* meal and rest
21 breaks *or* an additional hour of pay." See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53
22 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the
23 violation; the employer has still committed a violation even if the remedy for the violation has
24 been paid. See *Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As
25 such, the work environment and culture at DWH was not conducive to receiving consistent,
26 timely, statutory meal breaks under California law. Moreover, any meal or rest break premiums
27 paid were not compensated at the weighted average regular rate, inclusive of bonuses and/or
28 incentive payments as well as overtime compensation.

1 15. Furthermore, during the relevant time period, and due to the above labor code
2 violations, DWH failed to pay Plaintiff and other similarly situated aggrieved
3 employees all wages due to them within any time period specified by California Labor Code
4 section 204. Since Plaintiff was personally not compensated for all hours worked, DWH
5 would have certainly violated section 204 as to Plaintiff. DWH was also in violation of
6 California Labor Code section 226(a) by failing to include pertinent information on the wage
7 statements, including but not limited to, the correct hourly rate, all hours worked, overtime
8 hours worked, correct overtime pay, gross wages earned, net wages earned, premium pay for
9 missed meal and rest breaks, all deductions, the correct start and end of the pay period, all
10 employee identifying information, the correct and complete name and address of the legal
11 employer, and reimbursement for business expenses, among others. As such, DWH did not
12 provide Plaintiff and other similarly situated aggrieved employees with complete, accurate
13 itemized wage statements.

14 16. During the relevant time period, DWH also failed to keep accurate and complete
15 payroll records showing the actual hours worked per day and the wages paid to Plaintiff
16 and others pursuant to California Labor Code sections 1174(d).

17 17. DWH also violated Labor Code § 203 because it willfully failed to pay Plaintiff and
18 other similarly situated aggrieved employees earned and due wages upon separation of
19 employment, either immediately upon involuntary termination, or within 72 hours of
20 resignation. These earned but unpaid wages include compensation for all hours worked,
21 including minimum wages, overtime compensation, and premium pay for missed meal and rest
22 breaks. Since Plaintiff was shorted on his hours and was not paid his full wages, DWH
23 would have unequivocally violated Labor Code section 203 as to Plaintiff.

24 18. During the relevant time period, Plaintiff and other aggrieved employees incurred
25 necessary, business-related expenses and costs that were not reimbursed by DWH. These costs
26 include, but are not limited to, uniforms. Accordingly, DWH was in violation of California
27 Labor Code sections 2800 and 2802.
28

1 19. Additionally, DWH violated Labor Code Section 351 and 353 by taking some of the
2 tips meant for employees and also deducting the tips from others' earned wages. DWH also
3 deducted the credit card fee from others' tips and did not timely provide the credit card and
4 even cash tips to other aggrieved employees. As such, other similarly situated employees were
5 not given accurate tips to which they were entitled.

6 20. In addition, Plaintiff would have individual claims against DWH for violations under
7 the Fair Employment and Housing Act, including harassment and discrimination based on
8 physical disability and ethnicity as well as retaliation, and wrongful termination in violation of
9 public policy. On or around July 4, 2023, Plaintiff had a serious slip and fall injury at the
10 workplace wherein Plaintiff fell backwards, striking his back and head on the ground. Plaintiff
11 suffered a cerebral concussion as well as injury to his ear, spine, lower back. In fact, Plaintiff
12 was urinating blood after the incident. On the date of the incident, Plaintiff was sent to
13 a company clinic for evaluation, however, the clinic did not have the proper equipment to
14 thoroughly examine Plaintiff. As such, Plaintiff was referred to and in fact went to the hospital.
15 Upon his return to work, Plaintiff was scolded by management for going to the hospital and not
16 sticking only to the clinic. Despite his serious injuries, Plaintiff initially tried to
17 work through the injuries for a period of 15 days, and would wear a back brace for support as
18 well as ear plugs due to the concussion and accompanying symptoms. During this time, the
19 main chef, "Elias", and sub-chefs Angel and Eziquel, would poke fun of Plaintiff's injuries and
20 disabilities and make fun of the fact that Plaintiff fell. Note that Elias and the sub-chefs would
21 be considered Plaintiff's "supervisor" under FEHA because they all had the ability and did in
22 fact control and direct Plaintiff's work. Furthermore, Elias would always remind Plaintiff that
23 Elias had the ability to hire and fire. Since Plaintiff was wearing a back brace and ear plugs, the
24 sub-chefs would mock Plaintiff and make comments to Plaintiff such as "you look like an old
25 lady", "you look like a pregnant woman", "you look like a girl" and would also refer to him as
26 "Marica (sissy)". Moreover, the sub-chefs, Angel, and Eziquel would use derogatory phrases to
27 refer to Plaintiff, including "fucking terrorist Arab". Plaintiff was placed off work on or around
28

1 July 20, 2023 and was subsequently terminated on or around September 9, 2023, in a
2 retaliatory and discriminatory fashion due to his physical disabilities.

3 21. Pursuant to California Government Code section 12960, Plaintiff has exhausted his
4 administrative remedies. Plaintiff filed a complaint with the California Civil Rights Department
5 (formerly, Department of Fair Employment and Housing (“DFEH”)), alleging claims in this
6 complaint. The California Civil Rights Department immediately issued to Plaintiff a right to sue
7 letter/notice.

8 **FIRST CAUSE OF ACTION**

9 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

10 **(California Industrial Welfare Commission Order 5-2001, California Code of**
11 **Regulations Title 8 Section 11050, and California Labor Code Section 1198)**

12 **(Plaintiff against all named defendants and all DOE defendants)**

13
14 22. Plaintiff re-alleges and incorporates by reference each and every allegation in
15 paragraphs 1 through 21, inclusive, of this Complaint as though fully set forth herein.

16 23. At all times relevant herein, Defendants were required to compensate its employees for
17 all hours worked upon reporting for work at the appointed time stated by the employer
18 pursuant to Industrial Welfare Commission Order 5-2001, California Code of
19 Regulations, Title 8, Section 11050.

20 24. For the three (3) years preceding filing of this action, Defendants failed to compensate
21 Plaintiff for all hours worked.

22 25. Under the aforementioned wage order and regulations, Plaintiff is to recover
23 compensation for all hours worked but not paid by Defendants for the three (3) years
24 preceding the filing of this Complaint.

25 26. As a proximate result of the aforementioned violations, Plaintiff has been damaged in
26 an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of
27 this Court.

1 27. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
2 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
3 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
4 reasonable attorney's fees and costs of suit.

5 28. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
6 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
7 amount known to Plaintiff once he has obtained all of his payroll records from
8 Defendants.

9 **SECOND CAUSE OF ACTION**

10 **FAILURE TO PAY MINIMUM WAGES**

11 **(California Labor Code Sections 1194, 1194.2, 1197)**

12 **(Plaintiff against all named defendants and all DOE defendants)**

13 29. Plaintiff re-alleges and incorporates by reference each and every allegation in
14 paragraphs 1 through 28, inclusive, of this Complaint as though fully set forth herein.

15 30. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
16 to suffer or permit a California employee to work without paying wages at the minimum wage
17 rate for all hours worked as required by the applicable Industrial Welfare Commission
18 (hereinafter "IWC") Wage Order No. 5-2001, codified at California Code of Regulations, Title
19 8, Section 11050, subdivision 4.

20 31. Pursuant to IWC Wage Order no. 5-2001, subdivision 2(K)/(H), at all relevant
21 times, "hours worked" included "the time during which an employee is subject to the control of
22 an employer, and includes all the time the employee is suffered or permitted to work, whether
23 or not required to do so..."

24 32. During his employment, Plaintiff was regularly required as a matter of uniform
25 policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff
26 was paid less than the minimum wage rate by Defendants for hours worked in violation of
27 California Labor Code Section 1197 and the applicable California Industrial Wage
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Commission wage order(s).

33. Plaintiff was, at all relevant times, under the control of Defendants and suffered or permitted to work by Defendants. Defendants' acts or omissions in failing to adequately compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants to believe that their acts or omissions were not contrary to California law.

34. For all hours worked by Plaintiff for which he was paid less than the minimum wage rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194, Plaintiff is also entitled to attorney's fees, costs and interests according to proof.

35. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

THIRD CAUSE OF ACTION

FAILURE TO PAY OVERTIME

(California Industrial Welfare Commission Order 5-2001, California Code of Regulations Title 8 Section 11050; California Labor Code Section 510)

(Plaintiff against all named defendants and all DOE defendants)

36. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 35, inclusive, of this Complaint as though fully set forth herein.

37. Pursuant to Industrial Welfare Commission Order No. 5-2001, Cal. Code of Regs., Title 8, Section 11050, for the period of Plaintiff's employment, Defendants were required to compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5) times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours in a day or hours worked in excess of eight (8) on the seventh consecutive work day in a week.

1 38. Plaintiff was a non-exempt employee entitled to the protections of the California
2 Industrial Welfare Commission Order No. 5-2001, California Code of Regulations,
3 Title 8, Section 11050.

4 39. Plaintiff worked more than eight (8) hours in a single workday, twelve (12) hours in a
5 single workday or forty (40) hours in a single workweek on numerous occasions.

6 40. Plaintiff was entitled to the above overtime premiums.

7 41. Defendants did not pay Plaintiff premium wages of at least one and one-half times
8 Plaintiff's regular rate of pay for hours worked past eight (8) in a day. Defendants did not pay
9 Plaintiff premium wages of at least twice Plaintiff's regular rate of pay for hours worked past
10 twelve (12) in a day.

11 42. Defendants did not pay Plaintiff premium wages of at least one and one-half times
12 Plaintiff's regular rate of pay for hours worked past forty (40) in a week.

13 43. Plaintiff worked at least one pay period in which he was not properly paid overtime
14 within the three (3) years prior to the initiation of this lawsuit.

15 44. Defendants know or should know the actual dates of overtime worked, the amount of
16 overtime worked, and the amount of unpaid overtime due.

17 45. As a proximate result of Defendants' violations, Plaintiff has been damaged in an
18 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
19 Court.

20 46. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
21 Regulations, Title 8, Sections 11050, Plaintiff is entitled to recover damages for the
22 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
23 reasonable attorney's fees and costs of suit.

24 47. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
25 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
26 trial.

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1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

3 **(California Labor Code Section 226)**

4 **(Plaintiff against all named defendants and all DOE defendants)**

5 48. Plaintiff re-alleges and incorporates by reference each and every allegation in
6 paragraphs 1 through 47, inclusive, of this Complaint as though fully set forth herein.

7 49. Pursuant to California Labor Code Section 226, every employer must furnish each
8 employee an itemized statement of wages and deductions at the time of payment of wages.

9 50. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that
10 accurately reflected all information required by Labor Code Section 226, including but not
11 limited to, gross wages earned, including overtime, minimum wages, and premium pay for
12 missed meal and rest breaks, net wages earned, total hours worked by the employee, and all
13 deductions. Therefore, Defendants failed to maintain and provide accurate itemized wage
14 statements to Plaintiff in accordance with California Labor Code Section 226(a).

15 51. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
16 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
17 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
18 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
19 reasonable attorney's fees.

20 52. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
21 sustained damages, including loss of earnings, in an amount to be established at trial. As a
22 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
23 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
24 and attorney's fees pursuant to statute.

25 53. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
26 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
27 trial.
28

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

3 **(California Labor Code Section 204)**

4 **(Plaintiff against all named defendants and all DOE defendants)**

5 54. Plaintiff re-alleges and incorporates by reference each and every allegation in
6 paragraphs 1 through 53, inclusive, of this Complaint as though fully set forth herein.

7
8 55. California Labor Code Section 204 establishes the fundamental right of all employees
9 in the State of California to be paid wages in a timely fashion for their work.

10 56. At all times relevant during the liability period, Defendants failed to pay Plaintiff the
11 full amount of all owed wages when due as required by California Labor Code Section 204.

12 57. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
13 informed, believes, and thereon alleges, that all times relevant during the liability period,
14 Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,
15 including overtime hours, the minimum wage, and premium pay for missed meal and rest
16 breaks.

17 58. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
18 amount, subject to proof, to the extent he was not paid all wages each pay period. The precise
19 amount of unpaid wages is not presently known to Plaintiff but can be determined directly
20 from Defendants' records or indirectly based on information from Defendants' records.

21 59. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
22 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
23 trial.

24 **SIXTH CAUSE OF ACTION**

25 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

26 **(California Labor Code Sections 201, 203)**

27 **(Plaintiff against all named defendants and all DOE defendants)**

1 60. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 59, inclusive, of this Complaint as though fully set forth herein.

3 61. Pursuant to California Labor Code Section 201(a), an employer who discharges an
4 employee must immediately pay for all compensation due and owing.

5 62. Pursuant to California Labor Code Section 202, when an employee resigns, the
6 employer must pay all compensation due and owing within 72 hours of resignation, or on the
7 employee's last day of work, if the employee gives more than 72 hours notice of resignation.

8 63. Pursuant to California Labor Code Section 203, if an employer willfully fails to pay,
9 without abatement or reduction, any wages of an employee whose employment ends, the wages
10 of the employee shall continue as a penalty from the due date at the same rate until paid or until
11 an action is commenced; however, the wages shall not continue for more than 30 days for
12 failure to pay an employee owed wages.

13 64. After Plaintiff's employment with Defendants ended, Defendants willfully refused and
14 continue to refuse to pay his unpaid wages as required by Labor Code Section 203.

15 65. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
16 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
17 trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately
18 preceding the filing of this lawsuit.

19 66. Under this cause of action, Plaintiff also prays for attorney's fees and costs under
20 California Labor Code Section 218.5 for time spent pursuing the non-payment of wages as set
21 forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

22 67. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
23 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
24 trial.

25 **SEVENTH CAUSE OF ACTION**

26 **FAILURE TO GIVE REST BREAKS**

27 **(Plaintiff against all named defendants and all DOE defendants)**
28

1 68. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 67, inclusive, of this Complaint as though fully set forth herein.

3 69. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 4 a. Title 8 of the California Code of Regulations Sections 11050(12)(A), which
5 provides that every employer shall authorize and permit all employees to take rest
6 periods, which insofar as practicable shall be in the middle of each work period.
7 The authorized rest period time shall be based on the total hours worked daily at the
8 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
9
10 b. Title 8 of the California Code of Regulations Sections 11050(12)(B), which
11 provides that if an employer fails to provide an employee a rest period in
12 accordance with the applicable provisions of this order, the employer shall pay the
13 employee one (1) hour of pay at employee's regular rate of compensation for each
14 workday that the rest period is not provided;
15
16 c. Title 8 of the California Code of Regulations sections 11050(20)(A), which
17 penalizes the employer \$50.00 for each initial violation, per employee, of any
18 provision of the Wage Order, and \$100.00 for each additional violation thereafter
19 per employee; and
20
21 d. California Labor Code section 226.7, which states that (a) no employer shall require
22 any employee to work during any rest period mandated by an applicable order of
23 the Industrial Welfare Commission, and (b) if an employer fails to provide an
24 employee a rest period in accordance with an applicable order of the Industrial
25 Welfare Commission, the employer shall pay the employee one (1) additional hour
26 of pay at employee's regular rate of compensation for each work day that the rest
27 period is not provided.
28

1 70. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute
2 rest break after every four (4) hours of work or major fraction thereof, as required by California
3 law.

4 71. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
5 regulations, and wage orders alleged in this cause of action along with any allowable interest,
6 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
7 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.
8

9 72. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
10 fees as well as interest under Labor Code section 218.6.

11 73. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
12 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
13 trial.

14 **EIGHTH CAUSE OF ACTION**

15 **FAILURE TO GIVE MEAL BREAKS**

16 **(Plaintiff against all named defendants and all DOE defendants)**

17 74. Plaintiff re-alleges and incorporates by reference each and every allegation in
18 paragraphs 1 through 73, inclusive, of this Complaint as though fully set forth herein.
19

20 75. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 21 a. California Labor Code section 512(a), which requires that employees be given a 30-
22 minute uninterrupted meal break after five (5) hours of work, and a second
23 uninterrupted meal break after ten (10) hours of work;
24 b. California Labor Code section 226.7, which states that (a) no employer shall require
25 any employee to work during any meal period mandated by an applicable order of
26 the Industrial Welfare Commission, and (b) if any employer fails to provide an
27 employee a meal period in accordance with an applicable order of the Industrial
28

1 Welfare Commission, the employer shall pay the employee one (1) additional hour
2 of pay at the employee's regular rate of compensation for each workday that the
3 meal period is not provided;

4 c. California Industrial Welfare Commission Order No. 5 section 11(B), as codified
5 under Title 8 of the California Code of Regulations Section 11050, which states that
6 if an employer fails to provide an employee a meal period in accordance with the
7 applicable provisions of the Wage Order, the employer shall pay the employee one
8 (1) hour of pay at the employee's regular rate of compensation for each workday
9 that the meal period is not provided;
10

11 d. California Industrial Welfare Commission Wage Order No. 5 Section 7(A)(3), as
12 codified under Title 8 of the California Code of Regulations Section 11050, which
13 requires an employer to maintain records documenting its employees' meal periods;
14

15 e. California Industrial Welfare Commission wage order No. 5 Section 20(A), as
16 codified under California Code of Regulations Section 11050, which penalizes the
17 employer \$50.00 for each initial violation, per employee, of any provision of the
18 Wage Order, and \$100.00 for each additional violation thereafter per employee; and
19

20 f. California Labor Code section 1171 and 1173, which have given the California
21 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 5)
22 as enforceable law.

23 76. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
24 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
25 take a second relieved meal break after ten (10) hours of work, as required by California law.
26 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
27 5, as codified under California Code of Regulations Sections 11050 et. seq. requires that
28

1 employees receive uninterrupted meal periods every five (5) hours of consecutive work, and
2 that the meal period be at least 30 minutes in length, wherein employee is relieved of all work
3 duty. California Labor Code section 226.7 provides that employers may not require their
4 employees to work through their meal periods. California Labor Code section 226.7 and
5 California Code of Regulations section 11050 requires that if the employer fails to provide the
6 employee with an uninterrupted meal period, the employer must pay the employee one (1) hour
7 of pay for each work day that the meal period is not given.

8
9 77. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
10 regulations, and wage orders alleged in this cause of action along with any allowable interest,
11 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
12 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

13 78. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
14 fees as well as interest under Labor Code section 218.6.

15 79. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
16 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
17 trial.

18 **NINTH CAUSE OF ACTION**

19 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

20 **(Plaintiff against All Named Defendants and all DOE defendants)**

21 80. Plaintiff re-alleges and incorporates by reference each and every allegation in
22 paragraphs 1 through 79, inclusive, of this Complaint as though fully set forth herein.

23 81. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her
24 employee for all necessary expenditures or losses incurred by the employee in direct
25 consequence of the discharge of his or her duties."

26 82. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
27 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
28

1 of completing his job duties, which were not reimbursed by Defendant. These expenses
2 include, but are not limited to, uniforms.

3 83. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest
4 and attorney's fees and costs, under Labor Code section 2802.

5
6 **TENTH CAUSE OF ACTION**

7 **PRIVATE ATTORNEYS GENERAL ACT**
8 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
9 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 351, 353, 510, 512, 558, 1174, 1174.5,**
10 **1194, 1197.1, 1198, 2802)**

11 **(Plaintiff against All Named Defendants and all DOE defendants)**

12 84. Plaintiff re-alleges and incorporates by reference each and every allegation in
13 paragraphs 1 through 83, inclusive, of this Complaint as though fully set forth herein.

14 85. Plaintiff has complied with the procedures for bringing suit specified in California
15 Labor Code § 2699.3. By letter dated September 26, 2023, Plaintiff gave written notice by
16 certified mail to the Labor and Workforce Development Agency ("LWDA") and Defendants of
17 the specific provisions of the California Labor Code alleged to have been violated, including the
18 facts and theories to support the alleged violations.

19 86. Pursuant to California Labor code section 2699.3, no response was received from
20 the LWDA within 65 days of the postmark date of the above-alleged letter.

21 87. Plaintiff therefore has exhausted all administrative remedies required of him under
22 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
23 cause of action and pursue penalties in a representative action for Defendants' violations of the
24 Labor Code.

25 88. Pursuant to California Labor Code section 2699, any provisions of the Labor
26 Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its
27 departments, divisions, commissions, boards, agencies, or employees for violation of the code
28 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
on behalf of himself or herself and other current or former employees pursuant to the procedures
specified in California Labor Code section 2699.3.

1 89. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
2 violator and had one or more of the alleged violations committed against him, and therefore is
3 properly suited to represent the interests of other current and former employees, including all
4 current and former hourly, non-exempt employees who worked for DWH at all restaurant
5 locations in the State of California during the applicable PAGA Period.

6 90. Based on the acts alleged above, Plaintiff, on behalf of others, seeks penalties
7 under California Labor Code sections 2698 and 2699 because of Defendants’ violations of
8 numerous provisions of the California Labor Code as alleged in this Complaint.

9 91. Plaintiff therefore has exhausted all administrative remedies required of her under
10 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute
11 this cause of action and pursue penalties in a representative action for Defendants’ violations of
12 the Labor Code.

13 92. California Labor Code section 2699 et seq. imposes penalties upon culpable
14 Defendants for violating the Labor Code.

15 93. Plaintiff seeks penalties for Defendants’ misconduct as alleged herein as permitted by
16 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
17 seeking individual penalties/victim specific relief or underpaid wages for herself or other
18 employees under this specific PAGA cause of action. Plaintiff has separate causes of action in
19 this Complaint for individual wages but is not seeking wages through the PAGA action.

20 94. Specifically, Plaintiff seeks penalties under California Labor Code
21 section 2699, for the following:

22 Violations of California Labor Code sections 201, 202, 203, 204, and/or 204b, 210, 226,
23 226.3, 226.7, 351, 353, 510, 512, 558, 1174, 1174.5, 1194, 1197.1, 1198, 2802, and any
24 other Labor Codes/Industrial Welfare Commission Order (No. 5) violated based on the facts
25 alleged in this Complaint.

26 95. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney’s fees,
27 costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved employees
28 as alleged herein in an amount to be shown according to proof at trial and within the jurisdictional
limits of this Court.

ELEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE PERSONNEL RECORDS

(Plaintiff against all named Defendants and all DOE Defendants)

96. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 95, inclusive, of this Complaint as though fully set forth herein.

97. Labor Code section 1198.5 dictates “every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee’s performance or to any grievance concerning the employee.”

98. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, “the employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times...” On information and belief, Defendants intentionally failed to provide Plaintiff with personnel records when requested by Plaintiff via letter on September 26, 2023, as required by law. Plaintiff requested his personnel records in accordance with California Labor Code section 1198.5(k) on September 26, 2023, via U.S. certified mail, return receipt requested.

99. Defendants failed to provide Plaintiff with an opportunity to inspect or copy his records within 30 days. As a direct result of Defendants’ violations alleged herein, Plaintiff has suffered and continues to suffer substantial losses related to Defendants’ failure to provide personnel records.

100. Plaintiff seeks all available remedies for Defendants’ violations including, but not limited penalties, and costs to the extent permitted by law and according to proof at trial. Pursuant to Labor Code section 1198.5, Plaintiff prays for judgment against Defendants in the amount of \$750.00, along with costs and attorney’s fees.

TWELFTH CAUSE OF ACTION

FAILURE TO PROVIDE PAY RECORDS

(Plaintiff against all named Defendants and all DOE Defendants)

101. Plaintiff re-alleges and incorporates by reference each and every allegation in

1 paragraphs 1 through 100, inclusive, of this Complaint as though fully set forth herein.

2 102. Labor Code section 226 sub-section (b) dictates “an employer...shall afford
3 current and former employees the right to inspect or copy records pertaining to their
4 employment, upon reasonable request to the employer...”

5 103. Moreover, pursuant to sub-section (c) of Labor Code section 226, “an employer
6 who receives a written or oral request to inspect or copy records pursuant to subdivision (b)
7 pertaining to a current or former employee shall comply with the request as soon as practicable,
8 but no later than 21 calendar days from the date of the request.” On information and belief,
9 Defendants intentionally failed to provide Plaintiff with pay records when requested by Plaintiff
10 via certified letter, return receipt requested, on September 26, 2023, and as required by law.
11 Plaintiff requested his pay records in accordance with California Labor Code section 226 on
12 September 26, 2023, via certified mail. Defendants failed to provide Plaintiff with an opportunity
13 to inspect or copy his pay records within 21 days.

14 104. As a direct result of Defendants’ violations alleged herein, Plaintiff has suffered
15 and continues to suffer substantial losses related to Defendants’ failure to provide pay records.
16 Pursuant to Labor Code section 226, Plaintiff prays for judgment against Defendants in the
17 amount of \$750.00, along with costs and attorney’s fees.

18 105. Plaintiff seeks all available remedies for Defendants’ violations including, but
19 not limited penalties, and costs to the extent permitted by law and according to proof at trial.

20 **THIRTEENTH CAUSE OF ACTION**
21 **DISCRIMINATION ON THE BASIS OF PHYSICAL DISABILITY**
22 **IN VIOLATION OF FEHA**

23 **(Plaintiff against DWH RESTAURANTS, INC. and all DOE Defendants)**

24 106. Plaintiff re-alleges and incorporates by reference each and every allegation in
25 paragraphs 1 through 105, inclusive, of this Complaint as though fully set forth herein.

26 107. Defendant and DOES 1 to 25, inclusive, are covered employers under
27 California’s Fair Employment and Housing Act.

28 108. California Government Code section 12926(m) has established a “broad

1 definition” of
2 physical disability: disability protections under the Fair Employment and Housing Act
3 (“FEHA”) even extend to “perceived” physical disabilities. *Id.* Under the law of this state,
4 “working” is a major life activity. *See* section 12926.1(c).

5 109. Plaintiff’s concussion and injuries to his spine/back, which were debilitating, and
6 which limited a major life activity, qualify as disabilities under FEHA, and Plaintiff was entitled
7 to its protection.

8 110. Defendants knew of Plaintiff’s disabilities and violated California Government
9 Code
10 section 12940 et. seq. by discriminating against Plaintiff on the basis of his disability.

11 111. As a direct and proximate result of the aforementioned acts and omissions of
12 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
13 loss of income (past and future), loss of employment benefits (past and future), general and
14 compensatory damages (past and future), mental pain and anguish and emotional distress (past
15 and future), and will continue to suffer in the future, in an amount to be proved at the time of
16 trial.

17 112. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive,
18 and
19 each of their directors, officers and/or managing agents, constitutes malice, fraud, and oppression
20 and was authorized, ratified, and carried on with a conscious and willful disregard of their
21 workers’ right to work in an environment in which personnel decisions and company policies
22 are made without regard to physical disability, so as to justify the imposition of punitive damages
23 to punish and set an example of said Defendants.

24 113. As a proximate result of the foregoing conduct, which violated the provisions of
25 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney’s
26 fees and costs in the prosecution of this Cause of Action, in an amount to be proven at the time
27 of trial.

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FOURTEENTH CAUSE OF ACTION
FAILURE TO ACCOMMODATE PHYSICAL DISABILITY IN VIOLATION OF
FEHA

(Plaintiff against DWH Restaurants, Inc. and all DOE Defendants)

114. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 113, inclusive, of this Complaint as though fully set forth herein.

115. California Government Code section 12940(p) provides that it is unlawful for an employer to fail to make reasonable accommodation for the known physical disability of an employee.

116. Defendants failed to make reasonable accommodation of Plaintiff's physical disabilities of which Defendants were unequivocally aware.

117. As a direct and proximate result of the aforementioned acts and omissions of Defendants, Plaintiff suffered general and compensatory damages, including but not limited to, loss of income (past and future), loss of employment benefits (past and future), general and compensatory damages (past and future), mental pain and anguish and emotional distress (past and future), and will continue to suffer in the future, in an amount to be proved at the time of trial.

118. The foregoing conduct engaged in by Defendants and each of their directors, officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified, and carried on with a conscious and willful disregard of their workers' right to receive reasonable accommodations, so as to justify the imposition of punitive damages to punish and set an example of said Defendants.

119. As a proximate result of the foregoing conduct, which violated the provisions of Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's fees and costs in the prosecution of this Cause of Action, in an amount to be proven at the time of the trial.

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FIFTEENTH CAUSE OF ACTION

FAILURE TO ENGAGE IN INTERACTIVE PROCESS IN VIOLATION OF FEHA

(Plaintiff against DWH Restaurants, Inc. and all DOE Defendants)

120. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 119, inclusive, of this Complaint as though fully set forth herein.

121. California Government Code section 12940(n) provides that it is unlawful for an employer to fail to engage in a timely, good faith, interactive process with an employee to determine effective accommodations for that employee's physical disability.

122. Defendants failed to engage in a timely, good faith, interactive process with Plaintiff to determine effective reasonable accommodations for Plaintiff's known physical disabilities.

123. As a direct and proximate result of the aforementioned acts and omissions of Defendants, Plaintiff suffered general and compensatory damages, including but not limited to, loss of income (past and future), loss of employment benefits (past and future), general and compensatory damages (past and future), mental pain and anguish and emotional distress (past and future), and will continue to suffer in the future, in an amount to be proved at the time of trial.

124. The foregoing conduct engaged in by Defendants and each of their directors, officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified, and carried on with a conscious and willful disregard of their workers' right to engage in the interactive process and receive reasonable accommodations, so as to justify the imposition of punitive damages to punish and set an example of said Defendants.

125. As a proximate result of the foregoing conduct, which violated the provisions of Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's fees and costs in the prosecution of this Cause of Action, in an amount to be proven at the time of trial.

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SIXTEENTH CAUSE OF ACTION

HARASSMENT ON THE BASIS OF RACE, ETHNICITY, NATIONAL ORIGIN,

AND/OR ANCESTRY IN VIOLATION OF FEHA

(Plaintiff against DWH Restaurants, Inc. and all DOE defendants)

126. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 125, inclusive, of this Complaint as thought fully set forth herein.

127. Defendant and DOES 1 to 25, inclusive, are covered employers under California's Fair Employment and Housing Act.

128. Defendants' and its employees' and agents' conduct, as alleged, violated the FEHA, California Government Code sections 12900 et seq., and Defendants committed unlawful employment practice(s) by harassing Plaintiff and/or creating a hostile work environment, based in whole or in part, on Plaintiff's race/ethnicity, in violation of California Government Code section 12940(j).

129. In engaging in the aforementioned conduct, Defendants and DOES 1 to 25, inclusive, and each of them, aided, abetted, incited, compelled, and/or coerced unlawful employment practices in violation of the announced policy of this State against such practices. Furthermore, they failed to take immediate and appropriate corrective action to prevent this harassment.

130. As a direct and proximate result of the aforementioned acts and omissions of Defendants, Plaintiff suffered general and compensatory damages, including but not limited to, loss of income (past and future), loss of employment benefits (past and future), general and compensatory damages (past and future), mental pain and anguish and emotional distress (past and future), and will continue to suffer in the future, in an amount to be proved at trial.

131. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive, and each of their directors, officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified, and carried on with a conscious and willful disregard

1 of their workers' right to work in an environment free of harassment based on one's
2 race/ethnicity and an environment in which personnel decisions and company policies are
3 made without regard to one's race/ethnicity, so as to justify the imposition of punitive damages
4 to punish and set an example of said Defendants.

5 132. As a proximate result of the foregoing conduct, which violated the provisions of
6 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
7 fees and costs in the prosecution of this claim, in an amount to be proven at trial.
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9 **SEVENTEENTH CAUSE OF ACTION**

10 **RETALIATION IN VIOLATION OF FEHA**

11 **(Plaintiff against DWH Restaurants, Inc. and all DOE Defendants)**

12 133. Plaintiff re-alleges and incorporates by reference each and every allegation in
13 paragraphs 1 through 132, inclusive, of this Complaint as though fully set forth herein.

14 134. At all times herein mentioned, Government Code section 12940 et. seq. was in
15 full force and effect and was binding upon Defendants and each of them. Said statute imposes
16 certain duties upon Defendants concerning discrimination and retaliation against persons, such
17 as Plaintiff, on the basis of physical disability or on the basis of Plaintiff requesting time off of
18 work/missing time from work due to his physical disabilities. Said statutes were intended to
19 prevent the type of injury and damage set forth herein. Plaintiff was, at all times herein
20 mentioned, a member of the class of persons intended to be protected by said statutes. As alleged
21 above, Plaintiff was retaliated against and was terminated as a result of his physical disabilities
22 and for missing work as a result of his physical disabilities.

23 135. As a direct and proximate result of Defendants' conduct, Plaintiff has been
24 harmed in that Plaintiff has suffered the loss of wages, salary, and benefits, among other things.
25 As a result, Plaintiff has suffered such damages in an amount according to proof.

26 136. As a further direct and proximate result of the conduct of Defendants, and each
27
28

1 of them, Plaintiff has been harmed in that Plaintiff has suffered humiliation, mental anguish and
2 emotional distress, and has been harmed in mind and body. As a result, Plaintiff has suffered
3 such damages in an amount according to proof.

4 137. In committing the foregoing acts, Defendants have been guilty of oppression,
5 fraud, and/or malice under California Civil Code section 3294, thereby entitling Plaintiff to
6 punitive damages in a sum appropriate to punish and make an example out of the foregoing
7 Defendants.

8 138. The acts of oppression, fraud, and/or malice, were engaged in by employees of
9 Defendants. Each of the foregoing Defendants had advance knowledge of the unfitness of each
10 employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified the
11 wrongful conduct for which an award of punitive damages is sought, and/or was personally
12 guilty of oppression, fraud, and/or malice. The advance knowledge and conscious disregard,
13 authorization, ratification, or act of oppression, fraud, and/or malice was committed by or on part
14 of an officer, director, or managing agent of each of the Defendants, thereby entitling Plaintiff
15 to punitive and exemplary damages against each of the Defendants in accordance with California
16 Civil Code section 3294 in a sum appropriate to punish and make an example of each Defendant

17 139. FEHA provides for an award of reasonable attorneys' fees and costs incurred by
18 a prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will
19 continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has
20 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an
21 award of attorneys' fees and costs.

22 **EIGHTEENTH CAUSE OF ACTION**

23 **FAILURE TO PREVENT DISCRIMINATION, HARASSMENT AND RETALIATION**

24 **IN VIOLATION OF FEHA**

25 **(Plaintiff against DWH Restaurants, Inc. and all DOE Defendants)**

26 140. Plaintiff re-alleges and incorporates by reference each and every allegation in
27 paragraphs 1 through 139, inclusive, of this Complaint as though fully set forth herein.
28

1 141. At all times herein mentioned, FEHA, California Government Code section
2 12940(k), was in full force and effect and was binding on Defendants. This statute states that it
3 is an unlawful employment practice in California for an employer to “fail to take all reasonable
4 steps necessary to prevent discrimination and harassment from occurring.”

5 142. During the course of Plaintiff’s employment, Defendants failed to prevent their
6 employees, including management, from engaging in intentional actions that resulted in Plaintiff
7 being treated less favorably and eventually terminated because of Plaintiff’s protected status (i.e.
8 his physical disabilities). During the course of Plaintiff’s employment, Defendants failed to
9 prevent their employees from engaging in unjustified employment practices against employees
10 in such protected classes. During the course of Plaintiff’s employment, Defendants failed to
11 prevent a pattern and practice by its employees of intentional discrimination harassment, and
12 retaliation on the basis of physical disability, race/ethnicity, and/or other protected status and/or
13 protected activity.

14 143. Plaintiff believes and, on that basis, alleges that his physical disabilities and
15 other protected status and/or protected activity, including his race/ethnicity, was a substantial
16 motivating factor in Defendants’ employees’ harassing him, discriminating against him, and
17 retaliating against him.

18 144. As a direct and proximate result of the aforementioned acts and omissions of
19 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
20 loss of income (past and future), loss of employment benefits (past and future), general and
21 compensatory damages (past and future), mental pain and anguish and emotional distress (past
22 and future), and will continue to suffer in the future, in an amount to be proved at the time of
23 trial.

24 145. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive,
25 and each of their directors, officers and/or managing agents, constitutes malice, fraud, and
26 oppression and was authorized, ratified, and carried on with a conscious and willful disregard of
27 their workers’ right to work in an environment in which personnel decisions and company
28 policies are made without regard to physical disability, so as to justify the imposition of punitive
damages to punish and set an example of said Defendants.

1 146. As a proximate result of the foregoing conduct, which violated the provisions of
2 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
3 fees and costs in the prosecution of this Cause of Action, in an amount to be proven at the time
4 of trial.

5 **NINETEENTH CAUSE OF ACTION**

6 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

7 **(Plaintiff Against DWH Restaurants, Inc and all DOE Defendants)**

8 147. Plaintiff re-alleges and incorporates by reference each and every allegation in
9 paragraphs 1 through 146, inclusive, of this Complaint as though fully set forth herein.

10 148. At all times during his employment with Defendant DWH, Plaintiff performed his
11 duties with the utmost diligence and competence.

12 149. Plaintiff is informed and believes and thereon alleges that Defendants' decisions and
13 actions to treat him differently and ultimately terminate him as alleged herein, was motivated
14 by Plaintiff's physical disabilities and missing time from work due to his physical disabilities.
15 Defendant DWH Restaurants, Inc intentionally created the aforementioned retaliation, thereby
16 not giving Plaintiff an opportunity to work in an environment free of discrimination and
17 retaliation.

18 150. The employment of Plaintiff was wrongfully terminated on or around September 2023
19 in violation of the fundamental public policy of the State of California with respect to
20 retaliating and discriminating against an employee on account of his physical disabilities.
21 Moreover, Plaintiff was forced to hire an attorney to assist him to end these illegal activities.
22 Said conduct violated statutory and constitutional expressions of public policy including,
23 FEHA, the California Government Code section 12940 et seq. and the California Constitution,
24 Article 1, section 8.

25 151. As set forth above, said actions by Defendants were wrongful and in violation of the
26 fundamental principles of the public policy of the State of California as reflected in its laws,
27 objectives and policies. Said statutes and constitutional expressions of public policy include,
28

1 but are not limited to, FEHA, California Government Code section 12940 et seq, and the
2 California Constitution, Article 1 section 8. These laws inure to the benefit of the public at
3 large, and not just the private interests of the employers and employees whom they govern or
4 protect.

5 152. As a direct and proximate result of the aforementioned acts and omissions of
6 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
7 loss of income (past and future), loss of employment benefits (past and future), general and
8 compensatory damages (past and future), mental pain and anguish and emotional distress (past
9 and future), and will continue to suffer in the future, in an amount to be proved at trial.

10 153. The foregoing conduct engaged in by Defendants and each of their directors, officers
11 and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified,
12 and carried on with a conscious and willful disregard of their workers' right to work in an
13 environment free of retaliation and discrimination based on physical disability, so as to justify
14 the imposition of punitive damages to punish and set an example of said Defendants.
15

16 **TWENTIETH CAUSE OF ACTION**

17 **HARASSMENT ON THE BASIS OF PHYSICAL DISABILITY IN VIOLATION OF**

18 **FEHA**

19
20 **Violation of FEHA, California Government Code Sections 12900 et seq.**

21 **(Plaintiff against DWH Restaurants, Inc. and all DOE defendants)**

22 154. Plaintiff re-alleges and incorporates by reference each and every allegation in
23 paragraphs 1 through 153, inclusive, of this Complaint as thought fully set forth herein.

24 155. Defendant and DOES 1 to 25, inclusive, are covered employers under California's
25 Fair Employment and Housing Act.

26 156. Defendant's conduct, as alleged, violated the FEHA, California Government Code
27
28

1 sections 12900 et seq., and Defendant committed unlawful employment practice(s) by harassing
2 Plaintiff and/or creating a hostile work environment, based in whole or in part, on Plaintiff's
3 physical disability, in violation of California Government Code section 12940(j).

4 157. In engaging in the aforementioned conduct, Defendant and DOES 1 to 25, inclusive,
5 and each of them, aided, abetted, incited, compelled, and/or coerced unlawful employment
6 practices in violation of the announced policy of this State against such practices. Furthermore,
7 they failed to take immediate and appropriate corrective action to prevent this harassment.

8 158. As a direct and proximate result of the aforementioned acts and omissions of
9 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
10 loss of income (past and future), loss of employment benefits (past and future), general and
11 compensatory damages (past and future), mental pain and anguish and emotional distress (past
12 and future), and will continue to suffer in the future, in an amount to be proved at trial.

13 159. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive, and
14 each of their directors, officers and/or managing agents, constitutes malice, fraud, and oppression
15 and was authorized, ratified, and carried on with a conscious and willful disregard of their
16 workers' right to work in an environment free of harassment based on one's physical disability
17 and an environment in which personnel decisions and company policies are made without regard
18 to one's physical disability, so as to justify the imposition of punitive damages to punish and set
19 an example of said Defendants.

20 160. As a proximate result of the foregoing conduct, which violated the provisions of
21 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
22 fees and costs in the prosecution of this claim, in an amount to be proven at trial.

23 **TWENTY FIRST CAUSE OF ACTION**

24 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

25 **(California Business and Professions Code Section 17200)**

26 **(Plaintiff against DWH Restaurants, Inc and all DOE defendants)**

27 161. Plaintiff re-alleges and incorporates by reference each and every allegation in
28

1 paragraphs 1 through 160, inclusive, of this Complaint as though fully set forth herein.

2 162. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
3 constitutes unfair and unlawful business practices under California Business and Professions
4 Code Section 17200, et seq.

5 163. Defendants' violations of California labor laws and the Labor Code as well as
6 FEHA constitutes a business practice because it was done repeatedly over a significant period
7 of time in a systematic manner that was detrimental to Plaintiff and others.

8 164. For the four years preceding the filing of this action, Plaintiff has suffered damages
9 and request damages and/or restitution of all monies and profits to be disgorged from
10 Defendant DWH Restaurants, Inc in an amount according to proof at time of trial, but in
11 excess of the jurisdiction of this Court.

12 **PRAYER FOR RELIEF**

- 13 1. For compensatory damages including lost past and future wages, overtime,
14 commissions, and all other sums of money, including employment benefits, together
15 with interest on said amounts, and any other economic injury to Plaintiff, according to
16 proof;
- 17 2. For special and consequential damages to the extent allowed by law;
- 18 3. For general damages according to proof;
- 19 4. For an award of punitive damages against corporate Defendants according to proof;
- 20 5. For restitution and disgorgement for all unfair business practices by corporate
21 Defendants against Plaintiff in an amount according to proof;
- 22 6. For an order enjoining corporate Defendants from further unfair and unlawful business
23 practices in violation of Business and Professions Code section 17200, et seq.;
- 24 7. For damages and penalties against Defendants under Labor Code section
25 226 for Plaintiff in an amount subject to proof at trial;
- 26 8. For damages and penalties pursuant to Labor Code section 203 against Defendants in
27 an amount subject to proof at trial;
- 28 9. For one hour of wages due to Plaintiff for each work period of more than five (5) hours

1 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period.

2 10. For one hour of wages due to Plaintiff for each work period of at least three-and-a-half
3 (3.5) hours when Plaintiff did not receive an uninterrupted ten (10) minute rest period.

4 11. For maximum civil penalties available under the Labor Code and applicable Wage Order
5 against Defendant as described more particularly in the Complaint and Representative
6 PAGA claim/action;

7 12. For all remedies available to Plaintiff under the applicable Wage Order and the
8 Labor Code including an award of unpaid wages, attorney's fees, costs, interest,
9 liquidated damages, damages, penalties, and waiting time penalties according to proof
10 to the extent permitted by law;

11 13. For the imposition of civil penalties and/or statutory penalties;

12 14. Reasonable attorney's fees where available by law, including but not limited to,
13 pursuant to the California Labor Code, including section 2698, FEHA and Government
14 Code section 12940 et seq, and/or other applicable laws; and

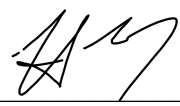
15 15. Costs and expenses of suit incurred herein;

16 16. For all interest as allowed by law;

17 17. For such other and further relief as the Court deems just and proper.

18 DATED: January 5, 2024

MESSRELIAN LAW INC.

19 By 

20 Harout Messrelian, Esq.

Attorneys for Plaintiff Sahid Magana

21 **DEMAND FOR JURY TRIAL**

22 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.
23

24 DATED: January 5, 2024

MESSRELIAN LAW INC.

25 By 

26 Harout Messrelian, Esq.

27 Attorneys for Plaintiff Sahid Magana
28

EXHIBIT 5

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Daniel William Holder

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

SAHID IRAD MAGANA SEGURA,

Plaintiff,

v.

DWH RESTAURANTS, INC.; DANIEL
WILLIAM HOLDER; and DOES 1 through 25,
inclusive,

Defendants.

Case No. 24-CV-428664

**ANSWER TO COMPLAINT BY
DEFENDANTS DWH RESTAURANTS,
INC. AND DANIEL WILLIAM HOLDER**

1 Defendants DWH RESTAURANTS, INC. and DANIEL WILLIAM HOLDER
2 (“Defendants”) hereby answers Plaintiff’s Complaint as follows:

3 **GENERAL DENIAL**

4 Pursuant to the provisions of Code of Civil Procedure section 431.30, Defendants generally
5 and specifically deny each and every allegation contained in Plaintiff’s Complaint, and further deny
6 any and all wrongful conduct on their part, whether as alleged or otherwise, and further deny that
7 Plaintiff has been injured in any manner whatsoever, whether as alleged or otherwise, or in any sum
8 or sums, or at all.

9 **AFFIRMATIVE DEFENSES**

10 AS A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO ALL CAUSES OF
11 ACTION SET FORTH IN PLAINTIFF’S COMPLAINT, Defendants allege that the Complaint
12 fails to state facts sufficient to constitute any cause of action against Defendants.

13 AS A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO ALL CAUSES OF
14 ACTION SET FORTH IN PLAINTIFF’S COMPLAINT, Defendants allege that equitable claims
15 for relief in the Complaint are barred by the doctrine of laches.

16 AS A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO ALL CAUSES OF
17 ACTION SET FORTH IN PLAINTIFF’S COMPLAINT, Defendants allege that the allegations
18 contained in the Complaint fail to state facts sufficient to entitle Plaintiff to recover any attorneys’
19 fees in this case, as a matter of law.

20 AS A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE TO ALL CAUSES OF
21 ACTION SET FORTH IN PLAINTIFF’S COMPLAINT, Defendants allege that, although they
22 deny that they owe any amount to Plaintiff, if it should be determined that amounts are owed,
23 Defendants allege, that at all times relevant hereto, a reasonable good faith dispute existed as to
24 whether any such amounts were owed to Plaintiff.

25 AS A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO ALL CAUSES OF
26 ACTION SET FORTH IN PLAINTIFF’S COMPLAINT, Defendants are informed and believe and
27 thereon allege that Plaintiff failed to mitigate the damages which he allegedly suffered, if any such
28

1 damages there were or are, and that such failure to mitigate bars and/or diminishes Plaintiff's
2 recovery against Defendant.

3 AS A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE TO ALL CAUSES OF
4 ACTION SET FORTH IN PLAINTIFF'S COMPLAINT, Plaintiff is barred from recovering on his
5 Complaint, or on any claim contained therein, under the doctrine of unclean hands.

6 AS A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO ALL CAUSES OF
7 ACTION SET FORTH IN PLAINTIFF'S COMPLAINT, Defendants allege that Plaintiffs is
8 estopped from asserting each and every cause of action in the Complaint.

9 AS AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE TO ALL CAUSES OF
10 ACTION SET FORTH IN PLAINTIFF'S COMPLAINT, Defendants allege that at all times
11 mentioned herein, Defendants acted in good faith, without malice, and with due regard for the rights
12 of Plaintiffs.

13 AS A NINTH, SEPARATE AND AFFIRMATIVE DEFENSE TO ALL CAUSES OF
14 ACTION SET FORTH IN PLAINTIFF'S COMPLAINT, Defendants allege that Plaintiff is not
15 entitled to penalties because any alleged act or omission by Defendants was not willful, was in good
16 faith, and Defendants had reasonable grounds for believing that their conduct did not violate any
17 provision of the California Labor Code.

18 AS A TENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO ALL CAUSES OF
19 ACTION SET FORTH IN PLAINTIFF'S COMPLAINT, Defendants allege that Plaintiff has failed,
20 in whole or in part, to exhaust his administrative remedies in a timely manner under applicable
21 local, state, or federal policies, regulations, procedures, or laws.

22 AS AN ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO ALL CAUSES
23 OF ACTION SET FORTH IN PLAINTIFF'S COMPLAINT, Defendants allege that Defendants
24 provided Plaintiff with all required meal periods and authorized and permitted all rest periods in
25 accordance with State and federal law as well as the California Supreme Court ruling in *Brinker v.*
26 *Superior Court* (2012) 53 Cal. 4th 1004 and, accordingly, Plaintiff and other employees may not
27 recover any damages nor penalties under Labor Code §226.7 or any other law because Plaintiff and
28

1 other employees willingly failed to take any required meal or rest periods after being instructed to
2 do so by Defendant.

3 AS A TWEFLTH, SEPARATE AND AFFIRMATIVE DEFENSE TO ALL CAUSES OF
4 ACTION SET FORTH IN PLAINTIFF’S COMPLAINT, Defendants allege that Plaintiff and the
5 allegedly aggrieved employees are not entitled to recover any civil penalties under the Private
6 Attorneys General Act of 2004 (“PAGA”), California Labor Code section 2698, *et seq.*, because,
7 under the circumstances of this case, any such recovery would be unjust, arbitrary, and oppressive,
8 or confiscatory.

9 AS A THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO ALL CAUSES
10 OF ACTION SET FORTH IN PLAINTIFF’S COMPLAINT, Defendants allege that, to the extent
11 Plaintiff seeks civil penalties under PAGA, California Labor Code section 2698, *et seq.*, she is not
12 entitled to a jury trial, and instead must adjudicate her Claims by way of a bench trial. *LaFace v.*
13 *Ralphs Grocery Co.* (2022) 75 Cal.App.5th 388.

14 AS A FOURTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO ALL CAUSES
15 OF ACTION SET FORTH IN PLAINTIFF’S COMPLAINT, Defendants allege that Plaintiff’s
16 claims under the Private Attorneys General Act of 2004 (“PAGA”), California Labor Code Section
17 2698, *et seq.*, are not susceptible to common proof, are fact intensive, and require highly
18 individualized inquiries to determine if Plaintiff or any other person is an aggrieved employee. As
19 such, adjudicating these claims on a representative basis would present intractable management
20 issues that would deprive Defendants of their right to a fair trial on the merits. Accordingly, these
21 claims cannot be fairly tried on a representative basis without impairing Defendants’ rights to assert
22 individualized Defenses to those claims as they pertain to individual employees of Defendant DWH
23 Restaurants, Inc.

24 Defendants presently have insufficient knowledge or information with which to form a belief
25 as to whether they may have additional, yet unstated affirmative defenses. Defendants reserve the
26 right to assert additional affirmative defenses in the event further investigation and discovery indicate
27 that such defenses are appropriate.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Defendant prays for judgment as follows:

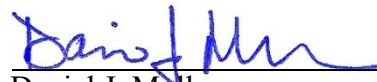
- 3 1. That Plaintiff take nothing by way of his Complaint;
- 4 2. For costs of suit incurred herein; and
- 5 3. For reasonable attorneys' fees as allowable by law;
- 6 4. For such other and further relief as the court may deem just and proper.

7 Date: July 3, 2024

VENTURA HERSEY & MULLER, LLP

8

9 By



10 Daniel J. Muller
11 Attorneys For Defendants
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EXHIBIT 6

Magana Segura v. DWH Restaurants, Inc., et al.
(Superior Court of California, Santa Clara, Case No. 24CV428664)

Messrelian Law Inc. Costs and Expenses	Total
LWDA Notice Filing Fee	\$ 75.00
Complaint Filing	\$ 1,496.08
Atty Service Fees	\$ 490.00
Court Costs	\$ 109.40
Mediator Fees	\$ 3,750.00
Data Analyst for Mediation	\$ 1,000.00
PAGA Motion filing fee	\$ 85.94
Current and Estimated Costs through 09/09/2025	\$ 7,006.42

EXHIBIT 7



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

March 13, 2025

CASE ASSUMPTIONS

Class Members	109
Opt Out Rate	N/A
Opt Outs Received	
Total Class Claimants	109
Subtotal Admin Only	\$4,419.77

Flat Fee Total \$4,419.77

For 109 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Spanish Translation, Printing & Mailing Included

Case: Segura v. DWH Restaurants, Inc., PAGA Administration

Phoenix Contact: Michael E. Moore

Contact Number: 949.331.0131

Email: mike@phoenixclassaction.com

Requesting Attorney: Maralle Messrelian

Firm: Messrelian Law, Inc.

Contact Number: 818.484.6531

Email: maralle@messrelianlaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PHX will need to adjust this Estimate accordingly.

Estimate is based on **109** Class Members. Class data **Must** be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of \$150 per hour will be charged for any additional analysis or programming. Pricing good for 90 day

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$100.00	2		\$200.00
Programming Database & Setup	\$100.00	1		\$100.00
Toll Free Setup*	\$100.00	1		\$100.00
Call Center & Long Distance	\$2.50	24		\$60.00
NCOA (USPS)	\$25.00	1		\$25.00
Total				\$485.00

* Up to 120 days after disbursement

Data Merger & Scrub / PAGA Letter & Check / Postage / Spanish Translation

Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	1		\$100.00
Spanish Translation	\$150.00	1		\$150.00
Data Merge & Duplication Scrub	\$0.09	109		\$9.81
PAGA Letter and Check Packet	\$1.00	109		\$109.00
Estimated Postage (up to 1 oz.)*	\$0.70	109		\$76.30
Total				\$445.11

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing PAGA Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	3		\$165.00
Skip Tracing Undeliverables	\$0.75	27		\$20.44
Remail PAGA Packets	\$1.00	24		\$24.25
Estimated Postage	\$0.70	24		\$16.98
Programming Undeliverables	\$50.00	1		\$50.00
Total				\$276.66

Case Management

Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	3		\$165.00
Case Manager	\$85.00	2		\$170.00
Total				\$335.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	1		\$135.00
Disbursement Review	\$135.00	1		\$135.00
Programming Manager	\$95.00	2		\$190.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	2		\$270.00
Total				\$865.00

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$115.00	1	\$115.00
Remail Undeliverable Checks (Postage Included)	\$1.50	22	\$33.00
Case Associate	\$55.00	3	\$165.00
Reconcile Uncashed Checks	\$85.00	3	\$255.00
Conclusion Reports	\$115.00	2	\$230.00
Case Manager Conclusion	\$85.00	2	\$170.00
Final Reporting & Declarations	\$115.00	3	\$345.00
QSF Annual Tax Reporting *	\$700.00	1	\$700.00
(State Tax Reporting & Escheating Uncashed Checks to the State of CA included)			
Total			\$2,013.00

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$4,419.77



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT 8

Estimate Number:	20250313-PJI-05	Prepared By:	Patrick J. Ivie
Estimate Date:	3/13/2025	Telephone Number (mobile):	310.995.6455
Estimate Expiration Date:	6/11/2025	Email:	pjvie@simpluris.com

Attorney Contact
Attorney: **Maralle Messrelian, Esq.**
Firm: MM Law, APC
Email: maralle@mmlawapc.com

Opposing Counsel Contact
Attorney: **Daniel J. Muller, Esq.**
Firm: Ventura Hersey & Muller, LLP
Email: dmuller@venturahersey.com

Case Name: *Magana Segura v. DWH Restaurants, Inc.*
PAGA Settlement
Scenario 2: With Spanish translation

Assumptions

In addition to the assumptions enumerated below, this estimate assumes that

- (1) Simpluris will receive data in a single, complete file; (2) there will be no substantial change to class size or in response rate;
- (3) administration costs will be paid from the QSF, and (4) Simpluris will submit revisions to this estimate to account for any material changes to scope.

Class/Aggrieved Employees:	109	Undeliverable Rate:	10%
Claims Rate:	n/a	Call Rate:	n/a
Opt-out Rate:	n/a	Average Call Length:	n/a
Language(s) for Communication	EN/SP	Fund Distribution:	Simpluris
Reminder Mailing:	n/a	Number of Distributions:	1
Unclaimed Funds:	Escheat	State(s):	CA
Length of Administration:	7 Months	Tax Year(s):	1

Case Setup

- Data compilation: develop case-specific response tracking

Category	Unit Value	# of Units	Total
Project Manager - Case Setup	\$110.00	1	\$110.00
Database Manager - Initial Data Analysis	\$125.00	1	\$125.00
Total:			\$235.00

Award Disbursement

- Establish 26 CFR § 1.468B-1 compliant Qualified Settlement Fund ("QSF")
- Spanish translation of the 1-page cover letter
- Disburse 1-page Letter with award payments and tax documents
- All funds not claimed within 180 days of mailing of payment shall be sent to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 et seq., for the benefit of those Aggrieved Employees who did not cash their checks until such time that they claim their property
- Conduct regular and annual IRS-mandated QSF reporting and reconciliation (one per calendar year)
- Complete all required filings with state and federal tax authorities

Category	Unit Value	# of Units	Total
Disbursement Data Preparation	\$125.00	2	\$250.00
Disbursement Manager - Data Validation	\$90.00	1	\$90.00
Setup Banking Account/QSF	\$675.00	1	\$675.00
QSF Monthly Reconciliation and Maintenance	\$125.00	7	\$875.00
Spanish Translation (assuming 450 words)	\$0.25	450	\$112.50
NCOA/CASS/LACS	\$0.14	109	\$15.26
Print & Mail Distribution Check and Tax Docs	\$1.50	109	\$163.50
Postage	\$0.72	109	\$78.48
Process Returned Checks	\$0.20	11	\$2.20
Skip Trace Search Undeliverable Checks	\$0.12	11	\$1.32
Remail Checks (includes postage)	\$2.40	11	\$26.40
Escheat Uncashed Checks	\$500.00	1	\$500.00
QSF Reporting and Final Declaration	\$500.00	1	\$500.00
Reissue Checks / Mailing	\$2.50	2	\$5.00
Reissue 1099s	\$2.50	2	\$5.00
Responding to IRS/State/Agency Inquiries	\$75.00	1	\$75.00
QSF Annual Tax Reporting and Reconciliation	\$850.00	1	\$850.00
Distribution Manager	\$90.00	1	\$90.00
Total:			\$4,314.66

Case Completion

- Final audit and review
- Send final declaration and reporting to counsel

Category	Unit Value	# of Units	Total
Data Manager-Final Reporting	\$125.00	1	\$125.00
Clerical-Clean Up Any Misc.	\$45.00	1	\$45.00
Project Manager-Wrap-up Final Issues	\$110.00	1	\$110.00
Total:			\$280.00

Total Estimated Cost of Administration:	\$4,830
Less Client Courtesy Discount:	<u>-\$1,830</u>
Discounted Total:	<u><u>\$3,000</u></u>

Terms and Conditions

All administration services to be provided by Simpluris to Client, are provided subject to the following terms and conditions ("Agreement"):

1. Services: Simpluris agrees to provide Client those services set forth in the Proposal (the "Services") to which these terms and conditions are attached and which has been provided to Client. As compensation for such Services, Client agrees to pay the fees for Services outlined in the Proposal. Simpluris will often take direction from Client's representatives, employees, agents and or professionals (collectively, the "Client Parties") with respect to the Services. The parties agree that Simpluris may rely upon, and Client agrees to be bound by, any direction, advice or information provided by the Client Parties to the same extent as if provided by Client. Client agrees and understands that Simpluris shall not provide Client or any other party with any legal advice.

2. Fee Estimates Not Binding: Simpluris and Client acknowledge that it is difficult to determine all necessary work required for the Services or the total amount of fees that may be incurred in performing the Services. Client agrees that fees for Services described in the Proposal are estimated based on the requirements provided by Client. Actual fees charged by Simpluris may be greater or less than such estimate. Client specifically agrees that it will be responsible for the payment of all such fees. Simpluris will provide estimates and budgets, but they are not intended to be binding; are subject to unforeseen circumstances, and by their nature are inexact.

3. Billing and Payment: Simpluris will invoice Client on a regular basis unless a specific timeframe is otherwise set forth in the Proposal. Client shall pay all invoices within 30 days of receipt. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Services are not provided on a contingency basis and Client shall remain liable to Simpluris for all fees incurred by Simpluris in performing the Services, regardless of any circumstance that impacts the outcome of Client's matter, including but not limited to, court decisions, actions by the parties, or a failure to consummate a settlement.

4. Further Assurances: Client agrees that it will use its best efforts to include provisions reasonably acceptable to Simpluris in any relevant court order, settlement agreement or similar document that provide for the payment of Simpluris' fees and expenses hereunder. No agreement to which Simpluris is not a party shall reduce or limit the full and prompt payment of Simpluris' fees and expenses as set forth herein and in the Proposal.

5. Rights of Ownership: The parties understand that the software programs and other materials furnished Simpluris to Client and/or developed during the course of the performance of Services are the sole property of Simpluris. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. Client agrees not to copy or permit others to copy the source code from the support software or any other programs or materials furnished to Client. Fees and expenses paid by Client do not vest in Client any rights in such property, it being understood that such property is only being made available for Client's use during and in connection with the Services provided by Simpluris.

6. Bank Accounts: Simpluris will establish a demand deposit checking account (i.e. non-interest bearing) for funds received related to a distribution, unless directed otherwise in writing by the parties or unless the settlement agreement stipulates otherwise. Simpluris may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and compensation for services Simpluris performs for financial institutions to be eligible for FDIC deposit insurance. The amounts held pursuant to these Terms and Conditions are at the sole risk of Client and, without limiting the generality of the foregoing, Simpluris shall have no responsibility or liability for any diminution of the fund that may result from any deposit made with a financial institution including any losses resulting from a default by such institution or other credit losses. It is acknowledged and agreed that Simpluris will have acted prudently in depositing the fund at such institution.

7. Retention of Documents & Data: Unless otherwise required in writing by the Client or court orders, all returned/undeliverable physical documents will be securely shredded after the data has been confirmed uploaded to our systems. Simpluris will retain bank and tax documents for such period of time as it determines is required to maintain compliance with various federal and state law requirements. Unless otherwise required in writing by the Client or court orders, Simpluris will adhere to the Company's data deletion policies and will destroy all remaining project-related information from our systems three (3) years after the conclusion of the project. Storage beyond three (3) years is available upon request and will be billed as incurred.

8. Limitation of Liability; Disclaimer of Warranties: Simpluris warrants that it will perform the Services diligently, with competence and reasonable care. In no event will Simpluris be liable to Client or any third party for any claims, losses, costs, penalties, fines, judgments, tax activities, lost profits or business opportunities, business interruptions or delay, special, exemplary, punitive, consequential, indirect or incidental damages relating to the performance of the Services, regardless of whether Client's claim is for breach of contract, tort (including negligence and strict liability) or otherwise, regardless of whether such damage was foreseeable and whether such party has been advised of the possibility of such damages. Simpluris' cumulative liability for damages to Client hereunder will be limited to the total fees charged or chargeable to Client for the particular portion of the Services affected by Simpluris' omission or error. THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

9. Force Majeure: To the extent performance by Simpluris of any of its obligations hereunder is substantially prevented or delayed by reason of any act of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date

that Simpluris began performing Services, epidemic, pandemic, quarantine, civil commotion, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an export or import restriction, quota, or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation or because of any other matter beyond Simpluris' reasonable control, then Simpluris' performance shall be excused and this Agreement, at Simpluris' option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

10. Rights in Data: Client agrees that it will not obtain, nor does Simpluris convey, any rights of ownership in the programs, system data, or materials provided or used by Simpluris in the performance of the Services.

11. Electronic Communications: During the provision of the Services, the parties may wish to communicate electronically with each other at a business e-mail address. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, each party agrees to use commercially reasonable procedures to check for the then most commonly known viruses and to check the integrity of data before sending information to the other electronically, but each party recognizes that such procedures cannot be a guarantee that transmissions will be virus free. It remains the responsibility of the party receiving an electronic communication from the other to carry out a virus check on any attachments before launching any documents whether received on disk or otherwise.

12. Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier to the address identified by each Party in the Proposal. Notice shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service. Notice should be addressed to an officer or principal of Client and Simpluris, as the case may be.

13. Waiver: Failure or delay on the part of a party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof or any of other subject, right, power or privilege.

14. Termination: Client may terminate the Services at any time upon 30 days prior written notice to Simpluris. Termination of Services shall in no event relieve Client of its obligation make any payments due and payable to Simpluris for Services rendered up to the effective date of Termination. Simpluris may terminate this Agreement (i) for any reason upon no less than 60 days prior written notice to the Client; or (ii) upon 15 calendar days' prior written notice if the Client is not current in payment of fees.

15. Jurisdiction: These Terms and Conditions will be governed by and construed in accordance with the laws of the state of California, without giving effect to any choice of law principles.

16. Survival: Any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 4 - Limitation of Liability; Disclaimer of Warranties, Section 6 – Rights in Data, and Section 12- Jurisdiction, 14 -Confidentiality, and Section 15 – Indemnification.

17. Confidentiality: Simpluris maintains reasonable and appropriate safeguards to protect the confidentiality and security of data provided by Client to Simpluris in connection with the Services. If, pursuant to a court order or other proceeding, a third-party requests that Simpluris to disclose any confidential data provided by or for Client, Simpluris will promptly notify the Client unless prohibited by applicable law. Client will then have the option to provide Simpluris with qualified legal representation at Client's expense to defend against such request. If, pursuant to a court order, Simpluris is required to disclose data, produce documents, or otherwise act in contravention of the obligation to maintain confidentiality set forth in these terms and conditions, Simpluris will not be liable for breach of said obligation.

18. Indemnification: Client will indemnify and hold Simpluris (and the officers, employees, affiliates and agents) harmless against any losses whatsoever incurred by Simpluris, arising out of any action by a third party, including governmental agencies, in connection with , or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by Simpluris in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by Simpluris pursuant to Client's instructions.

19. Severability: If any term or condition or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

20. Database Administration: Simpluris' database administration for Client assumes that Client will provide complete data that includes all information required to send notifications and calculate and mail settlement payments. Data must be provided in a complete, consistent, standardized electronic format. Simpluris' standardized format is Microsoft Excel, however, Simpluris may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by Simpluris on a time and materials basis according to Simpluris' Standard Rates.

21. Entire Agreement: These Terms and Conditions together with the Proposal constitutes the entire agreement between the parties with respect of the subject matter hereof and supersede all prior understandings, agreements, or representations by or among the parties, written or oral, to the extent they relate in any way to the subject matter hereof.

EXHIBIT 9

Case Name: Magana Segura v. DWH Restaurants, Inc.
Thursday, March 13, 2025

Requesting Attorney:
Maralle Messrelian, Esq.
MM Law, APC
maralle@mmlawapc.com
818.810.7747

ILYM Group Contact:
Lisa Mullins
ILYM Group, Inc.
Lisa@ilymgroup.com
714.878.8836

Estimate For Administrative Solutions: PAGA

KEY ASSUMPTIONS	
Total Number of Aggreived Employees	109
Estimated Percentage of Remails	15%
Certified Spanish Translation	Yes
ILYM Group Static Website	No
NCOA	Yes
Case Duration (Years)	1

Summary of ILYM Group, Inc.'s Fees & Expenses

Case Startup:	\$1,237.95
Distribution (Includes EIN, Bank Acct * /QSF Setup):	\$2,192.05
Case Conclusion:	\$520.00

Estimated ILYM Fees & Expenses: \$3,950.00

ILYM | GROUP, Inc.

CLASS ACTION ADMINISTRATION

Case Name: Magana Segura v. DWH Restaurants, Inc.

Thursday, March 13, 2025

Requesting Attorney's Name: Maralle Messrelian, Esq.

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - <i>Import and Formatting of Data*</i>	Hourly	\$150.00	1	\$150.00
Project Manager (Case notification and maintenance)	Hourly	\$120.00	2	\$240.00
Certified Spanish Translation	Flat Fee	\$750.00	1	\$750.00
NCOA	Flat Rate	\$42.95	1	\$42.95
Toll-Free Customer Service Representative	Flat Rate	\$55.00	1	\$55.00

**ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.*

Subtotal \$1,237.95

DISTRIBUTION (Includes EIN, Bank Acct /QSF Setup)*				
Distribution Setup & Management	Hourly	\$150.00	1	\$150.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	1	\$125.00
Notice, Check, Stub & Release - (including 1099)	Per Check	\$1.50	109	\$163.50
USPS First Class 1oz Postage	Per Piece	\$0.65	109	\$70.85
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.00	16	\$32.70
Preparation of Taxes	Hourly	\$150.00	1	\$150.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

**Additional Bank fees may apply*

Subtotal \$2,192.05

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	1	\$100.00
Process Unclaimed Funds	Flat Fee	\$300.00	1	\$300.00
Declaration	Hourly	\$120.00	1	\$120.00

Subtotal \$520.00

Estimated ILYM Fees & Expenses: \$3,950.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT 10