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Attorneys for Plaintiff Rainy Day Fisher,  
on behalf of herself and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF CONTRA COSTA**

RAINY DAY FISHER, an individual, on  
behalf of herself and others similarly situated,

Plaintiff,

vs.

RLW PROPERTIES, LLC, d/b/a Zephyr Grill  
& Bar, d/b/a Smith's Landing Seafood  
Restaurant, a California limited liability  
company; RLW PROPERTIES LLC  
ZEPHYR'S GRILL/SMITH'S LANDING, a  
business organization of form unknown;  
ZEPHYR GRILL & BAR, a business  
organization of form unknown; SMITH'S  
LANDING, a business organization of a form  
unknown; and DOES 1 through 50, inclusive,

Defendants.

Case No. C24-02017

**CLASS ACTION**

Assigned for all purposes to:  
Hon. Charles S. Treat  
Dept.: 12

**DECLARATION OF MARTA MANUS IN  
SUPPORT OF PLAINTIFF'S MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION AND PAGA SETTLEMENT**

Date:  
Time:  
Dept.: 12

Original Complaint filed: March 13, 2024  
Venue Transfer: August 02, 2024  
First Amended Complaint: December 04, 2024  
Trial: none set

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1. I am an attorney licensed and admitted to practice before all courts of the State of California, the United States District Court for the Central, Southern, Eastern, and Northern Districts of California. I am an Associate Attorney at D.LAW, INC. and counsel for Plaintiff Rainy Day Fisher (“Plaintiff”), on behalf of herself and all other similarly situated employees of Defendants RLW PROPERTIES, LLC, d/b/a Zephyr Grill & Bar, d/b/a Smith’s Landing Seafood Restaurant, RLW PROPERTIES LLC ZEPHYR’S (“Defendants”).

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**Plaintiff's Claims and Defendants' Defenses**

5. Plaintiff's claims are based on Defendants' alleged failure to pay wages (including overtime), failure to provide meal and rest periods, failure to pay all sick pay, failure to reimburse business expenses, the resulting failure to pay final wages when required and provide accurate wage statements, and largely derivative claims under the UCL and PAGA.

6. Specifically, Plaintiff alleges that Class Members who worked as bartenders, servers, bar backs and bussers, were required to perform job duties off-the-clock. Given Defendants' practice of understaffing, Plaintiff and Class Members frequently worked before and after their scheduled shifts and during meal and rest breaks. For example, Plaintiff alleges she was required to arrive at least 20 minutes before her scheduled shift and prepare the bar area prior to clocking in. Additionally, Plaintiff was required to complete closing duties such as cleaning up the bar area and count the money after her shift ended, without being compensated for this off-the-clock work. In addition to the pervasive off-the-clock work, Defendants' managers contacted Plaintiff by phone during off-the-clock hours. Plaintiff would also receive text messages and work-related instructions while off-duty, and was expected to respond and complete the instructions, without being given the ability to record these off-the-clock hours.

7. Plaintiff also alleges that Defendants' practice of understaffing and the demands of the job resulted in not being provided the opportunity to take duty-free meal and rest breaks/ instructed Defendants required Plaintiff and Class Members to sign on-duty meal period waivers to permit them to work through meal breaks despite the fact that the nature of the work does not prevent Plaintiff and Class Members from being relieved of all duties and the only reason they were unable to take duty-free breaks was due to the Defendants' unlawful practices and policies. In fact, Plaintiff alleges that Defendants required Plaintiff and Class Members to routinely work through their meal periods or take their meal periods late due to their work responsibilities and that Plaintiff similarly alleges that Plaintiff and Class Members were unable to take two duty-free rest periods during their work shifts because they were required to respond to respond to work-related demands, assist customers, and cover for other employees, including during breaks. Defendants failed to pay the legally required premium at their regular rate of pay whenever rest periods were missed, interrupted,

1 or late.

2 8. Additionally, Plaintiff alleges that Defendants required Plaintiff and Class Members  
3 to use their cellular phones for work for which they were not reimbursed. Defendants also required  
4 Plaintiff and Class Members to incur mileage expenses to drive to locations to purchase barware  
5 and supplies for work. Furthermore, Defendants has a tip pooling practice that included supervisors  
6 and leads drawing from the tip pool as well as deducted taxes from gratuities. Finally, to the extent  
7 Defendants paid overtime, it was underpaid as addressed above or Defendants failed to include all  
8 forms of remuneration in the regular rate used to calculate and pay overtime wages. This failure to  
9 include non-discretionary bonuses and shift differentials and the like in the overtime rate thus  
10 resulted in further underpayment of wages earned by Plaintiff and the Class members. Finally,  
11 Plaintiff alleges that Defendants failed to provide all required paid sick days and COVID-19  
12 supplemental sick leave to Plaintiff and Class Members.

13 9. Defendants generally deny all claims alleged in the Action and further denies class  
14 and/or representative treatment is appropriate for any purpose other than this Settlement and that it  
15 complied with all applicable laws. However, after careful consideration, Defendants have concluded  
16 that further litigation would be protracted and expensive and that it is desirable that the Action be  
17 fully and finally settled in the manner and upon the terms and conditions herein.

18 **Investigation**

19 10. Before filing the lawsuit, Class Counsel conducted a thorough investigation and  
20 researched the facts and circumstances underlying the pertinent issues and applicable law. This  
21 required thorough discussions and interviews between Class Counsel and Plaintiff, in addition to  
22 the above-described research into the various legal issues involved in the case. After filing the  
23 lawsuit, Class Counsel conducted a thorough investigation of the facts and claims giving rise to the  
24 action, including (1) conducting informal discovery and meeting and conferring with defense  
25 counsel about same; (2) reviewing and analyzing records and data, as well as employment-related  
26 policies; (3) reviewing Plaintiff's personnel file and other documentation; (4) interviewing Plaintiff  
27 regarding potential Class Members; (5) researching the applicable law and potential defenses; (6)  
28 constructing damage models based on interpretations of California law and the facts and numbers

provided by Defendants; and (7) reviewing information provided by Defendants in response to informal discovery and in advance of the mediation. The Parties conducted their own evaluations of the potential recoveries based on the claims alleged in the Action, including consulting experts.

11. Defendants, for their part, vigorously contested liability, the amount of claimed damages, and the propriety of class certification. After analyzing the relevant documents and other gathered data, Class Counsel believed that this case was appropriate for resolution via mediation. Given the high level of risk present for both sides, the Parties elected to mediate Plaintiff's claims and explore the possibility of settlement.

#### **Settlement Efforts**

12. On February 4, 2025, the Parties participated in an all-day mediation with Steven J. Serratore, a respected and highly experienced mediator in wage and hour class actions. During mediation, counsel for Plaintiff and Defendants discussed all aspects of the case, including the risks of litigation and the risks to both parties as well as the law and how it applied to the facts of this case. Following a full day of mediation, the Parties agreed to general settlement terms to resolve the lawsuit. The Parties continued to work together negotiating the long form settlement terms following mediation, as set forth in the Settlement Agreement.

13. In advance of mediation, Class Counsel conducted a thorough investigation into the facts of, and applicable law to, the Action, including reviewing documents and data regarding Defendant's employment policies and practices. Plaintiff's counsel provided Defendants' counsel with a comprehensive listing of informal discovery items required to constructively mediate. Defendants responded by producing timekeeping and corresponding payroll records for approximately 45 employees out of the total class size. Prior to mediation, Plaintiff therefore obtained and analyzed the production of time and payroll data for Class Members and Aggrieved Employees and the necessary policy documents through informal discovery to properly evaluate the strengths and weaknesses of their claims and engage in meaningful settlement discussions. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.*, 48 Cal.App.4th 1794, 1801 (1996) and *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 129-130 (2008) ("*Dunk/Kullar*").

14. Based on their own independent investigations and evaluations, Class Counsel is of the opinion that the Settlement with Defendants for the consideration and terms set forth herein, considering the representative and class claims, and the risk of loss, is fair, reasonable, and adequate in light of all known facts and circumstances, and is in the best interests of the Class. Class Counsel is also of the opinion that the total consideration and payment set forth in this Settlement Agreement is adequate in light of the uncertainties surrounding the risk of further litigation, the possibility of losing class certification, that the PAGA claim could be deemed unmanageable, and the defenses that Defendants have asserted and/or could assert as the substantive merit of the claims. Based on the settlement negotiations, which were extensive and conducted in good faith and at arm's length between attorneys with substantial experience litigating wage and hour cases, the Settlement was the product of a non-collusive settlement process and compromises in the interest of reaching a full and complete settlement. As a result, Class Counsel has determined that the settlement set forth in this Settlement Agreement is in the best interests of the Class.

## **Summary of the Settlement**

15. Under the terms of the proposed Settlement Agreement, the Defendants will pay \$410,000.00 (“Gross Settlement Amount” or “GSA”) on a non-reversionary basis to settle and release all claims asserted by Plaintiff in the operative complaint on behalf of the proposed Class. The Gross Settlement Amount will be funded in two installments paid by Defendants into the Qualified Settlement Fund established by the Administrator as follow: (1) \$205,000 to be paid 60 days after entry of judgment; and (2) \$205,000 to be paid 180 days after the first payment. (Manus Decl., Ex. 1, p. 8). The Settlement Agreement defines “Class Members” all non-exempt, hourly individuals that worked for Defendants in California during the Class Period (i.e. the period from March 13, 2020, through April 5, 2025). (*Id.*, Ex. 1, p. 3). The “Net Settlement Amount,” available for distribution to Class Members, is the Gross Settlement Amount, less the Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Administration Expenses Payment. (Ex. 1, p. 5). These amounts are detailed as follows:

- Up to one-third (1/3) of the GSA, or \$136,666.67, to Class Counsel for attorneys' fees, and

up to \$28,000.00 to Class Counsel for reimbursement of reasonable expenses incurred to prosecute the Action (Ex. 1, p. 2-3);

- Up to \$10,000.00 to Plaintiff as an enhancement award for service as the class representative (Ex. 1, p. 3);
- Up to \$17,200.00 to the Administrator for its fees and costs to administer the Settlement (Ex. 1, p. 2);
- \$10,000.00 for settlement of claims for civil penalties under PAGA, with 25% allocated to the Aggrieved Employees (\$2,500.00) and 75% allocated to the LWDA (\$7,500.00) will be paid to the LWDA (“LWDA Payment”) (Ex. 1, p. 5).

16. If the Court approves the above allocations from the Gross Settlement Amount, the Net Settlement Amount is estimated to be \$208,133.33. Each Class Member’s share of the Net Settlement Amount will be calculated based on the number of workweeks the Class Member worked during the Class Period. (Ex. 1, p. 4). For the 518 Class Members (if no exclusions), the average gross individual settlement payment share, using a straight average, is \$401.80. If the Court approves a lesser amount for any of the above requested allocations from the Net Settlement Amount, the remainder will be added to the Net Settlement Amount to be distributed to Class Members. (Ex. 1, p. 5).

17. The Class Notice is attached to the Settlement Agreement as Exhibit A. The Administrator will mail the Class Notice to all Class Members no later than 14 days after receiving the Class Data. (Ex. 1, p. 18). The Class Notice includes a summary of the case and settlement terms and provides Class Members with detailed instructions on how to exclude themselves, object to the settlement, and dispute the number of workweeks and/or pay periods attributed to each Class Member per Defendant’s records. (Ex. 1, p. 18-21). Class Members will have 45 days from the mailing of the Class Notice to opt out of or object to the Settlement or to dispute the number of work weeks and/or pay periods; Class Members will have an additional 14 days if they receive a re-mailed Notice. (Ex. 1, p. 19-21).

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**Certification for Settlement Purposes Only is Appropriate**

18. Plaintiff alleges that the proposed Class satisfies the criteria for certification of a settlement class under California law, as embodied in California Code of Civil Procedure § 382. Defendants have agreed to the conditional certification of the class for settlement purposes only. Defendants do not concede that certification is appropriate outside of this Settlement and preserves all rights to oppose certification if, for any reason, the settlement does not become effective. In general, courts may take a proposed settlement into account in evaluating the propriety of class certification. *See Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 fn. 19. Indeed, a “lesser standard” of scrutiny applies in certifying classes for settlement purposes. *Id.* Therefore, the Court should take into consideration the fact that the Parties have settled their claims and stipulated to certification for settlement purposes when assessing whether the Settlement is fair and reasonable.

19. Numerosity and Ascertainability. The putative Class is so numerous that joinder of all members is impractical. Class Members are all current and former non-exempt, hourly employees of Defendants employed in California during the Class Period (March 13, 2020, through April 5, 2025). Defendants have identified 518 Class Members based on review of its payroll and personnel records. Thus, there is numerosity and ascertainability.

20. Well-Defined Community of Interest. Plaintiff contends, and Defendants do not dispute for settlement purposes only, that common issues of fact and law predominate as to each of the claims alleged by Plaintiff, and the Class is united in its proof. This action involves, *inter alia*, a determination about Defendants’ alleged failure to provide meal and rest periods, failure to pay wages and overtime due to allegedly common off-the-clock work, failure to provide sick pay, failure to reimburse business expenses; the resulting failure to pay final wages when required and to provide accurate wage statements; and largely derivative claims under the UCL and PAGA. Plaintiff contends Defendants’ practices affected Class Members in the same way and present questions that are suitable for common adjudication because all Class Members were subject to the same employment policies and practices. The outcome of litigation in this matter depends upon questions that are common to Class Members.



1           21.     Typicality. The class representatives' claims are typical when they arise from the  
2 same event, practice, or course of conduct that gives rise to the claims of other putative Class  
3 Members, and if their claims rest on the same legal theories. Here, Plaintiff alleges that her claims  
4 are typical of Class Members' claims because they arose from the same factual basis and are based  
5 on the same legal theories. Plaintiff and Class Members were employed by Defendants during the  
6 Class Period and subject to the allegedly unlawful meal and rest policies and pay practices at issue  
7 in this litigation. Plaintiff contends, and Defendants do not dispute for settlement purposes only, that  
8 Plaintiff's claims are typical of Class Members' claims because they arose from the same factual  
9 basis and are based on the same legal theories. Thus, the typicality requirement is satisfied.

10           22.     Adequacy. Plaintiff's interests are aligned with those of the Class Members, as he  
11 has suffered the same injuries as the Class Members and has no conflicts of interest. Plaintiff has  
12 not shrunk from this responsibility. Indeed, Plaintiff has devoted a substantial amount of time and  
13 energy to litigating this action and effectuating a settlement. Furthermore, as set forth below, Class  
14 Counsel are experienced in wage-and-hour litigation, especially class actions, and have zealously  
15 represented the interests of the class in litigating this case and have no conflicts of interest.  
16 Accordingly, the adequacy requirement is satisfied.

17           23.     Predominance and Superiority. Plaintiff contends that individualized issues do not  
18 predominate over the issues of law and fact that are common to the Class as a whole. As explained,  
19 *supra*, Plaintiff allege there are common issues of law and fact given that Plaintiff and all Class  
20 Members were subjected to the same policies and pay practices during the relevant time period.  
21 Plaintiff and Class Members seek meal and rest premiums, unpaid wages and overtime, and  
22 penalties for work performed as non-exempt employees for Defendants. Plaintiff alleges that these  
23 issues are suitable for common adjudication because all Class Members were allegedly subject to  
24 the same employment policies, and Plaintiff contends the practices applied uniformly to all Class  
25 Members.

26           24.     Plaintiff contends that class resolution is superior to other available methods for the  
27 fair and efficient adjudication of the controversy as there is little interest or incentive for Class  
28 Members to individually control the prosecution of separate actions. Although the alleged injury

1 resulting from Defendants' policies and practices are allegedly real and significant, the cost of  
2 individually litigating each such case against Defendants would easily exceed the value of any relief  
3 that could be obtained by any one Class Member individually. If Class Members are forced to litigate  
4 their claims individually this would result in over 518 individual actions against Defendants. Here,  
5 the alternative methods of resolution are individual suits for relatively small amounts. Hence,  
6 individual suits would prove uneconomical for potential plaintiffs because litigation costs would  
7 dwarf a potential recovery.

8 **The Settlement is Fair, Adequate and Reasonable**

9 25. In deciding whether to approve a proposed class action settlement, the Court must  
10 find that a proposed settlement is "fair, adequate, and reasonable" and falls within the "range of  
11 approval." *Dunk*, 48 Cal.App.4th at 1801-02. The trial court considers all relevant factors, such as  
12 "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further  
13 litigation, the risk of maintaining class action status through trial, the amount offered in settlement,  
14 the extent of discovery completed and the stage of the proceedings, the experience and views of  
15 counsel, the presence of a governmental participant, and the reaction of the Class Members to the  
16 proposed settlement." *Id.* The Settlement satisfies all of these requirements.

17 **A. The Settlement is the Result of Serious, Informed, Non-Collusive Negotiations.**

18 26. The proposed settlement was reached as a result of arm's length negotiations after  
19 the completion of pertinent discovery and the exchange of necessary class data. The negotiations  
20 have been, at all times, adversarial and non-collusive in nature. *See*, 4 Newberg on Class Actions §  
21 13:45 (5th ed.) (due to the preference of settlement over litigation, "a court will presume that a  
22 proposed class action settlement is fair when certain factors are present, particularly evidence that  
23 the settlement is the product of arms-length negotiation, untainted by collusion."). Although  
24 Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff acknowledges that there were  
25 substantial risks and uncertainty in proceeding with litigation. As described above, Defendants  
26 presented multiple defenses to Plaintiff's claims, both on the merits and with respect to class  
27 certification. Thus, while Plaintiff was prepared to litigate these claims through class certification,  
28

1 and ultimately trial, success was far from certain. Assistance from a well-respected mediator ensured  
2 negotiations were non-collusive and well-informed.

3 **B. Extent of Discovery and Stage of Proceedings.**

4 27. As stated above, the Parties engaged in substantial informal discovery before the  
5 Settlement was reached to allow them to fully evaluate the class claims and Defendants' defenses.  
6 This litigation has reached the stage where the Parties have a clear view of their respective strengths  
7 and weaknesses.

8 **C. Strength of Plaintiff's Case and the Risk, Expense, Complexity and Likely Duration of**  
9 **Any Litigation.**

10 28. As stated above, while Plaintiff and Class Counsel contend the claims asserted in the  
11 Action have merit, they also acknowledge the expense and delay of continued litigation. (Ex. 1, p.  
12 7-8.) Although the Parties engaged in significant informal discovery in advance of mediation, the  
13 Parties still had significant discovery to complete had the matter not settled. This would have  
14 required expenditure of substantial time and resources by both Parties that would have very likely  
15 spanned several years. Even if Plaintiff were to certify the classes, the Parties would incur  
16 considerably more attorney fees and costs through a possible decertification motion, trial, and  
17 possible appeal. This Settlement avoids those risks and the accompanying expense.

18 **D. The Risk of Maintaining Class Action Status Through Trial.**

19 29. Plaintiff had not yet filed her motion for class certification, and as such, the extent to  
20 which Plaintiff proposed classes were certifiable is somewhat speculative. Absent settlement, there  
21 was a risk that there would not be a certified class at the time of trial, or if there were, it could consist  
22 of a significantly smaller group of employees than the proposed Settlement Class resulting in less  
23 overall recovery.

24 30. Finally, in class actions, decertification is always a possibility, and there is always a  
25 risk that a trial of this magnitude can become unmanageable. Cases like *Duran v. U.S. Bank Nat.*  
26 *Assn.* (2014) 59 Cal. 4th 1, 34 address the complexity of using statistical samples in class actions  
27 and demonstrate that decertification is a real risk that Class Counsel must consider. A class trial  
28 would have also required expert witnesses, the accrual of extensive litigation costs, and the

1 commitment of extensive further time and financial resources. Finally, given the complexity and  
2 unsettled nature of the issues, it is likely that any outcome at trial would have resulted in a lengthy  
3 and costly appeal. An appeal would result in further delay for the Class Members who have already  
4 waited years for resolution in this matter. Risk and legal uncertainty must be dealt with in any  
5 litigation, and this Settlement was the product of compromise accounting for those risks and that  
6 uncertainty.

7 **E. The Presence of a Governmental Participant.**

8 31. Class Counsel will be submitting the Settlement Agreement to the LWDA  
9 concurrently with the filing of this motion pursuant to Labor Code § 2699(1)(2). Attached hereto as  
10 **Exhibit 2** is the email confirmation from the LWDA.

11 **F. The Amount Offered in Settlement is Fair Given the Potential Value of the Claims.**

12 32. Because the class consists of numerous employees, it was unlikely that the potential  
13 monetary claims of individual Class Members would have proved viable without the class-action  
14 mechanism. The Settlement Agreement should be approved in light of two California appellate  
15 decisions: *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785 and *Kullar v.*  
16 *Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.

17 33. The strength of the Plaintiff's case in light of the settlement amount is deemed by  
18 courts to be the "most important." *Clark v. American Residential Services, LLC* (2009) 175  
19 Cal.App.4th 785, 799 (citing *Kullar*). Here, Plaintiff alleges that Defendants failed to pay minimum  
20 wages and overtime, failed to provide meal and rest breaks, failed to provide accurate wage  
21 statements, failed to pay all wages upon termination, failed to pay all sick pay owed, and failed to  
22 reimburse for business expenses, all in violation of California law. Plaintiff seeks related violations  
23 of California's Business & Professions Code, penalties pursuant to Labor Code § 2699 *et seq.*  
24 Summary calculations for estimated liability for each of these claims follow.

25 **Failure to Pay Regular Wages and Overtime:**

26 34. Plaintiff alleged that Defendant failed to pay all wages owed, including by requiring  
27 off-the-clock work, violating California Labor Code § 1197, which prohibits "Pay of Less Than  
28 Minimum Wage" and states, "[t]he minimum wage for employees fixed by the commission is the

1 minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed  
2 is unlawful.” Plaintiff further alleged that when Defendants required off-the-clock work, Plaintiff  
3 and the Class Members were not being paid for all hours worked, including due to off-the-clock  
4 work and time they were under Defendant’s “control,” such as when performing pre-shift and post-  
5 shift tasks and working through meal period and rest periods. Specifically, Plaintiff alleged that  
6 Class Members who worked as bartenders, servers, bar backs and bussers, were required to perform  
7 job duties off-the-clock. Given Defendants’ practice of understaffing, Plaintiff and Clas Members  
8 frequently worked before and after their scheduled shifts and during meal and rest breaks. For  
9 example, Plaintiff alleges she was required to arrive at least 20 minutes before her scheduled shift  
10 and prepare the bar area prior to clocking in. Additionally, Plaintiff was required to complete closing  
11 duties such as cleaning up the bar area and count the money after her shift ended, without being  
12 compensated for this off-the-clock work. In addition to the pervasive off-the-clock work,  
13 Defendants’ managers contacted Plaintiff by phone during off-the-clock hours. Plaintiff would also  
14 receive text messages and work-related instructions while off-duty, and was expected to respond  
15 and complete the instructions, without being given the ability to record these off-the-clock hours.  
16 Defendants argued that these claims were not suitable for class treatment given the individualized  
17 issues they raise and the manageability difficulties. Defendants argued they did not require off-the-  
18 clock work, and correctly calculated and paid overtime wages under California law.

19 35. Plaintiff conservatively estimated the Class Members endured approximately two hours  
20 of off-the-clock work per workweek, including in the manner described above. Based on  
21 Defendants’ sample of records, Plaintiff’s damages consultant estimated that the approximately 518  
22 employees were owed wages for 61,170 hours of off-the-clock work (assuming 28.4% of the off-  
23 the-clock hours attributable to overtime). Plaintiff estimated Defendants’ exposure on the unpaid  
24 wages to be approximately \$1,203,506.00 (excluding interest). However, given Defendants’  
25 defenses and the potential hurdles facing certification of this claim, Plaintiff applied a 90% discount  
26 making for an adjusted realistic exposure of \$120,350.00 for Defendants.

27 **Meal Periods and Rest Breaks:**

28 36. Plaintiff argued that Defendants had a common practice and policy of failing to provide

1 compliant meal and rest periods. Plaintiff alleged that Defendants' practice of understaffing and the  
2 demands of the job resulted in not being provided the opportunity to take duty-free meal and rest  
3 breaks/ instructed Defendants required Plaintiff and Class Members to sign on-duty meal period  
4 waivers to permit them to work through meal breaks despite the fact that the nature of the work does  
5 not prevent Plaintiff and Class Members from being relieved of all duties and the only reason they  
6 were unable to take duty-free breaks was due to the Defendants' unlawful practices and policies. In  
7 fact, Plaintiff alleges that Defendants required Plaintiff and Class Members to routinely work  
8 through their meal periods or take their meal periods late due to their work responsibilities For each  
9 meal period missed, of less than 30 minutes, or taken late for which the employee was not provided  
10 a reasonable opportunity to take a complete and timely meal period, an employer must pay the  
11 employee an additional one hour of compensation. Labor Code § 226.7. This additional hour of  
12 compensation is referred to as "premium pay." To comply with these laws, every employer must  
13 keep, for each employee, accurate time records showing when the employee begins and ends each  
14 work period and takes his or her meal periods. See Wage Order 4-2001(7)(A)(3).

15 37. For each meal period allegedly missed, of less than 30 minutes, or taken late for which  
16 the employee was not provided a reasonable opportunity to take a complete and timely meal period,  
17 an employer must pay the employee an additional one hour of compensation. Labor Code §226.7.  
18 This additional hour of compensation is referred to as "premium pay." To comply with these laws,  
19 every employer must keep, for each employee, accurate time records showing when the employee  
20 begins and ends each work period and takes his or her meal periods.

21 38. Defendants disagreed with Plaintiff's contentions regarding meal breaks. Defendant  
22 argued that in practice all employees were authorized and did in fact take timely uninterrupted meal  
23 breaks. Defendants also argued that their written policies were valid and disseminated to all  
24 employees. Defendants contended that Class Members were given a reasonable opportunity to take  
25 their meal periods, and in fact received their meal periods most of the time. Defendants also  
26 contended that differences in how the various employees performed their daily duties would have  
27 led to individualized issues predominating and would have defeated class certification.

28 39. Plaintiff's expert estimated Defendant's maximum total exposure on the meal break claim

1 at approximately \$1,545,537.00 based on a detailed analysis of meal period records and an offset  
2 for meal premiums paid by Defendants (\$22,892.00). Plaintiff believes this estimate is high given  
3 Defendants' defenses and potential hurdles facing certification of this claim and thus provided an  
4 75% discount making the adjusted realistic exposure \$386,384.00.

5 40. **Rest Breaks:** The same argument applied to rest breaks. Plaintiff contended that  
6 Defendants did not provide Class Members with the opportunity to take timely paid 10-minute rest  
7 breaks for every four hours or major fraction thereof. Plaintiff contended that Class Members were  
8 required to work through their rest breaks and through their entire shifts in part due to understaffing.

9 41. Defendants maintained that it provided the reasonable opportunity for Class Members to  
10 take duty-free rest breaks. Defendants also pointed out that, unlike meal periods, rest breaks need  
11 not be recorded. As these considerations would likely depress the damages *vel non* ultimately  
12 awarded, Class Counsel applied significant and appropriate discounts to the rest break claim. Class  
13 Counsel's expert estimated Defendants' maximum total exposure on the rest break claim at  
14 approximately \$2,002,706.00 (assuming 100% violation rate for shifts greater than 3.5 hours).  
15 Owing to the arguments above and the fact that recording of rest periods is not required, this claim  
16 was substantially discounted and was not a major driver of exposure in this case. Plaintiff therefore  
17 applied a 90% discount, making the adjusted realistic exposure \$200,270.00.

18 **Inaccurate Wage Statement Violations:**

19 42. Under Labor Code § 226(a), Plaintiff and the Class are entitled to recover \$50 for initial  
20 violations for inaccurate wage statements and \$100 for subsequent violations, up to a maximum of  
21 \$4,000 per employee. Plaintiff alleged Defendants issued wage statements to Plaintiffs and the Class  
22 Members that did not accurately list all hours worked by omitting off-the-clock work and by  
23 unlawful rounding and inaccurately listing applicable hourly rates.

24 43. Defendants challenged Plaintiff's claim for Labor Code § 226(e) penalties, including by  
25 arguing they were merely derivative of the other claims that lacked merit, and Plaintiff's failure to  
26 prove the underlying claims could result in the dismissal of these derivative claims. Defendant also  
27 argued that it did not knowingly and intentionally commit these alleged violations. *See, e.g.*, Labor  
28 Code § 226(e) (recovery of penalties requires showing there was "a knowing and intentional failure

1 by an employer”).

2 44. Plaintiff’s expert estimated Defendants’ maximum total exposure on the section 226  
3 claim at approximately \$1,140,000.00 (\$50 for initial violations x 285 employees from relevant  
4 period) + (\$100 for subsequent violations x 13,754 estimated number of pay periods after subtracting  
5 the initial violations during the relevant period)). The Parties discussed these issues, and in light of  
6 these and other considerations, Class Counsel factored in a reduction of 90% liability and damages  
7 for this cause of action, making the adjusted realistic exposure \$114,000.00.

8 **Failure to Pay Final Wages at Termination or Separation:**

9 45. In allegedly failing to pay Class Members their minimum wages, overtime wages, and  
10 premium pay for deficiently provided meal periods and rest breaks, all discussed above, Plaintiff  
11 alleged that Defendants willfully failed to pay Class Members all wages due and certain at the time  
12 of termination or within seventy-two (72) hours of resignation, as required under Labor Code § 203.

13 46. Section 203 further provides that if an employer willfully fails to pay an employee all  
14 wages due at termination or within 72 hours of resignation, then that employee’s wages will continue  
15 as a penalty until paid for a period of up to 30 days from the date they were due. Because Class  
16 Members stopped working for Defendant but were allegedly not paid their full compensation for the  
17 reasons discussed above, Class Members did not receive all wages due upon termination of  
18 employment.

19 47. Defendants challenged this claim under Labor Code § 203 with several arguments,  
20 including that under Labor Code § 203, employers are only obligated to pay waiting-time penalties  
21 if they “willfully” fail to pay wages due and owing at the time of termination or resignation. As Title  
22 8, California Code of Regulations, § 13520 states: “A willful failure to pay wages within the  
23 meaning of Labor Code Section 203 occurs when an employer intentionally fails to pay wages to an  
24 employee when those wages are due. However, a good faith dispute that any wages are due will  
25 preclude imposition of waiting time penalties under Section 203.” Defendants argued that their good  
26 faith disputes and lack of willfulness would excuse its violations. Defendants maintained that  
27 because they had viable defenses in both law and fact, such penalties were subject to a three-year  
28 limitations period under Labor Code § 203(b). Defendants also argued that there is no liability under



1 Labor Code § 203 for violations of meal and rest break requirements alone.

2 48. Plaintiff's expert estimated Defendants' maximum total exposure on the section 203  
3 claim at approximately \$984,214.00 (295 terminated employees during the relevant period x 30  
4 days x average hourly). Given the foregoing arguments, this claim had to be steeply discounted.  
5 Therefore, Plaintiff applied a 90% discount making the adjusted realistic exposure \$98,421.40.

6 **Miscalculation of Regular Rate:**

7 49. To the extent Defendants also paid other forms of remuneration such as bonuses, Plaintiff  
8 argued Defendants failed to include such remuneration in the regular rate to calculate and pay  
9 overtime sick leave payments, when they were paid. Plaintiff's expert estimated Defendants'  
10 maximum exposure for underpaid sick pay to be \$2,950.00 and underpaid meal premiums to be  
11 \$1,219.00. In light of the nominal amounts owed, this claim was not a major driver of exposure in  
12 this case.

13 **PAGA Penalties:**

14 50. The Labor Code Private Attorneys General Act, Labor Code § 2698 *et seq.*, allows  
15 Plaintiff to obtain civil penalties on behalf of herself and other aggrieved employees for Defendants'  
16 violation of any provision of the Labor Code enumerated under Labor Code § 2699.5. Where civil  
17 penalties are provided in the statute, those civil penalties are recoverable; where no civil penalties  
18 are recoverable, Labor Code § 2699(f) establishes civil penalties of one (\$100) for each aggrieved  
19 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved  
20 employee per pay period for each subsequent violation. Pursuant to Labor Code § 2699(i), seventy-  
21 five (75) percent of the penalties recovered must be allocated to the Labor and Workforce  
22 Development Agency (LWDA), with the remaining twenty-five (25) percent allocated to the  
23 affected employees. The limitations period as for all penalties is one year prior to the filing of the  
24 complaint.

25 51. The provisions of the Labor Code potentially triggering PAGA penalties in this case  
26 include but are not limited to Labor Code §§ 203, 226(a), 226.3, 226.7, 510, and 1194. PAGA  
27 penalties are not mandatory and are instead permissive. Labor Code § 2699(e)(2) states that "a court  
28 may award a lesser amount than the maximum civil penalty amount specified by this part if, based

1 on the facts and circumstances of the particular case, to do otherwise would result in an award that  
2 is unjust, arbitrary and oppressive, or confiscatory.” See *Thurman v. Bayshore* (2012) 203 Cal. App.  
3 4th 1112 (substantially reducing PAGA penalties by 30% under this provision). Defendant contested  
4 Plaintiffs’ claim for PAGA penalties.

5 52. PAGA penalties are also derivative of each and every other claim, and Defendant argued  
6 the PAGA claims would be subject to the same defenses as the underlying claims, and as well as  
7 additional equitable defenses, including substantial compliance. Finally, under *Amaral v. Cintas*  
8 *Corp.* (2008) 163 Cal.App.4th 1157, Defendants asserted that penalties under PAGA could, at best,  
9 be awarded only at the rates obtainable for initial violations under the applicable statutes, because  
10 Defendant had never been notified of the alleged violations. *Id.* at 1208-1209.

11 53. Plaintiff’s expert estimated Defendants’ maximum total exposure on PAGA claims at  
12 approximately \$6,784,500.00 (13,754 PAGA Pay Periods). However, Class Counsel also estimated  
13 any PAGA recovery would be substantially reduced and applied discounts in light of the  
14 countervailing arguments with regard to the other causes of action and the Court’s power to award  
15 “a lesser amount than the maximum civil liability.” Therefore, Plaintiff applied a 90% discount for  
16 a realistic exposure of \$678,450.00. Given the Gross Settlement Amount of \$410,000.00, the PAGA  
17 allocation agreed upon by the Parties therefore was \$10,000.00, subject to the Court’s final approval.  
18 75% of that amount (\$7,500.00) will be paid to the LWDA out of the Gross Settlement Amount,  
19 and the remaining 25% (\$2,500.00) will remain in the Net Settlement Fund for distribution to the  
20 Aggrieved Employees.

### 21 **Unfair Business Practices**

22 54. Plaintiff pled this cause of action to augment their other causes of action and aid in their  
23 prosecution. Business & Professions Code § 17208 extends the statute of limitations on Plaintiff’s  
24 wage claims, which qualify as unfair business practices, to four years rather than the three years  
25 provided by statute.

### 26 **Summary**

27 55. The foregoing discussion establishes the adequacy of the Settlement amount in light of  
28 the merits of Plaintiff’s case and establishes the fairness of the class-action settlement in the

1 instant case, including by analyzing it in light of the *Clark* and *Kullar* decisions. It does so by  
2 explaining the legal basis for each of Plaintiff's causes of action, summarizing the evidence that  
3 Class Counsel gathered in support of those causes of action, and relating to Defendants' legal and  
4 factual arguments that worked to detract from the strength of Plaintiff's case.

5 56. Class Counsel had to apply appropriate discounts in light of the facts and law as  
6 discussed above. In addition, Defendants argued that said employees were dissimilarly situated co-  
7 workers, making the certification of all Class Members less than a certainty. This Settlement, like  
8 most others, was the product of compromise. As addressed above and by adding up numbers,  
9 Plaintiff estimated that Defendants faced approximately \$923,594.00 in total liability exposure on  
10 Plaintiffs' main claims and \$678,450.00 in potential PAGA penalties for a total of \$1,602,044.00.  
11 The Maximum Settlement Amount of \$410,000.00 therefore represents a recovery for the Class  
12 Members of approximately 26% of the total maximum liability exposure Plaintiff estimated that  
13 Defendants could face on the main claims in this case. Plaintiff and Class Counsel submit that this  
14 is an excellent result in the face of uncertainty and the prospects of protracted and contested  
15 litigation through class certification, summary judgment, and trial.

16 **Class Representative Enhancement Award is Fair and Reasonable**

17 57. Plaintiff spent significant time better apprising himself of his rights, deciding whether  
18 remedial action should be taken, how it should be taken, searching for attorneys, and contacting  
19 Class Counsel, who spent many hours with Plaintiff discussing the case and the law. In light of the  
20 foregoing, Class Counsel believes that the incentive award in the amount of \$10,000.00 to the Class  
21 Representative is fair and reasonable.

22 **Proposed Class Notice Provides Adequate Notice**

23 58. The notification procedure set out in the Settlement Agreement provides the greatest  
24 likelihood that each and every Class Member will receive the Class Notice, attached to the  
25 Settlement as Exhibit A. Under the Settlement, the Administrator will mail the Class Notice to the  
26 Class Members via first-class mail no later than 14 days after receiving the Class Data Defendants.  
27 (Ex. 1, p. 18). If any Notices Packets are returned undeliverable, the Administrator will forward  
28 them to any address appearing on the returned envelope within five (5) calendar days or, if there is

1 no forwarding address, will perform a skip trace before mailing them to any addresses thereby  
2 identified. (*Id.*) This is the best and most practicable way to ensure the greatest possible number of  
3 Class Members will receive the Notice.

4 59. The Class Notice itself fully apprises Class Members of the nature of the lawsuit, the  
5 claims involved, the terms of the settlement, and their options thereunder. It provides for a specific  
6 procedure to seek exclusion from the Class, disputing payments and Class data, and for lodging  
7 objections to the settlement. In the Class Notice, Class Members will also receive Class Counsel's  
8 contact information so they can speak to attorneys conversant with the legal and factual issues  
9 involved in this case, as well as the contact information for the Settlement Administrator. The efforts  
10 taken to ensure that Class Members receive the Class Notice and are well informed about the  
11 settlement are reasonable and provide the best notice practicable under the facts.

12 **Qualifications and Adequacy of Class Counsel**

13 60. D.Law (formerly known as Davtyan Law Firm) prosecutes wage and hour cases,  
14 including class actions and PAGA actions on behalf of employees and others who have had their  
15 rights violated. D.Law, either on its own or with co-counsel, is currently serving as plaintiffs'  
16 counsel of record in numerous wage and hour and employment class action and PAGA action cases  
17 pending in both state and federal court.

18 61. D.Law is well-qualified and has ample experience, knowledge, and resources to act as  
19 counsel and represent Plaintiff and the putative Class and aggrieved employees in this action. Our  
20 practice is exclusively focused on employment matters and representing plaintiffs in wage and hour  
21 actions with the same or similar causes of actions brought forth in the matter pending before this  
22 Court.

23 62. D.Law has litigated and successfully resolved many wage and hour class action cases  
24 involving failure to pay wages and derivative Labor Code claims and penalties. See e.g. De La Rosa  
25 v. The Coca Cola Company et al. (Superior Court of California in Napa, 17CV000787), Harvey v.  
26 Bed Bath & Beyond of California Limited Liability Company (Superior Court of California in  
27 Alameda, RG17885153), Paredes v. Bottling Group LLC et. al. (Superior Court of California in  
28 Kern), Ramirez v. Harris Ranch Beef Company (Superior Court of California in Fresno,

1 16CECG04103), Gates v. Gate Gourmet, Inc. et. al. (Southern District of California, 16-cv-01084-  
2 L-AGS), Hargrave v. Antelope Valley Hospital (Superior Court of California in Los Angeles,  
3 BC663252), Ramirez v. Milton Roy et. al. (Superior Court of California in Los Angeles, BC 632  
4 276), Hawkins v. AvalonBay Communities (Superior Court of California in Santa Clara,  
5 17CV316492), Jones Tharpe et al. v. Sprint Corporation et al. (Superior Court of California in Los  
6 Angeles, BC644645), Ortega et al. v. Nestle Waters North America, Inc. et al. (Superior Court of  
7 California in Los Angeles, BC623610), Schultz v. Jimbo's Natural Family, Inc. (Superior Court of  
8 California in San Diego, 37-2017-00022348-CUE-OE-CTL), Ambrose v. Victor Valley Global et  
9 al. (Superior Court of California in San Bernardino, CIVDS1709289), Puerta-Gildardo v. Real Time  
10 Staffing Services LLC et. al. (Superior Court of California in Los Angeles, BC565445), Vargo v.  
11 Pregis Innovative Packaging LLC (Superior Court of California in Tulare, 270836), Conlin v. Aegis  
12 Senior Communities LLC (Northern District of California, 17-cv-05534-LHK), Galarza v.  
13 Kloeckner Metals Corporation (Central District of California, 2:17-cv-04910-FMO), Estes v. L3  
14 Technologies, Inc. et al. (Southern District of California, 3:17-cv-02356-H-JMA), Rowser v. Trunk  
15 Club, Inc. (Central District of California, 2:17-cv-05064-DSF-RAO), Leach v. The Claremont  
16 Colleges, Inc. (Superior Court of California in Los Angeles, BC686451), Vaesau v. PCT  
17 Enterprises, Inc. dba Precision Cabinets (Superior Court of California, County of Contra Costa  
18 MSC18-02404), Terry v. TF Louderback, Inc. dba Bay Area Beverage Company (Superior Court  
19 of the State of California, County of Contra Costa, MSC18-00859), Roach v. Westcare California,  
20 Inc. (Superior Court of California in Kern County, BCV-17-102367-SDS), Patton v. Church &  
21 Dwight Co., Inc. (Central District of California, EDCV 18-903-MWF (KKx)), Juarez v. ISL  
22 Employees, Inc. (Superior Court of California in Madera, MCV074787), Ferraro v. USC Verdugo  
23 Hill s Hospital, et al. (Superior Court of California in Los Angeles, 18STCV09463), Ford v. Account  
24 Control Technology, Inc., et al. (Superior Court of California in Los Angeles, 19STCV09369),  
25 Ornelas v. iStorage, et al. (Superior Court of California in San Francisco, CGC-18-571421),  
26 Martinez v. Ronpak, Inc. (Superior Court of California in Riverside, RIC1901307), Barrera et al. v.  
27 Exclusive Wireless, Inc. (Superior Court of California in Stanislaus, 9000687), Barajas v. Mancha  
28 Development Company LLC (Superior Court of California in Orange County, 30-2018-00974707-

CU-OE-CXC), Prado v. IMAX Corporation dba IMAC Worldwide Home (Superior Court of California in San Bernardino, CIVDS1820265), Rodriguez v. ND Industries, Inc. (Superior Court of California in Los Angeles, 19STCV38096), Singletary v. Motel 6 Operating LP, et al. (Southern District of California, 3:20-cv-0270-LAB-AHG), Quizon v. CF Watsonville East, LLC, et al. (Superior Court of California in Santa Cruz, 20CV01868), Stephenson v. Bakersfield Dodge, Inc. (Superior Court of California in Kern, BCV-20-102693), Bacerra v. Hugo Boss Retail, Inc. (Superior Court of California in San Diego, 37-2021-00002933-CU-OE-CTL), Walker v. Ariat International, Inc. (Superior Court of California in Alameda, HG19026439), Orr v. Petvet Care Centers (California) Inc. (Superior Court of California in Santa Clara, 19CV354063), Jimenez v. OEC Distribution Services, Inc. (Superior Court of California in San Bernardino, CIVDS1915743), Viridi v. Absolute Security International (Superior Court of California in San Bernardino, CIVDS 1909589), Raj v. First Transit, Inc (Superior Court of California in Sacramento, 34-2021-00295895-CU-OE-GDS), Marchbanks v. Torrid Administration, Inc. (Superior Court of California in San Diego, 37-2020-00008179-CU-OE-NC), among others.

63. I am a 2008 California Western School of Law graduate and was admitted to the California State Bar in December 2008. Since graduating from law school, I have dedicated my entire career to litigating employment class and PAGA actions. I have litigated and settled hundreds of wage and hour class actions and have obtained numerous six and seven figure settlements. As such, I have significant experience specifically working on wage and hour class actions from the plaintiff's side.

64. The collective experience of the D.Law attorneys in litigating employment wage and hour matters has been integral in identifying legal issues, evaluating the strengths and weaknesses of a case, and generally negotiating fair and reasonable class and representative action settlements. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the constantly evolving substantive law (state and federal), as well as the procedural law of class and representative action litigation. In this action, the attorneys at D.Law are fully equipped to use the skills and knowledge developed over decades of prosecuting and defending wage and hour class actions to fairly and adequately represent the interests of the Class Members and aggrieved

1 employees. Therefore, based on our resources, experience, and knowledge, the attorneys at D.Law  
2 are well-qualified to act as class counsel and represent the Plaintiff and the putative Class Members  
3 and aggrieved employees in this action.

4 65. We understand the responsibilities owed as counsel to the Settlement Class Members  
5 and aggrieved employees we represent. The attorneys at D.Law thoroughly investigated the claims  
6 asserted in this action and have remained committed to dedicating the resources necessary to  
7 represent the Settlement Class and vigorously pursue their claims. Based upon my experience and  
8 understanding of the claims and defenses in this action, I believe the settlement is fair, adequate,  
9 and reasonable for the Class Members and aggrieved employees and all involved, and that the  
10 Settlement is well within the range of reasonableness that would permit it to be finally approved. I  
11 am not aware of any conflict of interest with Plaintiff or any other Class Member that would  
12 interfere with the duties as Class Counsel.

13 **The Stipulated Award of Attorneys' Fees and Costs**

14 66. Under the Settlement, Class Counsel requests, without opposition from Defendants, an  
15 award of Attorneys' Fees and Costs consisting of: One Hundred Thirty Six Thousand Six Hundred  
16 Sixty Six Dollars and Sixty Seven Cents (\$136,666.67.00), one-third of the Gross Settlement  
17 Amount, and actual reasonable litigation costs in an amount not to exceed Twenty-Eight Thousand  
18 Dollars and Zero Cents (\$28,000.00) for reimbursement of actual reasonable litigation costs. (Ex.  
19 1, p. 2-3). This request is fair, reasonable, and adequate to compensate Class Counsel for the  
20 substantial work they have put into this case and, moreover, the risk they assumed by taking it in  
21 the first place. The attorneys' fees award is intended to reimburse Class Counsel for all  
22 uncompensated work that they have already done and for all the work they will continue to do in  
23 carrying out and overseeing the notification to Class Members, communicating with Class  
24 Members regarding their claims, and assisting in the administration of the settlement if it is  
25 preliminarily approved. Defendant will not oppose Class Counsel's above fees and cost request.

26 I declare under penalty of perjury under the laws of the State of California that the  
27 foregoing is true and correct.  
28

Executed this 18<sup>th</sup> day of July 2025, at Glendale, California



Marta Manus



# EXHIBIT 1

**D.LAW, INC.**  
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RLW Properties, LLC, d/b/a Zephyr Grill & Bar,  
d/b/a Smith's Landing Seafood Restaurant

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF CONTRA COSTA**

RAINY DAY FISHER, an individual, on  
behalf of herself and others similarly  
situated,  
  
Plaintiff,  
  
vs.  
  
RLW PROPERTIES, LLC, d/b/a Zephyr Grill  
& Bar, d/b/a Smith's Landing Seafood  
Restaurant, a California limited liability  
company; RLW PROPERTIES LLC  
ZEPHYR'S GRILL/SMITH'S LANDING, a  
business organization of form unknown;  
ZEPHYR GRILL & BAR, a business  
organization of form unknown; SMITH'S  
LANDING, a business organization of a form  
unknown; and DOES 1 through 50, inclusive,  
  
Defendants.

Case No. C24-02017  
  
CLASS ACTION  
  
Assigned for all purposes to:  
Hon. Charles S. Treat  
Dept.: 12  
  
**CLASS AND PAGA ACTION  
SETTLEMENT AGREEMENT**  
  
Original Complaint filed: March 13, 2024  
Venue Transfer: August 02, 2024  
First Amended Complaint: December 04, 2024  
Trial: none set

1 This “Class Action and PAGA Settlement Agreement” (“Agreement”) is made by and  
2 between plaintiff Rainy Day Fisher (“Plaintiff”) and RLW Properties, LLC, d/b/a Zephyr Grill &  
3 Bar, d/b/a Smith’s Landing Seafood Restaurant (“Defendants”). The Agreement refers to Plaintiff  
4 and Defendant collectively as “the Parties,” or individually as “Party.”

5 **A. DEFINITIONS.**

6 1. “Action” means Plaintiff’s lawsuits alleging wage and hour violations against  
7 Defendant captioned *Rainy Day Fisher v. RLW Properties, LLC, et al.*, filed on March 13, 2024, in  
8 Los Angeles County Superior Court; later transferred to the Contra Costa County Superior Court  
9 and First Amended Complaint adding PAGA Cause of Action filed on December 04, 2024,

10 2. “Administrator” means Apex Class Action administrators (“Apex”), and Apex is the  
11 neutral entity the Parties have agreed to appoint to administer the Settlement.

12 3. “Administration Costs” means the amount the Administrator will be paid from the  
13 Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the  
14 Administrator’s “not to exceed” bid the parties have received from Apex for \$17,200.00.

15 4. “Aggrieved Employee” means all non-exempt, hourly individuals that worked for  
16 Defendants in California during the PAGA Period (i.e. the period from March 13, 2023 through  
17 April 5, 2025).

18 5. “Class” means all non-exempt, hourly individuals that worked for Defendants in  
19 California during the Settlement Class Period (i.e. the period from March 13, 2020 through April 5,  
20 2025).

21 6. “Class Counsel” means Emil Davtyan, David Yeremian and Alvin B. Lindsay and the  
22 other attorneys of D.Law, Inc.

23 7. “Class Counsel Fees Payment” means an award of attorneys’ fees granted to Class  
24 Counsel and paid from the Gross Settlement Amount. The Parties have agreed Plaintiff will request  
25 approval from the Court of up to one-third of the Gross Settlement Amount, i.e. up to \$136,666.67.

26 8. “Class Counsel Litigation Expenses Payment” means the amount allocated from the  
27 Gross Settlement Amount to Class Counsel for reimbursement of reasonable expenses and costs  
28 incurred in the Action, not to exceed \$28,000.00. If Class Counsel Litigation Expenses Payment is

less than \$28,000.00, the difference will remain in the Net Settlement Amount to be distributed to the Class Members.

9. “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, email address, telephone number, Social Security number, hire dates, and termination dates.

10. “Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

11. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member 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 Class Members.

12. “Class Notice” means the Court approved notice of settlement and hearing date for Final Approval, with a Spanish translation, to be mailed to Class Members and incorporated by reference into this Agreement.

13. “Class Period” means the period from March 13, 2020 through April 5, 2025.

14. “Class Representative” means the named Plaintiff Rainy Day Fisher, in the Action seeking Court approval to serve as a Class Representative.

15. “Class Representative Enhancement Award” means the payment to the Class Representative for initiating the Action and providing services in support of the Action, and Defendant agreed not to object to a requested Enhancement Award of up to \$10,000.00 subject to Court approval.

16. “Court” means the Superior Court of California, County of Contra Costa.

17. “Defendant” means named Defendant RLW Properties, LLC, d/b/a Zephyr Grill & Bar, d/b/a Smith’s Landing Seafood Restaurant.

18. “Defense Counsel” means Jonathan Fraser Light, Chancellor Nobles and Michael Brody of LIGHTGABLER LLP.

1           19. “Effective Date” means the date when the Court enters Judgment upon Final Approval  
2 and the Judgment is final. The judgment is final when the Court’s final Judgment is entered in  
3 addition to the Court’s Order granting final approval to the Settlement. If there is an objector and no  
4 appeal, the Effective Date will be 60 days after entry of final judgment. If there is an appeal, the  
5 Effective Date will be 60 days after it has been finalized. The Effective Date of Release for the Class  
6 and PAGA Releases will be when both installment payments have been made and the Gross  
7 Settlement Amount has been fully funded in the Qualified Settlement Fund.

8           20. “Final Approval” means the Court’s order granting final approval of the Settlement.

9           21. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval  
10 of the Settlement.

11           22. “Gross Settlement Amount” means \$410,000.00 (Four Hundred Ten Thousand Dollars  
12 with Zero Cents), which is the total amount Defendant agrees to pay under the Settlement, except as  
13 provided in Paragraph F below. The Gross Settlement Amount will be funded in two installments  
14 paid by Defendant into the Qualified Settlement Fund established by the Settlement Administrator  
15 as follow: (1) \$205,000 to be paid 60 days after entry of judgment; and (2) \$205,000 to be paid 180  
16 days after the first payment.

17           23. “Individual Class Payment” means the Participating Class Member’s pro rata share of  
18 the Net Settlement Amount calculated according to the number of Workweeks worked during the  
19 Class Period.

20           24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25%  
21 of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the  
22 PAGA Period.

23           25. “Judgment” means the judgment entered by the Court based upon the Final Approval.

24           26. “LWDA” means the California Labor and Workforce Development Agency, the  
25 agency entitled, under Labor Code section 2699, subd. (i).

26           27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA  
27 under Labor Code section 2699, subd. (i).

28. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: PAGA Penalties, Class Representative Enhancement Award, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Costs. The remainder is to be paid to Participating Class Members as Individual Class Payments.

29. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

30. “Operative Complaint” means the operative “First Amended Complaint” filed in the Action on December 4, 2024, which also encompasses the original Complaint and the PAGA Notice Letter as submitted to the LWDA.

31. “PAGA Pay Period” means any pay period during which an Aggrieved Employee worked for Defendant for at least five hours during the period of one work day during the PAGA Period, and will be calculated for each Aggrieved Employee by dividing the total number of five-hour or greater shifts worked during the PAGA Period by five (representing days in a workweek).

32. “PAGA Period” means the period from March 13, 2023 through April 5, 2025.

33. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

34. “PAGA Notice” means Plaintiff’s March 13, 2023 letter to LWDA (LWDA Case No. LWDA-CM-1016436-24).

35. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount (\$10,000.00), allocated 25% to the Aggrieved Employees (\$2,500.00) and 75% to LWDA (\$7,500.00) in settlement of PAGA claims.

36. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Class portion of the Settlement.

37. “Plaintiff” means Rainy Day Fisher, the named plaintiff in the Action.

38. “Preliminary Approval” means the Court’s order granting preliminary approval of the Settlement.

39. “Release Effective Date” means the date Plaintiff, Class Members, and Aggrieved Employees effectively release all claims against the Released Parties. For the Participating Class

Members and Aggrieved Employees, the Release Effective Date occurs on the date after the Court enters Judgment and the QSF has been fully funded by Defendant with the Gross Settlement Amount, or if there is an objector, the date after any appeal period has passed, or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remitter and the Defendant fully funds the Gross Settlement Amount.

40. "Released Class Claims" means the class claims being released on the Release Effective Date and as described in Paragraph 66 below.

41. "Released PAGA Claims" means the PAGA claims being released on the Release Effective Date as described in Paragraph 67 below.

42. "Released Parties" means: Defendant and all of Defendant's former and present officers, directors, subsidiaries, affiliates, shareholders, members, agents, attorneys, insurers, predecessors, successors, owners, and assigns.

43. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class portion of the Settlement signed by the Class Member.

44. "Response Deadline" means forty-five (45) days after the Administrator mails Class Notice to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Class portion of the Settlement, or (b) fax, email, or mail his or her objection to the Settlement. Class Members to whom Class Notice is resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond when the Response Deadline has expired to provide an appropriate response.

45. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

46. "Workweeks" means any week during which a Class Member worked for Defendant for at least five hours during the period of one work day, during the Class Period, and will be calculated for each Class Member by dividing the total number of five-hour or greater shifts worked during the Class Period by five (representing days a workweek).

1                    **B.     RECITALS.**

2            47. On March 13, 2024, Plaintiff commenced the Action by filing a complaint alleging causes  
3 of action against Defendant for (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and  
4 Overtime; (3) Meal Period Violations; (4) Rest Period Violations; (5) Violation of Labor Code  
5 §226(a); (6) Violation of Labor Code §221; (7) Violation of Labor Code §204; (8) Violation of Labor  
6 Code §203; (9) Violation of Labor Code §245 and §246; (10) Failure to Reimburse Necessary  
7 Uniform and Business Expenses; and (11) Violation of Business & Professions Code §17200 *et seq.*  
8 On March 13, 2024, and pursuant to Labor Code §2699.3, subd.(a), Plaintiff gave timely notice to  
9 the LWDA and Defendant that Plaintiff intended to proceed with a representative action under  
10 PAGA (LWDA-CM-1016436-24). After meeting and conferring, a Joint Stipulation to Transfer  
11 Venue was filed in Los Angeles Superior Court and venue transfer was completed on August 2, 2024  
12 to Contra Costa County Superior Court. On December 4, 2024, after the 65-day statutory period  
13 passed, Plaintiff filed her First Amended Complaint (Operative Complaint), which added claims for  
14 penalties under PAGA, Labor Code §2698.

15            48. Defendant denies the allegations in the Operative Complaint, denies any failure to  
16 comply with the laws identified in the Operative Complaint, and denies any and all liability for the  
17 causes of action alleged.

18            49. On February 4, 2025, the Parties participated in a mediation presided over by respected  
19 wage and hour mediator Steven J. Serratore and were able to reach an agreement on general  
20 settlement terms.

21            50. In advance of mediation, Class Counsel conducted a thorough investigation into the  
22 facts of, and applicable law to, the Action, including reviewing documents and data regarding  
23 Defendant's employment policies and practices. Plaintiff's counsel provided Defendant's counsel  
24 with a comprehensive listing of informal discovery items required to constructively mediate.  
25 Defendant responded by producing timekeeping and corresponding payroll records for an agreed  
26 sample size of 45 putative class members covering the period of March 13, 2020 through July 10,  
27 2024. Prior to mediation, Plaintiff therefore obtained and analyzed the production of time and payroll  
28 data for Class Members and Aggrieved Employees and the necessary policy documents through



informal discovery to properly evaluate the strengths and weaknesses of their claims and engage in meaningful settlement discussions. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.*, 48 Cal.App.4th 1794, 1801 (1996) and *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 129-130 (2008) ("*Dunk/Kullar*").

51. The Court has not granted class certification and the parties are stipulating to conditional class certification for Settlement purposes only.

52. The Parties, Class 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.

**C. MONETARY TERMS.**

53. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Defendant will pay \$410,000.00 (Four Hundred Ten Thousand Dollars with Zero Cents) to fully settle, resolve, and extinguish all claims asserted in the Action, including without limitation all claims asserted in the PAGA Notice. The Gross Settlement Amount is non-reversionary and does not include employer payroll taxes owed on the Wage Portion of the Individual Class Payments, which Defendant will pay separately.

54. Schedule for Payment of the Gross Settlement Amount: Defendant shall fully fund the Gross Settlement Amount and also fund the amounts necessary to fully pay Defendant's share of payroll taxes in two equally-divided payments; (1) by transmitting \$205,000.00 of the funds to the Administrator no later than sixty (60) days after the Effective Date; and (2) by transmitting \$205,000.00 of the funds to the Administrator no later than sixty (180) days after the first payment. This is a non-reversionary Settlement in which Defendant is required to pay the entire Gross Settlement Amount. No portion of the Gross Settlement Amount will revert to Defendant. Defendant is separately and solely responsible for any employer payroll taxes owed as a result of this Settlement Agreement. Within sixty (60) days of the Effective Date, Defendant will deposit the first installment money (\$205,000.00); and no more than one-hundred and eighty days (180) after, Defendant will deposit the second installment money (\$205,000.00); which combined is an amount equal to the Gross Settlement Amount, to pay (1) the Settlement Class per the terms of the final settlement

1 agreement, and (2) court-approved Class Counsel Fees Payment, Class Counsel Litigation Expenses  
2 Payment, Administration Costs, and Class Representative Enhancement Award, and (3) PAGA  
3 penalties to be paid to the LWDA and to the Aggrieved Employees into a Qualified Settlement Fund  
4 established by the Settlement Administrator.

5       55. Cure Period, Interest Clause: If Defendant fails to make any payment of the Gross  
6 Settlement Amount by the deadlines set forth in Paragraph 54 and pursuant to the Administrator's  
7 payment timeline, and such failure continues for more than thirty (30) days after written notice from  
8 the Administrator of such failure, then the unpaid portion of the Gross Settlement Amount due will  
9 incur interest at the then-current Primary Credit rate set by the Federal Reserve Bank of San  
10 Francisco, as provided by: [https://www.frbdiscountwindow.org/pages/discount-rates/current-](https://www.frbdiscountwindow.org/pages/discount-rates/current-discount-rates..)  
11 [discount-rates..](https://www.frbdiscountwindow.org/pages/discount-rates/current-discount-rates..) Any such interest accrued will be distributed pro rata to the Participating Class  
12 Members or otherwise as the Court directs. Defendants shall have no power over transferred funds,  
13 or to alter the schedule set forth in Paragraph 54 of this Agreement, absent court order. Any dispute  
14 between the Parties as to the meaning and/or application of Paragraph 54 will be submitted to the  
15 Court. No interest will accrue during the time that any Paragraph 54 issue is submitted to and is  
16 before the Court.

17       56. Payments from the Gross Settlement Amount. Subject to the terms and conditions of  
18 this Agreement, the Administrator will make and deduct the following payments from the Gross  
19 Settlement Amount in the amounts specified by the Court in the Final Approval:

20       56.1 To Plaintiff: A payment for the Class Representative Enhancement Award to the Class  
21 Representative, Rainy Day Fisher, of not more than \$10,000.00 (Ten Thousand Dollars) in addition  
22 to any Individual Class Payment and any Individual PAGA Payment the Class Representative is  
23 entitled to receive as a Participating Class Member. Defendant will not oppose Plaintiff's request for  
24 a Class Representative Enhancement Award that does not exceed this amount. As part of the motion  
25 for the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, Plaintiff will  
26 seek Court approval for any Class Representative Enhancement Award. If the Court approves a Class  
27 Representative Enhancement Award less than the amount requested, the Administrator will retain  
28 the remainder in the Net Settlement Amount to be distributed to Participating Class Members. The

1 Administrator will pay the Class Representative Enhancement Award using IRS Form 1099.  
2 Plaintiff assumes full responsibility and liability for employee taxes owed on the Class  
3 Representative Enhancement Award.

4       56.2 To Class Counsel: A Class Counsel Fees Payment of not more than one-third of the  
5 Gross Settlement Amount, that is up to \$136,666.67, and a Class Counsel Litigation Expenses  
6 Payment for actual costs, not to exceed \$28,000.00. Defendant will not oppose requests for these  
7 payments. Plaintiff and/or Class Counsel will file a motion requesting Class Counsel Fees Payment  
8 and Class Counsel Litigation Expenses Payment no later than 16 (sixteen) court days prior to the  
9 Final Approval Hearing, or as otherwise ordered by the Court. If the Court approves a Class Counsel  
10 Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested,  
11 the Administrator will allocate the remainder to the Net Settlement Amount for distribution to  
12 Participating Class Members. Released Parties shall have no liability to Class Counsel or any other  
13 Plaintiff's counsel arising from any claim to any portion of Class Counsel Fees Payment and/or Class  
14 Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment  
15 and Class Counsel Litigation Expenses Payment using one or more IRS 1099 Forms. Class Counsel  
16 assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the  
17 Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies  
18 Defendant, from any dispute or controversy regarding any division or sharing of any of these  
19 payments.

20       56.3 To the Administrator: An Administration Costs payment not to exceed \$17,200.00  
21 except for a showing of good cause and as approved by the Court. To the extent the Administration  
22 Costs are less or the Court approves payment of less than \$17,200.00 the Administrator will retain  
23 the remainder in the Net Settlement Amount to be distributed to Participating Class Members.

24       56.4 To Each Participating Class Member: An Individual Class Payment is calculated by  
25 (a) dividing the Net Settlement Amount by the total number of Workweeks (as defined by paragraph  
26 46, *supra*) worked by all Participating Class Members during the Class Period, and (b) multiplying  
27 the result by each individual Participating Class Member's Workweeks.  
28

1           56.4(a) Tax Allocation of Individual Class Payments. 10% of each Participating Class  
2 Member's Individual Class Payment will be allocated to wage claims (the "Wage Portion"). The  
3 Wage Portion is subject to tax withholding and will be reported on an IRS W-2 Form. 45% of each  
4 Participating Class Member's Individual Class Payment will be allocated to interest and the  
5 remaining 45% allocated to penalties (the "Non-Wage Portion"). The Non-Wage Portion is not  
6 subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members  
7 assume full responsibility and liability for any employee taxes owed on their Individual Class  
8 Payment.

9           56.4(b) Effect of Non-Participating Class Members on Calculation of Individual Class  
10 Payments. Non-Participating Class Members will not receive any Individual Class Payments. The  
11 Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement  
12 Amount for distribution to Participating Class Members on a pro-rata basis.

13           56.5 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of  
14 \$10,000.00 (Ten Thousand Dollars) will be paid from the Gross Settlement Amount, with 75%  
15 (\$7,500.00) allocated to the LWDA PAGA Payment and 25% (\$2,500.00) allocated to the Individual  
16 PAGA Payments. Aggrieved Employees cannot request exclusion.

17           56.5(a) The Administrator will calculate each Individual PAGA Payment by (a) dividing  
18 the amount of the Aggrieved Employees' 25% share of PAGA Penalties of \$2,500.00 by the total  
19 number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period, and  
20 (b) multiplying the result by each individual Aggrieved Employee's PAGA Pay Periods. Aggrieved  
21 Employees assume full responsibility and liability for any taxes owed on their Individual PAGA  
22 Payment.

23           56.5(b) If the Court approves PAGA Penalties of less than the amount requested, the  
24 Administrator will allocate the remainder to the Net Settlement Amount to be distributed to  
25 Participating Class Members. The Administrator will report the Individual PAGA Payments on IRS  
26 1099 Forms.

1                   **D. SETTLEMENT FUNDING AND PAYMENTS.**

2                   57. Class Workweeks and Aggrieved Employee PAGA Pay Periods. Based on data  
3 gathered through mediation, it is estimated there were 518 Class Members who collectively worked  
4 a total of **23,000** Workweeks from March 13, 2020 through April 5, 2025, and 285 Aggrieved  
5 Employees who worked a total of 13,754 PAGA Pay Periods from March 13, 2023 through April 5,  
6 2025.

7                   58. Class Data. Not later than thirty (30) days after the Court grants Preliminary Approval  
8 of the Settlement, Defendants will deliver the Class Data to the Administrator, in the form of a  
9 Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must  
10 maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and  
11 for no other purpose, and restrict access to the Class Data to Administrator employees who need  
12 access to the Class Data to effect and perform under this Agreement. Defendants have a continuing  
13 duty to immediately notify Class Counsel if they discover that the Class Data omitted Class Member  
14 identifying information and to provide corrected or updated Class Data as soon as reasonably  
15 feasible. Without any extension of the deadline by which Defendant must send the Class Data to the  
16 Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to  
17 reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

18                  59. Payments from the Gross Settlement Amount. The monies to be distributed to  
19 Participating Class Members (i.e. the Net Settlement Amount) and Aggrieved Employees shall be  
20 paid to them by the Administrator within 10 (ten) days following the receipt of the entire Gross  
21 Settlement Amount by the Settlement Administrator from Defendants.

22                  60. The Administrator will issue checks for the Individual Class Payments and/or  
23 Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail. The face  
24 of each check shall prominently state the date (180 days after the date of mailing) when the check  
25 will be voided ("Void Date"). The Administrator will cancel all checks not cashed by the Void Date.  
26 The Administrator will send checks for Individual Settlement Payments to all Participating Class  
27 Members (including those for whom the Class Notice was returned undelivered). The Administrator  
28 will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-

Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). Before mailing any checks, the Administrator must update the recipients' mailing addresses using the National Change of Address Database.

61. The Administrator must conduct a Class Member Address Search for all Class Members whose checks are returned undelivered without a 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 Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

62. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and canceled 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 Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

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

**E. RELEASES OF CLAIMS.** On the Release Effective Date, Plaintiff, Class Members, Aggrieved Employees, and Class Counsel will release claims against all Released Parties as follows:

64. Plaintiff's Release. Plaintiff and her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, releases and discharges Released Parties from all claims, transactions, or occurrences, that occurred during the Class Period, including all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and Plaintiff's PAGA Notice ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims under the Fair Employment and Housing Act, California Family Rights Act, wrongful termination in violation of public policy, or related claims.

1 Plaintiff's Release also does not extend to any claims or actions to enforce this Agreement, or to any  
2 claims for vested benefits, unemployment benefits, disability benefits, social security benefits,  
3 workers' compensation benefits that arose at any time, or based on occurrences outside the Class  
4 Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition  
5 to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that  
6 Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or  
7 additional facts or Plaintiff's discovery of them.

8 65. Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes  
9 of Plaintiff's Release and excluding Plaintiff's Individual Matter, Plaintiff expressly waives and  
10 relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code,  
11 which reads:

12 *A general release does not extend to claims that the creditor or releasing party does not*  
13 *know or suspect to exist in his or her favor at the time of executing the release, and that if*  
14 *known by him or her would have materially affected his or her settlement with the debtor or*  
15 *Released Party.*

16 66. Release by Participating Class Members: All Participating Class Members, on behalf  
17 of themselves and their respective former and present representatives, agents, attorneys, heirs,  
18 administrators, successors, and assigns, release the Released Parties from those claims arising out of  
19 or related to the allegations set forth in the Operative Complaint that arose during the Class Period,  
20 including all statutes on which those claims are based in the Operative Complaint, including claims  
21 for: failure to pay for all hours worked/compensation due for services, wages, minimum wages,  
22 overtime, premium payments, meal periods, rest periods, pay reporting time pay; failure to provide  
23 payment of wages during employment and payment of wages at termination; failure to maintain and  
24 provide accurate and complete records; failure to reimburse for necessary business expenses; failure  
25 to provide sick pay, COVID-19 sick pay, California sick pay, bonus pay, and any unpaid wages or  
26 compensation related to any or all of the foregoing, which are based on the facts alleged in the  
27 Action; restitution related to any or all of the foregoing, which are based on the facts alleged in the  
28 Action; and any penalties, including statutory or civil penalties, related to any or all of the foregoing.

This release includes any and all claims pursuant to: California Labor Code §§ 90.5, 201, 202, 203, 204, 206.5, 210, 218.5, 221, 226, 226.2, 226.3, 226.7, 246, 248 *et seq.*, 248.1, 248.2, 248.5, 432.5, 510, 512, 551, 552, 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 1198.5, 1199 and 2802; the Fair Labor Standards Act; California Business & Professions Code § 17200 *et seq.*; California Code of Civil Procedure § 1021.5; and the California Industrial Welfare Commission Wage Orders MW-2014 (collectively, the “Released Class Claims”). The Released Class Claims apply to claims arising during the Class Period. Except as set forth in Paragraph 67 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

67. Release by Aggrieved Employees: All Aggrieved Employees, including Non-Participating Class Members who are 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 facts stated in the Operative Complaint, the PAGA Notice, and ascertained in the course of the Action, including PAGA Penalties claims premised on: California Labor Code §§ 201, 202, 203, 204, 210, 221, 226, 226.7, 227.3, 246, 248.1, 248.2, 248.5, 351, 354, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2802, 2810.5, 2698, and 2699, *et seq.*; failure to pay for all hours worked/compensation due for services, wages, minimum wages, overtime, premium payments, meal periods, rest periods, pay reporting time pay; failure to provide payment of wages during employment and payment of wages at termination; failure to maintain and provide accurate and complete records; failure to reimburse for necessary business expenses; failure to provide sick pay, COVID-19 sick pay, California sick pay, bonus pay, and any unpaid wages or compensation related to any or all of the foregoing, which are based on the facts alleged in the Action (“Released PAGA Claims”). The Released PAGA Claims apply to claims arising during the PAGA Period.



68. Release Effective Date: As of the Release Effective Date, as defined above, all Participating Class Members shall be enjoined from filing, joining or becoming a party, member or representative in any actions, claims, complaints, or proceedings in any state or federal court on an individual, representative, collective or class action basis, or from initiating any other proceedings regarding any of the Released Class Claims identified herein. In addition, upon the Release Effective Date, all eligible Aggrieved Employees shall be enjoined from filing, joining, or becoming a party, member or representative in any actions, claims, complaints, or proceedings in any state or federal court on an individual, representative, collective or class action basis, or from initiating any other proceedings to the extent such actions, claims, complaints, or proceedings are based on the Released PAGA Claims released through this Settlement

**F. MOTION FOR PRELIMINARY APPROVAL**. Plaintiff will prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”).

69. Defendant’s Statement of Non-Opposition in Support of Preliminary Approval. Defendant may file a statement of non-opposition in support of preliminary approval to be filed with or after the Motion for Preliminary Approval documents.

70. Plaintiff’s Responsibilities. Plaintiff will prepare all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, memorandum in support, Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA portion of the Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Preliminary Approval order; (iii) a draft proposed Class Notice, (iv) 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 Class 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 Class Members, and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (vi) a signed declaration from Class Counsel firm attesting to its competency to

1 represent the Class Members; its timely transmission to the LWDA of all necessary PAGA  
2 documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint  
3 (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2));  
4 and (vii) all facts relevant to any actual or potential conflict of interest with Class Members, and/or  
5 the Administrator. In their declarations, Plaintiff and Class Counsel shall aver that they are not aware  
6 of any other pending matter or action asserting claims that will be extinguished or adversely affected  
7 by the Settlement.

8       71. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly  
9 responsible for expeditiously finalizing the Motion for Preliminary Approval. Class Counsel will  
10 obtain a prompt hearing date for the Motion for Preliminary Approval, file the Motion for  
11 Preliminary Approval no later than 16 (sixteen) court days before the hearing, unless otherwise  
12 ordered by the Court, and deliver the Court's Preliminary Approval to the Administrator.

13       72. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for  
14 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense  
15 Counsel will expeditiously work together on behalf of the Parties by meeting in person or by  
16 telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary  
17 Approval or conditions Preliminary Approval on any material change to this Agreement, Class  
18 Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting  
19 in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the  
20 Court's concerns.

21       **G. SETTLEMENT ADMINISTRATION.**

22       73. Selection of Administrator. The Parties have jointly selected Apex to serve as the  
23 Administrator and verified that, as a condition of appointment, the Administrator agrees to be bound  
24 by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange  
25 for payment of Administration Costs. The Parties and their Counsel represent that they have no  
26 interest or relationship, financial or otherwise, with the Administrator other than a professional  
27 relationship arising out of prior experiences administering settlements.  
28

1           74. Employer Identification Number. The Administrator shall have and use its own  
2 employer identification number for purposes of calculating payroll tax withholdings and providing  
3 reports to state and federal tax authorities.

4           75. Qualified Settlement Fund. The Administrator shall establish a settlement fund that  
5 meets the requirements of a “Qualified Settlement Fund” (“QSF”) under US Treasury Regulation  
6 section 468B-1 for the funding of the Gross Settlement Amount. Any interest that accrues on the  
7 Gross Settlement Amount sums paid into the QSF prior to distribution by the Administrator will  
8 become part of the Net Settlement Amount for distribution to Participating Class Members. The QSF  
9 will be fully funded in two payments as addressed in paragraphs 22 and 54 above.

10          76. Notice to Class Members.

11           76.1 No later than five (5) calendar days after receipt of the Class Data, the  
12 Administrator shall notify Class Counsel that the list has been received and state the number of Class  
13 Members, Aggrieved Employees, Workweeks, and PAGA Pay Periods in the Class Data.

14           76.2 Using best efforts to perform as soon as possible, and in no event later than 14  
15 (fourteen) days after receiving the Class Data, the Administrator will send to all Class Members  
16 identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class  
17 Notice with Spanish translation if the Parties deem necessary substantially in the form attached to  
18 this Agreement as **Exhibit A**. The Class Notice shall prominently estimate the dollar amounts of any  
19 Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the  
20 number of Workweeks and PAGA Pay Periods used to calculate these amounts. Before mailing  
21 Class Notice, the Administrator shall update Class Member addresses using the National Change of  
22 Address Database.

23           76.3 Not later than five (5) calendar days after the Administrator’s receipt of any Class  
24 Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using  
25 any forwarding address provided by the USPS. If the USPS does not provide a forwarding address,  
26 the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to  
27 the most current address obtained. The Administrator has no obligation to make further attempts to  
28 locate or send Class Notice to Class Members whose Class Notice is returned a second time.

1           76.4 The deadlines for Class Members' written objections, challenges to Workweeks  
2 and/or PAGA Pay Periods, and Requests for Exclusion will be extended an additional fourteen days  
3 (14) days beyond the forty-five (45) days otherwise provided in the Class Notice for all Class  
4 Members whose notice is re-mailed. The Administrator will inform the Class Member of the  
5 extended deadline with the re-mailed Class Notice.

6           76.5 If the Administrator, Defendant, or Class Counsel is contacted by or otherwise  
7 discovers any persons who believe they should have been included in the Class Data and should  
8 have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone,  
9 and in good faith in an effort to agree on whether to include them as Class Members. If the Parties  
10 agree, such persons will be Class Members entitled to the same rights as other Class Members, and  
11 the Administrator will send, via email or overnight delivery, a Class Notice requiring them to  
12 exercise options under this Agreement not later than 14 (fourteen) days after receipt of Class Notice,  
13 or the deadline dates in the Class Notice, whichever are later.

14           77. Requests for Exclusion (Opt-Outs).

15           77.1 Class Members who wish to exclude themselves (opt-out of) the Class portion of  
16 the Settlement must send the Administrator, by fax, email, or mail, a signed written Request for  
17 Exclusion not later than 45 (forty-five) days after the Administrator mails the Class Notice (plus an  
18 additional 14 (fourteen) days for Class Members whose Class Notice is re-mailed). A Request for  
19 Exclusion is a letter from a Class Member or his/her representative that reasonably communicates  
20 the Class Member's election to be excluded from the Class portion of the Settlement and includes  
21 the Class Member's name, address and email address or telephone number. To be valid, a Request  
22 for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

23           77.2 The Administrator may not reject a Request for Exclusion as invalid because it  
24 fails to contain all the information specified in the Class Notice. The Administrator shall accept any  
25 Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person  
26 as a Class Member and the Class Member's desire to be excluded. The Administrator's  
27 determination shall be final and not appealable or otherwise susceptible to challenge. If the  
28 Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator

1 may demand additional proof of the Class Member's identity. The Administrator's determination of  
2 authenticity shall be final and not appealable or otherwise susceptible to challenge.

3 77.3 Every Class Member who does not submit a timely and valid Request for  
4 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all  
5 benefits and bound by all terms and conditions of the Settlement, including the Participating Class  
6 Members' releases under Paragraphs 66 and 67 of this Agreement, regardless of whether the  
7 Participating Class Member actually receives the Class Notice or objects to the Settlement.

8 77.4 Every Class Member who submits a valid and timely Request for Exclusion is a  
9 Non-Participating Class Member and shall not receive an Individual Class Payment or have the right  
10 to object to the class action components of the Settlement. Because future PAGA claims are subject  
11 to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are  
12 Aggrieved Employees are deemed to release the Released PAGA Claims identified in Paragraph 67  
13 of this Agreement and are eligible for an Individual PAGA Payment.

14 78. Challenges to Calculation of Workweeks. Each Class Member shall have 45 (forty-  
15 five) days after the Administrator mails the Class Notice (plus an additional 14 (fourteen) days for  
16 Class Members whose Class Notice is re-mailed) to challenge the number of Workweeks and PAGA  
17 Pay Periods allocated to the Class Member in the Class Notice. The Class Member may challenge  
18 the allocation by communicating with the Administrator via fax, email or mail. The Administrator  
19 must encourage the challenging Class Member to submit supporting documentation. In the absence  
20 of any contrary documentation, the Administrator is entitled to presume that the Workweeks and  
21 PAGA Pay Periods contained in the Class Notice are correct so long as they are consistent with the  
22 Class Data. The Administrator's determination of each Class Member's allocation of Workweeks  
23 and/or PAGA Pay Periods shall be final and not appealable or otherwise susceptible to challenge.  
24 The Administrator shall promptly provide copies of all challenges to the calculation of Workweeks  
25 and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's  
26 determination of the challenges.

1           79.   Objections to Settlement.

2           79.1   Only Participating Class Members may object to the class action components of  
3 the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or  
4 amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment  
5 and/or Class Representative Enhancement Award.

6           79.2   Participating Class Members may send written objections to the Administrator, by  
7 fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an  
8 attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A  
9 Participating Class Member who elects to send a written objection to the Administrator must do so  
10 not later than 45 (forty-five) days after the Administrator's mailing of the Class Notice (plus an  
11 additional 14 (fourteen) days for Class Members whose Class Notice was re-mailed).

12           79.3   Non-Participating Class Members have no right to object to any of the class action  
13 components of the Settlement.

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

16           80.1   Website, Email Address and Toll-Free Number. The Administrator will establish,  
17 maintain and use an internet website to post information of interest to Class Members including the  
18 date, time, and location for the Final Approval Hearing and copies of the Agreement, Motion for  
19 Preliminary Approval, Preliminary Approval, Class Notice, Motion for Final Approval, motion for  
20 Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative  
21 Enhancement Award, the Final Approval, and the Judgment. The Administrator will also maintain  
22 and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes  
23 and emails.

24           80.2   Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will  
25 promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than  
26 five (5) days after the expiration of the deadline for submitting Requests for Exclusion, the  
27 Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and  
28 other identifying information of Class Members who have timely submitted valid Requests for

1 Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members  
2 who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion  
3 submitted (whether valid or invalid).

4       80.3 Weekly Reports. The Administrator must, on a weekly basis, provide written  
5 reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class  
6 Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether  
7 valid or invalid) received, objections received, challenges to Workweeks and/or PAGA Pay Periods  
8 received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA  
9 Payments (“Weekly Report”). The Weekly Reports must include the Administrator’s assessment of  
10 the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections  
11 received.

12       80.4 Workweek and/or PAGA Pay Period Challenges. The Administrator has the  
13 authority to address and make final decisions consistent with the terms of this Agreement on all  
14 Class Member challenges over the calculation of Workweeks and/or PAGA Pay Periods. The  
15 Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.

16       80.5 Administrator’s Declaration. Not later than 14 (fourteen) days before the date by  
17 which Plaintiff is required to file the Motion for Final Approval, the Administrator will provide to  
18 Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its  
19 due diligence and compliance with all of its obligations under this Agreement, including, but not  
20 limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of  
21 Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion it  
22 received (both valid or invalid), the number of written objections and attach the Exclusion List. The  
23 Administrator will supplement its declaration as needed or requested by the Parties and/or the Court.  
24 Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.

25       80.6 Final Report by Settlement Administrator. Within 10 (ten) days after the  
26 Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide  
27 Class Counsel and Defense Counsel with a final report detailing its disbursements by employee  
28 identification number only of all payments made under this Agreement. At least 15 (fifteen) days

1 before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel  
2 and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement  
3 of all payments required under this Agreement. Class Counsel is responsible for filing the  
4 Administrator's declaration in Court.

5 **F. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.** Based on data gathered  
6 through the February 4, 2025, mediation, it is estimated that there are 518 Class Members who  
7 collectively worked a total of **23,000** Workweeks from March 13, 2020 through April 5, 2025. If it  
8 is determined that the total number of Workweeks is greater than **26,450** as of Preliminary Approval  
9 (i.e. a 15% increase or more than the original estimate of 23,000 workweeks), the Gross Settlement  
10 Amount will be increased by the same number of percentage points above 15% by which the actual  
11 number of Workweeks exceeds 23,000. Alternatively, Defendant may at its sole discretion elect  
12 instead to shorten the Class Period to stay within the fifteen percent cushion (i.e., Defendant may  
13 cut off the liability period as of the date the total number of Workweeks reaches 26,450 Workweeks).  
14 If this provision is triggered so as to increase the Gross Settlement Amount, the Parties agree that  
15 the portion of the Gross Settlement Amount allocated to attorneys' fees will increase proportionally  
16 such that the total amount of attorneys' fees remains one third of the Gross Settlement Amount after  
17 the upward adjustment required by this provision is implemented.

18 **G. DEFENDANT'S RIGHT TO WITHDRAW.** If the number of valid Requests for  
19 Exclusion identified in the Exclusion List exceeds five percent (5%) of the total of all Class  
20 Members, Defendant may, but is not obligated, to elect to withdraw from the Settlement. The Parties  
21 agree that, if Defendant withdraws, the Settlement shall be *void ab initio*, have no force or effect  
22 whatsoever, and that neither Party will have any further obligation to perform under this Agreement;  
23 provided, however, Defendant will remain responsible for paying all Administration Costs incurred  
24 to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later  
25 than thirty (30) days after the Administrator sends the final Exclusion List to Defense Counsel; late  
26 elections will have no effect.

27 **H. MOTION FOR FINAL APPROVAL.** Not later than 16 (sixteen) court days before  
28 the calendared Final Approval Hearing, unless otherwise scheduled by the Court, Plaintiff will file



1 in Court, a Motion for Final Approval of the Settlement that includes a request for approval of the  
2 PAGA portion of the settlement under Labor Code section 2699, subd. (l); a proposed Final  
3 Approval; and a proposed Judgment (collectively “Motion for Final Approval”).

4 81. Response to Objections. Each Party retains the right to respond to any objection raised  
5 by a Participating Class Member, including the right to file responsive documents in Court no later  
6 than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by  
7 the Court.

8 82. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final  
9 Approval on any material change to the Settlement (including, but not limited to, the scope of release  
10 to be granted by Class Members), the Parties will expeditiously work together in good faith to  
11 address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The  
12 Court’s decision to award less than the amounts requested for the Class Representative Enhancement  
13 Award, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or  
14 Administration Costs shall not constitute a material modification to the Agreement within the  
15 meaning of this paragraph.

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

20 84. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and  
21 conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class  
22 Counsel Litigation Expenses Payment as set forth in this Settlement, the Parties, their respective  
23 counsel, and all Participating Class Members who did not object to the Settlement as provided in  
24 this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment  
25 and appellate proceedings, the right to file motions to vacate judgment, motions for new trial,  
26 extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to  
27 oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties’ obligations  
28 to perform under this Agreement will be suspended until such time as the appeal is finally resolved

1 and the Judgment becomes final.

2 85. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the  
3 reviewing court vacates, reverses, or modifies the Judgment in a manner that requires a material  
4 modification of this Agreement (including, but not limited to, the scope of release to be granted by  
5 Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously  
6 work together in good faith to address the appellate court's concerns and to obtain Final Approval  
7 and Judgment, sharing, on a 50-50 basis, any additional Administration Costs reasonably incurred  
8 after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class  
9 Representative Enhancement Award, Class Counsel Fees Payment and/or Class Counsel Litigation  
10 Expenses Payment shall not constitute a material modification of the Judgment within the meaning  
11 of this paragraph, as long as the Gross Settlement Amount remains unchanged.

12 I. AMENDED JUDGMENT. If any amended judgment is required under Code of Civil  
13 Procedure §384, the Parties will work together in good faith to jointly submit a proposed amended  
14 judgment.

15 J. ADDITIONAL PROVISIONS.

16 86. No Admission of Liability, Class Certification or Representative Manageability for  
17 Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims.  
18 Nothing in this Agreement is intended or should be construed as an admission by Defendant that any  
19 of the allegations in the Operative Complaint has merit or that Defendant has any liability for any  
20 claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's  
21 defenses in the Action have merit. The Parties agree that class certification and representative  
22 treatment is for purposes of this Settlement only. If, for any reason, the Court does not grant  
23 Preliminary Approval, Final Approval, or enter Judgment, Defendant reserves the right to contest  
24 certification of any class for any reason, Defendant reserves all available defenses to the claims in  
25 the Action, and Plaintiff reserves the right to move for class certification on any grounds available  
26 and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to  
27 settle the Action will have no bearing on, and will not be admissible in connection with, any litigation  
28 (except for proceedings to enforce or effectuate the Settlement and this Agreement).

1           87. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant, and  
2 Defense Counsel separately agree that, until the Motion for Preliminary Approval is filed, they and  
3 each of them will not disclose, disseminate and/or publicize, or cause or permit another person to  
4 disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly,  
5 specifically or generally, to any person, corporation, association, government agency, or other entity  
6 except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep  
7 this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report  
8 income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in  
9 response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees  
10 to immediately notify the other Party of any judicial or agency order, inquiry, or subpoena seeking  
11 such information. Plaintiff, Class Counsel, Defendant, and Defense Counsel separately agree not to,  
12 directly or indirectly, initiate any conversation or other communication, before the filing of the  
13 Motion for Preliminary Approval, with any third party regarding this Agreement or the matters  
14 giving rise to this Agreement except to respond only that "the matter was resolved," or words to that  
15 effect. This paragraph does not restrict Class Counsel's communications with Class Members in  
16 accordance with Class Counsel's ethical obligations owed to Class Members.

17           88. No Solicitation. The Parties separately agree that they and their respective counsel and  
18 employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from  
19 the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to  
20 communicate with Class Members in accordance with Class Counsel's ethical obligations owed to  
21 Class Members.

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

26           90. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and  
27 represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate  
28 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its

1 terms, and to execute any other documents reasonably required to effectuate the terms of this  
2 Agreement including any amendments to this Agreement.

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

10 92. No Prior Assignments. The Parties separately represent and warrant that they have not  
11 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber  
12 to any person or entity and portion of any liability, claim, demand, action, cause of action, or right  
13 released and discharged by the Party in this Settlement.

14 93. No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are  
15 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied  
16 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part  
17 10, as amended) or otherwise.

18 94. Modification of Agreement. This Agreement, and all parts of it, may be amended,  
19 modified, changed, or waived only by an express written instrument signed by all Parties or their  
20 representatives, and approved by the Court.

21 95. Agreement Binding on Successors. This Agreement will be binding upon, and inure to  
22 the benefit of, the successors of each of the Parties.

23 96. Applicable Law. All terms and conditions of this Agreement and its exhibits will be  
24 governed by and interpreted according to the internal laws of the State of California, without regard  
25 to conflict of law principles.

26 97. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation  
27 of this Agreement. This Agreement will not be construed against any Party on the basis that the Party  
28 was the drafter or participated in the drafting.

98. 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.

99. 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.

100. 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.

101. 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:

**D.LAW, INC.**  
David Yeremian  
[d.yeremian@d.law](mailto:d.yeremian@d.law)  
Alvin B. Lindsay  
[a.lindsay@d.law](mailto:a.lindsay@d.law)  
450 N. Brand Blvd., Suite 840  
Glendale, CA 91203  
Telephone: (818) 962-6465  
Facsimile: (818) 962-6469

To Defendant:

**LIGHT GABLER, LLP**  
Jonathan Fraser Light (SBN 101049)  
[jlight@lightgablerlaw.com](mailto:jlight@lightgablerlaw.com)  
Chancellor Nobles (SBN 330081)  
[cnobles@lightgablerlaw.com](mailto:cnobles@lightgablerlaw.com)  
Michael Brody (SBN 238757)  
[mbrody@lightgablerlaw.com](mailto:mbrody@lightgablerlaw.com)  
760 Paseo Camarillo, Suite 300  
Camarillo, CA 93010  
Telephone: (805) 248-7208  
Facsimile: (805) 248-7209

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

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

11           104. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal.  
12 Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by  
13 Defendant in connection with the mediation, other settlement negotiations, or in connection with the  
14 Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be  
15 used in any way that violates any existing contractual agreement, statute, or rule of court. Not later  
16 than 90 days after the date when the Court discharges the Administrator's obligation to provide a  
17 declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and  
18 electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of  
19 the Administrator's obligation, Defendant makes a written request to Class Counsel for the return,  
20 rather than the destructions, of Class Data.

21           105. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,  
22 the Parties request that the Court first attempt to construe the provisions valid to the fullest extent  
23 possible consistent with applicable precedents, so as to define all provisions of this Agreement valid  
24 and enforceable.

25 ///

26 ///

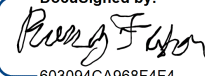
27 ///

106. Severability. In the event that one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision if Defense Counsel and Class Counsel, on behalf of the Parties, the Class Members, and the Aggrieved Employees, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

**IT IS SO AGREED.**

By the Parties:

DATED: 5/23/2025

DocuSigned by:  
  
603094CA968F4E4

Plaintiff Rainy Day Fisher

DATED: \_\_\_\_\_

Defendant, RLW Properties, LLC, d/b/a Zephyr Grill & Bar, d/b/a Smith's Landing Seafood Restaurant

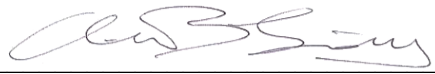
By: \_\_\_\_\_

Position: \_\_\_\_\_

Approved by counsel:

DATED: June 16, 2025

**D.LAW, INC.**

By: 

David Yeremian

Alvin Lindsay

Counsel for Plaintiff Rainy Day Fisher and the Settlement Class

DATED: June 9, 2025

**LIGHT GABLER, LLP**

By: 

Jonathan Fraser Light

Chancellor Nobles

Michael Brody

Attorneys for Defendants, RLW Properties, LLC, d/b/a Zephyr Grill & Bar, d/b/a Smith's Landing Seafood Restaurant

106. Severability. In the event that one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision if Defense Counsel and Class Counsel, on behalf of the Parties, the Class Members, and the Aggrieved Employees, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

**IT IS SO AGREED.**

By the Parties:

DATED: 5/23/2025

DocuSigned by:  
Rainy Day Fisher  
603094CA968F4E4

Plaintiff Rainy Day Fisher

DATED: 6/9/2025

DocuSigned by:  
Randy Tei  
34D738EA566C4C0...

Defendant, RLW Properties, LLC, d/b/a Zephyr Grill & Bar, d/b/a Smith's Landing Seafood Restaurant  
By: Randy Tei

Position: Managing Member

Approved by counsel:

DATED: \_\_\_\_\_, 2025

**D.LAW, INC.**

By: \_\_\_\_\_  
David Yeremian  
Alvin Lindsay  
Counsel for Plaintiff Rainy Day Fisher and  
the Settlement Class

DATED: \_\_\_\_\_, 2025

**LIGHT GABLER, LLP**

By: \_\_\_\_\_  
Jonathan Fraser Light  
Chancellor Nobles  
Michael Brody  
Attorneys for Defendants, RLW Properties, LLC,  
d/b/a Zephyr Grill & Bar, d/b/a Smith's Landing  
Seafood Restaurant



# EXHIBIT A

*Rainy Day Fisher v. RLW Properties, LLC, et al.*  
*Contra Costa County Superior Court Case No. C24-02017 (“Court”)*

*A court has authorized this notice. This is not a solicitation.*  
*This is not a lawsuit against you and you are not being sued.*  
*Your legal rights are affected whether you act or do not act.*

**NOTICE OF CLASS ACTION AND PAGA SETTLEMENT (“Notice”)**

To: All persons employed by Defendant RLW Properties, LLC, d/b/a Zephyr Grill & Bar, d/b/a Smith’s Landing Seafood Restaurant. (“Defendants” or “RLW”) in California as non-exempt hourly employees who worked for Defendant during the Class Period, which is March 13, 2020 through April 5, 2025 (the “Class”).

**YOU MAY BE ELIGIBLE TO RECEIVE PAYMENT FROM THE CLASS ACTION AND PAGA SETTLEMENT DESCRIBED IN THIS NOTICE.**

| <b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|---------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>DO NOTHING</b>                                       | To receive a Settlement payment, you do not need to do anything. Your payment will be mailed to you, automatically, after the Court grants final approval of the Settlement. <i>You must, however, keep a current address on file with the Settlement Administrator to ensure receipt of your check.</i>                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>CHANGE CONTACT AND ADDRESS INFORMATION</b>           | Update your address with the Settlement Administrator to ensure your check is sent to the correct address.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>EXCLUDE YOURSELF FROM THE CLASS SETTLEMENT</b>       | <p>If you do not want to participate in the Class portion of the Settlement, you may exclude yourself (opt out) from the Class portion of the Settlement. If you exclude yourself from the Class portion of the Settlement, you will not receive an Individual Class Payment (defined below). This is the only option that allows you to pursue your own Class claims (in your own lawsuit) against Defendant about the legal claims in the Lawsuit.</p> <p>However, even if you exclude yourself from the Class portion of the Settlement, you will still receive your Individual PAGA Payment from the PAGA portion of the Settlement if eligible and be bound by it as further explained below.</p> |
| <b>OBJECT</b>                                           | Write to the Court if you think the Settlement is not fair or you can appear at a hearing to explain to the Court why you think the Settlement is not fair.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

- **YOUR RIGHTS AND OPTIONS – AND THE DEADLINES TO EXERCISE THEM – ARE EXPLAINED IN THIS NOTICE.**
- **RLW WILL NOT RETALIATE IN ANY MANNER AGAINST ANYONE FOR PARTICIPATING OR NOT PARTICIPATING IN THIS SETTLEMENT.**

## BACKGROUND ON THE LAWSUIT

### 1. **Why did I get this notice?**

You received this notice because RLW's records identify you as someone who worked for RLW in California as a non-exempt hourly employee at any time from March 13, 2020 through April 5, 2025, making you a "Class Member" during the "Class Period." The Settlement will resolve all Class Members' claims, which are described below, during the Class Period. The Settlement will also resolve claims for civil penalties brought under the California Private Attorneys General Act ("PAGA"). If you are a Class Member, you are also an "Aggrieved Employee" if you worked for Defendant in California as a non-exempt hourly employee at any time from March 13, 2023 through April 5, 2025 ("PAGA Period").

The purpose of this notice is to explain the lawsuit, the pending Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court has already preliminarily approved the proposed Settlement and directed that you receive this notice. The Court will hold a final approval hearing (details provided below) to determine whether to finally approve the Settlement.

### 2. **What is this Class and PAGA Lawsuit about?**

Plaintiff, Rainy Day Fisher ("Plaintiff" or "Class Representative") initiated this wage and hour class and representative action against Defendant on March 13, 2024. Also, on March 13, 2024, Plaintiff sent a letter to the LWDA and Defendant advising of his PAGA claims ("PAGA Notice"). The First Amended Complaint filed on December 4, 2024 ("Operative Complaint") alleges claims against Defendant for: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime; (3) Meal Period Violations; (4) Rest Period Violations; (5) Violation of Labor Code §226(a); (6) Violation of Labor Code §221; (7) Violation of Labor Code §204; (8) Violation of Labor Code §203; (9) Violation of Labor Code §245 and §246; (10) Failure to Reimburse Necessary Uniform and Business Expenses; and (11) Violation of Business & Professions Code §17200 *et seq.*; and (12) Penalties under PAGA, Labor Code § 2698 (the "Lawsuit"). Plaintiff's class action and representative claims are on behalf of all current and former non-exempt hourly employees who worked for Defendant in California during the Class Period. Collectively, Plaintiff and Defendant are referred to as the "Parties."

Defendant denies all allegations in the Lawsuit and contends that it has fully complied with the California Labor Code. The Settlement is not an admission of any wrongdoing by Defendant or an indication that any law was violated or that this case was suitable for class or representative treatment.

On February 4, 2025, through arms-length negotiations with an experienced wage and hour mediator, Steven J. Serratore, the Parties settled the Lawsuit ("Settlement") subject to Court approval. The Settlement is memorialized in a "Class Action and PAGA Settlement Agreement" ("Agreement").

### 3. **Why is there a Settlement?**

The Court has not decided in favor of Plaintiff or Defendant or made any decision as to whether this case could proceed on a class or representative basis. Instead, with the assistance of an experienced and neutral mediator, the parties successfully negotiated the Settlement to resolve the Lawsuit rather than continue the expensive and time-consuming process of litigation.

Plaintiff and her attorneys strongly believe the Settlement is a good deal for you because they believe that: (1) Defendant has agreed to pay a fair, reasonable, and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) the Settlement is in the best interests of the Class Members and Aggrieved Employees.

#### **4. Who are the Attorneys for the Parties?**

##### Counsel for Plaintiff and the Class (“Class Counsel”)

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##### Counsel for Defendant

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### **THE TERMS OF THE SETTLEMENT**

#### **5. What is the Settlement Amount?**

The proposed Settlement provides for a maximum payment of \$410,000.00 (the “Gross Settlement Amount”). From the Gross Settlement Amount, Class Counsel will apply to the Court for attorneys’ fees of \$136,666.67 and up to \$28,000.00 in costs; a payment of up to \$10,000.00 to Plaintiff for her time and efforts to initiate and prosecute the Lawsuit (“Class Representative Service Payment”); \$7,500.00 to the California Labor Workforce Development Agency (“LWDA”) out of \$10,000.00 allocated to PAGA penalties (“PAGA Penalties”); \$2,500.00 in Individual PAGA Payments to the Aggrieved Employees based on the number of pay periods worked during the PAGA Period (“PAGA Pay Periods”; and payment not to exceed \$17,200.00 to Apex Class Action (“Settlement Administrator”) for settlement administration expenses (“Administration Costs”). The exact amount of the attorneys’ fees, litigation costs, Class Representative Service Payment, and Administration Costs will be determined by the Court at the Final Approval Hearing. The remaining portion of the Gross Settlement Amount (“Net Settlement Amount”) is currently estimated to be approximately **\$208,134.00**. The Net Settlement Amount will be apportioned and paid out to Class Members who do not opt out from the Settlement (“Settlement Class Members”) as individual payments based on the number of Workweeks worked during the Class Period (“Individual Class Payments”).

The Gross Settlement Amount will be funded in two installments paid by Defendant into the Qualified Settlement Fund established by the Settlement Administrator as follow: (1) \$205,000 to be paid 60 days after entry of judgment or the date any appeal period runs if there is an objector, or if a timely appeal from the judgment is filed, the day after the appellate court affirms the judgment and issues a remittitur; and (2) \$205,000 to be paid 180 days after the first payment. Distribution of the Individual Class Payments to the Settlement Class Members and Individual PAGA Payments to the Aggrieved Employees shall be paid to them by the Administrator within 10 (ten) days following the receipt of the entire Gross Settlement Amount by the Settlement Administrator from Defendants.

#### **6. How will the Individual Settlement Payments to Settlement Class Members be calculated?**

Settlement Class Members will receive Individual Class Payments as a proportional amount of the Net Settlement Amount. **A claim form is not required.** Class Members who opt out of the class portion of the

Settlement will not receive an Individual Class Payment and will not be bound by the class portion of the Settlement.

Each Settlement Class Member's Individual Class Payment will be a pro-rata share of the Net Settlement Amount based on the number of workweeks worked during the Class Period ("Workweeks"). The Settlement Administrator will calculate the total Workweeks for all Settlement Class Members. The respective Workweeks for each Settlement Class Member will be divided by the total Workweeks for all Settlement Class Members, resulting in the pro-rata share of the Net Settlement Amount that each Settlement Class Member would be entitled to.

All Individual Class Payments to Settlement Class Members shall be allocated as follows for tax purposes: 10% of each Participating Class Member's Individual Class Payment will be allocated to wage claims (the "Wage Portion"). The Wage Portion is subject to tax withholding and will be reported on an IRS W-2 Form. 45% of each Participating Class Member's Individual Class Payment will be allocated to interest and the remaining 45% allocated to penalties (the "Non-Wage Portion"). The Non-Wage Portion is not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

Your total estimated Workweeks is [REDACTED]. Based on that, your anticipated approximate Individual Class Payment is [REDACTED].

**7. How will the PAGA Penalties be allocated to the LWDA and Aggrieved Employees?**

The Parties will ask the Court to approve \$10,000.00 in PAGA Penalties for claims of civil penalties under PAGA. As required under PAGA, 75% of the PAGA Penalties, or \$7,500.00, will be paid to the LWDA ("LWDA PAGA Payment"). The remaining 25% of the PAGA Penalties, or \$2,500.00, will be paid to Aggrieved Employees ("Individual PAGA Payment").

No claim form is required to receive an Individual PAGA Payment. Because Aggrieved Employees cannot opt out of the PAGA portion of the Settlement, Aggrieved Employees will receive an Individual PAGA Payment and be bound by the PAGA portion of the Settlement even if they opt out of the Class portion of the Settlement.

Each Aggrieved Employee's Individual PAGA Payment will be a pro-rata share of the 25% (\$10,000.00) of the PAGA Penalties to be distributed to Aggrieved Employees. Individual PAGA Payments will be based on the number of PAGA Pay Periods that each Aggrieved Employee worked for Defendant during the PAGA Period as a proportion of all PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period. For tax purposes, 100% of the Individual PAGA Payments will be allocated as penalties for which an IRS Form 1099 will be issued, if required by law.

Your total estimated Pay Periods are [REDACTED]. Based on that, your anticipated Individual PAGA Payment is [REDACTED].

**HOW TO GET A PAYMENT**

**8. How can I get a settlement payment?**

If you do nothing, you will automatically receive your Individual Class Payment and Individual PAGA Payment (if any) after the Court's approval of the Settlement becomes final. You must notify the Settlement Administrator of any change in your name, mailing address, and/or telephone number if the information shown on this is not correct.

**It is your responsibility to keep the Settlement Administrator informed of any change in your address. Settlement payments will be mailed to the last known address the Settlement Administrator has on file for**

**you.** You can contact the Settlement Administrator by U.S. Mail, email, or phone at [REDACTED] if you need to update contact information.

**9. What do I do if I believe my Workweeks and/or PAGA Pay Periods are incorrect?**

If you believe the Workweeks and/or PAGA Pay Periods above are not correct, you may send a letter to the Settlement Administrator indicating what you believe to be the correct information. Your letter must be postmarked on or before [REDACTED], 2025. *[45 days within mailing of Notice]* You should include any documents or other information which supports what you believe to be the number of Workweeks and/or PAGA Pay Periods you worked. The Settlement Administrator will resolve any dispute regarding these issues based on Defendant's records and any information you provide.

**10. When can I expect to receive a settlement check?**

Individual Class Payments and Individual PAGA Payments will be mailed to Settlement Class Members and Aggrieved Employees approximately 28 days after the Court's approval of the Settlement becomes final if the Settlement Administrator determines that the First Payment will fund the entirety of the Individual Class Payments and Individual PAGA Payments; otherwise, the Individual Class Payments and the Individual PAGA Payments, along with all the other payments from the Gross Settlement Amount, will be made following the Second Payment, which would occur approximately one year after the Court's final approval of the Settlement.

**Settlement checks should be cashed promptly upon receipt.** Proceeds of checks that remain uncashed after 180 days from the date of issuance will be forwarded to the State of California Unclaimed Property Fund in the name of each Settlement Class Member and/or Aggrieved Employee who did not cash his or her settlement check. If your settlement check is lost or misplaced, you should contact the Settlement Administrator immediately.

**WHAT HAPPENS IF THE COURT APPROVES THE SETTLEMENT**

**11. What am I giving up to get an Individual Settlement Payment?**

If the Court approves this Settlement and unless you exclude yourself from the Class portion of the Settlement, you will become a Settlement Class Member, and that means that you cannot sue, continue to sue, or be part of any other lawsuit against Defendant concerning the Class claims being resolved in this Settlement. Specifically, you will be giving up or "releasing" the claims described below:

**Release by Settlement Class Members:** All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from those claims arising out of or related to the allegations set forth in the Operative Complaint that arose during the Class Period, including all statutes on which those claims are based in the Operative Complaint, including claims for: failure to pay for all hours worked/compensation due for services, wages, minimum wages, overtime, premium payments, meal periods, rest periods, pay reporting time pay; failure to provide payment of wages during employment and payment of wages at termination; failure to maintain and provide accurate and complete records; failure to reimburse for necessary business expenses; failure to provide sick pay, COVID-19 sick pay, California sick pay, bonus pay, and any unpaid wages or compensation related to any or all of the foregoing, which are based on the facts alleged in the Action; restitution related to any or all of the foregoing, which are based on the facts alleged in the Action; and any penalties, including statutory or civil penalties, related to any or all of the foregoing. This release includes any and all claims pursuant to: California Labor Code §§ 90.5, 201, 202, 203, 204, 206.5, 210, 218.5, 221, 226, 226.2, 226.3, 226.7, 246, 248 *et. seq.*, 248.1, 248.2, 248.5, 432.5, 510, 512, 551, 552, 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1,

1198, 1198.5, 1199, 1198.5, 1199 and 2802; the Fair Labor Standards Act; California Business & Professions Code § 17200 *et seq.*; California Code of Civil Procedure § 1021.5; and the California Industrial Welfare Commission Wage Orders MW-2014 (collectively, the “Released Class Claims”). The Released Class Claims apply to claims arising during the Class Period. Except as set forth in Paragraph 67 of the Settlement Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

## **12. What PAGA Claims are released by this Settlement?**

**Release by Aggrieved Employees:** All Aggrieved Employees, including Non-Participating Class Members who are 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 facts stated in the Operative Complaint, the PAGA Notice, and ascertained in the course of the Action, including PAGA Penalties claims premised on: California Labor Code §§ 201, 202, 203, 204, 210, 221, 226, 226.7, 227.3, 246, 248.1, 248.2, 248.5, 351, 354, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2802, 2810.5, 2698, and 2699, *et seq.*; failure to pay for all hours worked/compensation due for services, wages, minimum wages, overtime, premium payments, meal periods, rest periods, pay reporting time pay; failure to provide payment of wages during employment and payment of wages at termination; failure to maintain and provide accurate and complete records; failure to reimburse for necessary business expenses; failure to provide sick pay, COVID-19 sick pay, California sick pay, bonus pay, and any unpaid wages or compensation related to any or all of the foregoing, which are based on the facts alleged in the Action (“Released PAGA Claims”). The Released PAGA Claims apply to claims arising during the PAGA Period.

“Released Parties” means Defendant and all of Defendant’s former and present officers, directors, subsidiaries, affiliates, shareholders, members, agents, attorneys, insurers, predecessors, successors, owners, and assigns.

## **EXCLUDING YOURSELF FROM THE CLASS SETTLEMENT**

## **13. How do I opt out of the Class portion of the Settlement?**

If you wish to pursue your own separate lawsuit against Defendant for the Class claims asserted in the Lawsuit, or if you otherwise wish not to participate in the Class portion of the Settlement for whatever reason, you should exclude yourself from this case (that is, opt out of the Class portion of the Settlement). However, you cannot opt out of the PAGA portion of the Settlement. Class Members who opt out of the Class portion of the Settlement will still be bound by the PAGA portion of the Settlement and will receive an Individual PAGA Payment.

To opt out of the Class portion of the Settlement and the release of Released Class Claims, you must provide a signed and dated letter to the Settlement Administrator requesting to be excluded. The letter must include the case name, case number, your full name, current address, and email address, and must be signed by you and faxed, emailed, or postmarked on or before [REDACTED], 2025. [45 days within mailing of Notice] Opt-out requests faxed, emailed, or postmarked after the deadline will be invalid.

Settlement Administrator: Apex Class Action

Email Address:

Mailing Address:

Telephone:

Fax Number:

**14. If I don't exclude myself from the Class portion of the Settlement, can I sue Defendant for the same thing later?**

No. Unless you exclude yourself, you give up any right to sue Defendant for the claims being released by the Class portion of the Settlement, the Released Class Claims. If you have a claim or lawsuit already filed against Defendant or any of the Released Parties, you should speak to your lawyer in that case immediately. You may need to exclude yourself from the Class portion of the Settlement to continue your own lawsuit. You cannot exclude yourself from the PAGA portion of the Settlement.

**OBJECTING TO THE SETTLEMENT**

**15. How do I tell the Court that I don't like the Settlement?**

If you are a Settlement Class Member and don't think the Settlement is fair, you can object to some or all of the Settlement. You can either object to the Settlement in person at the Final Approval Hearing or you can submit a written objection. Written objections must be faxed, emailed, or mailed to the Settlement Administrator by \_\_\_\_\_, 2025. *[45 days within mailing of Notice]*

The written objection should state your name and address and describe all legal and factual reasons for objecting to the terms of the Settlement. You should also include or attach any documents upon which your objection is based. If the Court overrules the objection at the Final Approval Hearing, the Settlement and Agreement will be approved and you will receive your Individual Class Payment. If you do not submit a written objection, you may still appear at the Final Approval Hearing to voice your objection or to otherwise observe the proceedings.

Class Members who opt out from the Class portion of the Settlement have no right to object to the Settlement.

**THE COURT'S FINAL APPROVAL HEARING**

**16. When and where will the Court decide whether to grant final approval of the Settlement?**

The Court will hold a "Final Approval Hearing" in Department 12 of the Contra Costa County Superior Court Martinez-Wakefield Taylor Courthouse located at 725 Court Street, Martinez CA 94553 on \_\_\_\_\_ 2025, at \_\_\_\_ p.m. At this hearing, the Court will determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve the Class Counsel's request for attorneys' fees and costs, the Class Representative Service Payment, and the Administration Costs.

The Court may reschedule the Final Approval Hearing without further notice to Class Members. You can also check the Contra Costa County Superior Court website at <https://odyportal.cc-courts.org/portal> for changes to the hearing schedule.

**17. Do I have to come to the Final Approval Hearing?**

No. Class Counsel will answer any questions the Court may have. But you are welcome to come at your own expense. If you timely submit a written objection, you don't have to come to Court to talk about it but you may. You may also hire and pay your own lawyer to attend if you so desire.



## GETTING MORE INFORMATION

**18. Whom may I contact if I have questions about the Settlement?**

You may contact Class Counsel at the contact information listed above in Paragraph 4 if you have any questions about the Settlement. You may also contact the court-appointed Settlement Administrator, Apex Class Action, using its contact information provided above.

**PLEASE DO NOT TELEPHONE THE SUPERIOR COURT CLERK TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.**

# EXHIBIT 2