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SUPERIOR COURT OF THE STATE OF CALIFORNIA

**FOR THE COUNTY OF ALAMEDA
(UNLIMITED JURISDICTION)**

SEBASTIANA IXQUIACTAP,

Plaintiff,

vs.

TWS RESTAURANT CORPORATION;
COASTAL VALLEY ENTERPRISES;
PAYRIGHT PAYROLL SERVICES INC.;
and DOES 1 to 25, inclusive,

Defendants.

Case No.: 24CV094320

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

Action filed: October 1, 2024

Hearing Date: May 14, 2026

Hearing Time: 2:30 p.m.

Hearing Dept: 23, Hon. Ruben Sundeen

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

I, HAROUT MESSRELIAN, declare and state as follows:

1. I am an attorney duly licensed to practice before all the Courts of the State of California. I am the managing attorney of Messrelian Law Inc. and the attorney of record for Plaintiff Sebastiana Ixquiactap (individually, "Ixquiactap" or "Plaintiff") in her lawsuit against Defendants TWS Restaurant Corporation and Coastal Valley Enterprises ("Defendants" or "TWS"). Except as otherwise indicated, I have personal knowledge of all matters set forth herein and, if called as a witness, could and would competently testify thereto under oath.

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

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

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

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

4 ***Factual and Procedural Background***

5 5. Plaintiff started working for Defendants on or around September 11, 2021 as a
6 cashier at their El Pollo Loco restaurant located at 24119 Mission Blvd., Hayward, California
7 94544. Plaintiff’s employment with Defendants ended on or around June 5, 2024.

8 6. Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit
9 under the PAGA. On June 17, 2024, and July 13, 2024, Plaintiff, on behalf of herself and
10 Defendants’ other California non-exempt hourly employees (hereafter collectively the
11 “Aggrieved Employees”) gave written notice by electronic service to the California Labor and
12 Workforce Development Agency (“LWDA”) and via certified mail to Defendants of the specific
13 provisions of the California Labor Code alleged to have been violated, including the facts and
14 theories to support the alleged violations (the “LWDA Letters”). A true and correct copy of
15 Plaintiff’s letters to the LWDA are attached hereto as **Exhibit 3**.

16 7. On October 1, 2024, Plaintiff filed a representation action under PAGA against
17 Defendants alleging various wage and hour violations, including failure to pay minimum wages,
18 failure to provide reporting time pay, failure to pay overtime, failure to provide meal and rest
19 breaks, failure to timely pay wage owed, failure to provide accurate itemized wage statements,
20 failure to provide payroll records, failure to timely pay wages due upon separation of
21 employment, failure to reimburse for necessary business expenses, unlawful collection of tips
22 and gratuities, failure to provide sick leave, and failure to provide suitable seating. Specifically,
23 Plaintiff sought civil penalties under California Labor Code section 2698, et seq. and was
24 premised on alleged violations of California Labor Code sections, 201, 202, 203, 204, 204b,
25 226, 226.3, 226.7, 233, 246, 351, 353, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197,
26 1197.1, 1198, 2698, 2699 et seq., 2800, 2802, and the IWC Wage Order No. 5-2001 (the “PAGA
27 Complaint,” “Lawsuit,” or “Action”). A true and correct copy of Plaintiff’s Lawsuit is attached
28 hereto as **Exhibit 4**. On January 30, 2025, Defendants filed their Answer to Plaintiff’s Lawsuit.

1 A true and correct copy of Defendants' Answer is attached hereto as **Exhibit 5**. On January 28,
2 2025, the Parties agreed to submit Plaintiff's individual claims to arbitration in light of a binding
3 Arbitration Agreement signed by Plaintiff during her employment, and to stay Plaintiff's
4 representative PAGA claims in the Superior Court pending completion of her individual claims
5 in arbitration. On February 4, 2025, the Court granted the Parties Joint Stipulation to Stay the
6 PAGA Action pending completion of Plaintiff's individual claims in arbitration. Prior to
7 Plaintiff filing her Demand for Arbitration, the Parties agreed to attempt to resolve Plaintiff's
8 claims through private mediation.

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

12 9. On August 28, 2025, the parties attended a full day mediation session with
13 mediator Kevin Barnes, Esq. At the mediation, the parties agreed to settle Plaintiff's PAGA
14 Claim for violation of Labor Code § 2698, et seq. Before agreeing to the terms of the Settlement,
15 the Parties engaged in informal discovery regarding Defendants' policies, practices, operations,
16 time and payroll information and other topics. In advance of mediation, Defendants produced
17 Plaintiff's personnel file, including time and payroll data. Moreover, prior to the mediation,
18 Defense counsel provided Plaintiff's counsel with information and documents relating to other
19 Aggrieved Employees, including time and payroll data. Through extensive arm's length
20 negotiations at the mediation and only after discovery and investigation were performed, the
21 parties agreed to settlement terms. Now that the parties have finalized the PAGA Settlement,
22 Plaintiff submits it to this Court for approval.

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

26 11. Counsel for the Parties have further investigated the applicable law as applied to
27 the facts discovered regarding Plaintiff's claims, the defenses thereto, and the Labor Code
28 violations claimed by Plaintiff. I am experienced in prosecuting PAGA lawsuits. Counsel for the

1 Defendants are experienced in defending PAGA cases. Based on the parties' own independent
2 investigations and evaluations, the parties and their respective counsel are of the opinion that the
3 Settlement for the consideration and on the terms set forth in the Agreement are fair, reasonable
4 and adequate and are in the best interests of Plaintiff, the Aggrieved Employees, the State, and
5 Defendants in light of all known facts and circumstances and the risks inherent in litigation,
6 particularly given the ongoing challenges facing the restaurant industry, where businesses are
7 struggling to remain afloat, much less prosper and make a large profit.

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

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

26 14. The PAGA Settlement warrants a presumption of fairness for several reasons: (1)
27 The parties reached the Settlement through arm's-length bargaining with the aid of a respected
28 mediator; (2) The parties conducted sufficient investigation and discovery to allow Counsel and

1 the Court to act intelligently. Plaintiff requested and Defendants provided the number Aggrieved
2 Employees, the number of total pay periods during the PAGA Period, all policies in effect during
3 the PAGA Period, and pay and time records; and (3) Counsel for the Parties are experienced with
4 PAGA cases. Moreover, neither Plaintiff nor I have any conflicts of interest with the absent
5 Aggrieved Employees and there are no issues of ascertainability.

6 15. I considered various sources of information in the lead-up to the mediation of
7 August 28, 2025 that enabled Plaintiff to achieve the Settlement at issue. Among other things,
8 Plaintiff considered the following:

- 9 • Defendants produced and Plaintiff's counsel reviewed Plaintiff's personnel file.
- 10 • Plaintiff's counsel requested that Defendants provide any and all policies regarding
11 overtime and double-time wages, off the clock work, expense reimbursement, meal
12 periods, rest breaks, meal period waivers and agreements, compensation plans, and
13 complaints about working conditions in effect during the relevant time period beginning
14 in June of 2023. Defendants produced those policies as part of its employee handbook.
- 15 • Plaintiff's counsel requested that Defendants provide the total number of employees,
16 paychecks, and the pay cycles during the relevant period. Defendants provided the
17 answers to each of these questions.
- 18 • Defendants provided Plaintiff's counsel with time and payroll data for all of its California
19 non-exempt employees who worked during the PAGA Period.
- 20 • Plaintiff's counsel then retained a professional data analyst, James Toney, to examine
21 the records and determine the meal period violation rates, if there was any pay
22 discrepancy in timesheet hours versus paid hours, and if there was any rounding/time
23 shaving issues. Plaintiff is prepared to provide the Court with the data analysis for *in*
24 *camera* inspection upon its request.
- 25 • Plaintiff's counsel analyzed the state of caselaw on PAGA claims, meal and rest break
26 violations, claims for "off the clock" work and business expense reimbursement,
27 especially as it relates to "manageability" arguments brought up by the defense.

28 16. Defendants estimated for purposes of mediation there were approximately 400
Aggrieved Employees who worked approximately 8,544 pay periods during the PAGA Period.
Based on this information, Plaintiff's counsel prepared an estimate of the maximum possible civil
penalties under the PAGA. The maximum possible civil penalties under the PAGA is the total

1 number of pay periods with one or more violations multiplied by the maximum possible civil
2 penalty amount per pay period.

3 17. Under the civil penalty formulas applicable under PAGA, Plaintiff's counsel
4 estimated a maximum possible exposure of approximately \$968,550 for civil penalties for
5 Plaintiff's strongest disputed claims of failure to provide meal and rest periods and failure to
6 reimburse for business expenses. Plaintiff's analysis, which Defendants vehemently dispute,
7 revealed a 10.4% violation rate (net of meal period premiums) for either late, short, or no meal
8 periods for shifts over 6 hours. Plaintiff based the analysis on shifts over 6 hours due to valid
9 meal period waivers in effect during the PAGA Period. Since the total number of pay periods in
10 the PAGA period was 8,544 and since approximately 97.7% of the shifts in the sample analysis
11 were over 3.5 hour and 61.5% of the shifts in the sample analysis were over 6 hours, the total
12 number of pay periods to consider for potential meal break violations was 5,255 (61.5% x 8,544
13 pay periods) and for rest break violations was 8,347 (97.7% x 8,544 pay periods). As such, with
14 the 10.4% violation rate, the maximum exposure for meal violations would be \$27,350, which is
15 calculated as \$50 penalty multiplied by 547 pay periods (10.4% of the 5,255 pay periods).
16 Plaintiff extrapolated the same 10.4% rate for rest break violations, which would equate to a
17 maximum exposure of \$86,800 (\$100 penalty per pay period multiplied by 868 pay periods,
18 which is 10.4% x 8347 pay periods). For failure to reimburse business expenses, Plaintiff
19 calculated a maximum exposure of \$854,400 (\$100 penalty per pay period multiplied by 8,544
20 pay periods). Assuming that Plaintiff's calculations and analysis are accurate, the maximum
21 exposure presumes that the Court will not reduce the penalty award as unjust, arbitrary,
22 oppressive, or confiscatory. For the rest period violations, it also presumes that the meal and rest
23 period violation rates were identical.

24 18. There are risks to Plaintiff's meal and rest period claims. Defendants contend
25 that, to establish a violation for missed meal periods, a plaintiff must do more than show that a
26 meal break was not taken. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004.
27 So long as an employer provides employees with a "reasonable opportunity" to take a duty-free
28 meal period, it has no further duty to "police meal breaks and ensure no work thereafter is

1 performed.” *Id.* at 1040-41. Instead, a plaintiff must show the employer impeded, discouraged,
2 or prohibited the employee from taking a proper break, or otherwise failed to release the
3 employee of all control. *Id.* “Thus, the crucial issue with regard to the meal break claim is the
4 reason that a particular employee may have failed to take a meal break.” *Washington v. Joe’s*
5 *Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. Determining by a review of Defendants’ time
6 records the exact reasons why a meal period appears to be short or late would be difficult and
7 pinpointing those days in which Plaintiff and the Aggrieved Employees worked during their meal
8 periods will be a challenge. Additionally, Defendants provided evidence that they provide
9 employees with the opportunity to take meal and rest breaks and paid meal premium payments
10 throughout the PAGA Period. Moreover, meal period premium payments were observed in the
11 sample records. In addition, Defendants’ Handbook contains legally compliant meal period and
12 rest break policies.

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

19 20. There are also risks to Plaintiff’s claim for unreimbursed expenses. Plaintiff
20 alleges that Defendants did not reimburse her or the other Aggrieved Employees for uniforms,
21 use of personal cell phones for work purposes, and masks. Defendants, however, contended at
22 mediation that they provided all required uniform and PPE items to employees and that any use
23 of personal cell phones was limited to scheduling-related communications. Moreover, there is a
24 risk that the Court may consider Plaintiff’s claims as to Defendants’ alleged failure to indemnify
25 for business expenses to be individual in nature. As such, Plaintiff’s Counsel had to significantly
26 discount the value of this claim during settlement negotiations. As it relates to Plaintiff’s other
27 claims, and unlike the arguments for meal/rest period violations, there would be issues with
28 proof. The time and pay records did not reveal any rounding as hours were paid to the second

1 decimal point. As it relates to any overtime issues, the data showed the average workday was
2 6.7 hours, which means that overtime pay was not an issue. Regardless, when employees worked
3 over 8.0 hours, they were paid 1.5 times their regular rate. Moreover, Defendants provided
4 overall strong written policies as it related to wage and hour practices and showed that Plaintiff
5 acknowledged the policies. Plaintiff's other claims for violations of Labor Code sections 203,
6 204, and 226 (for not being paid all wages owed every pay period or at the end of employment
7 as well as not receiving accurate, itemized wage statements) would not be triggered since they
8 are derivative claims, and no rounding/overtime issues were identified. Plaintiff's counsel
9 further estimates a 50% likelihood of success on the claims at trial, reducing the estimated value
10 of the meal and rest claims and business expense reimbursement claims from approximately
11 \$968,550 to approximately \$484,275. This estimate assumes the accuracy of Plaintiff's
12 calculations and further assumes that the Court would not exercise its discretion to reduce any
13 civil penalties as unjust, arbitrary, oppressive, or confiscatory. In light of these considerations,
14 the gross settlement amount of \$125,000 represents approximately 12.91% of the maximum
15 potential exposure and approximately 25.81% of the risk-adjusted value of \$484,275 for the
16 strongest claims (the meal period, rest period, and business expense reimbursement claims) and
17 supports approval of the settlement as fair, reasonable, and adequate.

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

26 22. Additionally, PAGA states a court has discretion to award a lesser amount than
27 the maximum penalty. *See Lab. Code* § 2699(e)(2) ("...a court may award a lesser amount than
28 the maximum civil penalty amount specified by this part if, based on the facts and circumstances

1 of the particular case, to do otherwise would result in an award that is unjust, arbitrary and
2 oppressive, or confiscatory.”); *see also Thurman v. Bayshore Transit Management, Inc.* (2012)
3 203 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that the Court
4 could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff’s evidence
5 of willful and intentional conduct. *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504
6 (“*Carrington*”) illustrates this. In that case, the Court of Appeal affirmed a trial court’s heavily
7 discounted award of only \$5 per violation because it was within the Court’s discretion to
8 significantly reduce PAGA penalties even when there is a finding that a violation of the
9 California Labor Code occurred. The plaintiff in *Carrington* had requested penalties in excess of
10 \$70 million and was successful in proving the PAGA claim during a bench trial. However, the
11 trial court reduced the total award after trial to only \$150,000 (30,000 violations x \$5) and stated
12 that this reduction was warranted because imposing the maximum penalty would be “unjust,
13 arbitrary, and oppressive”, based on Starbucks’s “good faith attempts” to comply with meal break
14 obligations and because the Court found the violations were minimal. Applying the same formula
15 here and assuming there was one violation during each pay period, the award of civil penalties
16 could not exceed \$42,720.00 in PAGA penalties (8,544 violations x \$5). As such, this Settlement
17 is a great result based solely on the risk the Court chooses to apply the *Carrington* formula.
18 Defendants have also posed formidable defenses to the Labor Code claims underlying Plaintiff’s
19 allegations. Thus, the chance of Plaintiff recovering a higher amount than the Gross Settlement
20 Amount is uncertain.

21 23. The Parties further recognize that the issues presented in the representative PAGA
22 claim are likely only to be resolved with extensive and costly pretrial and trial proceedings, and
23 that further litigation will cause inconvenience, distraction, disruption, delay, and expense
24 disproportionate to the maximum potential benefits to the Aggrieved Employees and Plaintiff
25 from continued litigation.

26 24. The settlement of the representative PAGA claim involves monetary relief to all
27 Aggrieved Employees, Plaintiff, her attorneys, and the State of California. The Settlement is
28 reasonable given the uncertainties this lawsuit entails. It is also reasonable given the structure

1 and purpose of the PAGA, since the PAGA is not a restitution statute. Rather, it is essentially a
2 punishment statute. It provides for civil penalties only. Within the PAGA framework she is bound
3 by, Plaintiff, considering the evidence she faced, achieved a great result for the employees
4 concerned. Furthermore, any employees who are dissatisfied with the amount they received in
5 civil penalties can pursue any damages they believe they are owed by the Defendants. The
6 Settlement does not require them to opt out to do so.

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

17 26. As such, the settlement of PAGA penalties in the gross sum of \$125,000.00, of
18 which 75% of the net amount after attorney's fees, litigation costs, Plaintiff's service award, and
19 settlement administration costs (\$45,270.51), will be paid to the LWDA and 25% (\$15,090.17) will
20 be distributed to the Aggrieved Employees, is reasonable and appropriate under the
21 circumstances.

22 ***Individual PAGA Payments***

23 27. Defendants represent that at the time of mediation there were approximately 400
24 Aggrieved Employees during the PAGA Period. After deducting the requested Court-approved
25 PAGA Counsel's Fees (\$43,750) and PAGA Counsel's Litigation Costs (\$10,339.32), and the
26 Settlement Administrator's Costs (\$5,550), the NSA will be approximately \$60,360.68. Seventy
27 five percent (75%) of the NSA will be paid to the Labor and Workforce Development Agency
28 ("LWDA Payment") (\$45,270.51), and twenty five percent (25%) (\$15,090.17) of the NSA will

1 be paid to the Aggrieved Employees on a pro-rata basis based upon their respective number of
2 pay periods during the PAGA Period. Agreement, ¶ III.3-4. With a total of 400 Aggrieved
3 Employees, the average estimated individual PAGA payment for each Aggrieved Employee is
4 approximately \$37.73 (\$15,090.17 [25% of the estimated PAGA Penalties]) / 400 Aggrieved
5 Employees). This is a great result given the uncertainties this lawsuit entails.

6 *Attorneys' Fees and Costs*

7 28. I represent Plaintiff on a straight contingency basis. My firm's request for
8 \$43,750.00 in attorney fees and \$10,339.32 in litigation costs is fair and reasonable. "[R]egardless
9 whether the percentage method or the lodestar method is used, fee awards in class actions average
10 around one-third of the recovery." (See *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66,
11 fn.11 ("Chavez")); *In re Pacific Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 379 ("Pacific")
12 [affirming 33% fee award]; *Williams v. MGM-Pathe Communications Co.* (9th Cir. 1997) 129
13 F.3d 1026, 1027 ("MGM") (awarding 33% of total fund amount).) This is also consistent with my
14 experience in wage and hour class and PAGA settlements.

15 29. To date, I have investigated and prosecuted this matter vigorously, including initial
16 investigation, drafting the initial PAGA notice and evidence preservation letter; reviewing
17 Defendant's informal document production, including wage and hour policies; sending and
18 receiving emails on the case with defense counsel, including substantive discussions; reviewing
19 the expert's findings/conclusions; preparing for and attending a full day mediation, reviewing the
20 settlement agreement, and reviewing this PAGA Approval Motion. I will make detailed copies of
21 such time records available to the Court for inspection upon its request. I also expect to perform
22 additional work on this case if the Court grants final approval of the Settlement, including
23 supervision of the Settlement Administrator's disbursement of the settlement funds to the
24 Aggrieved Employees.

25 30. My previous experience in litigating wage and hour actions also supports the
26 reasonableness of the fee request. Based on past experience with similar matter, I was able to
27 evaluate the strengths and weaknesses of this case and the reasonableness of the Settlement.
28 Because it is reasonable to compensate me commensurate with my skill, reputation, and

1 experience, attorney's fees of approximately one-third of the Gross Settlement Amount is
2 reasonable. Likewise, the caliber and experience of opposing counsel in labor and employment
3 litigation, Gregory Iskander and Benjamin Sanchez of Littler Mendelson, also supports the
4 fairness and reasonableness of the requested fee award.

5 31. The award of attorney's fees sought is also justified by the contingency nature of
6 the attorney-client relationship, my experience in litigating wage and hour cases, the number of
7 attorney and staff hours my firm has spent on this lawsuit, the high caliber of defense counsel,
8 the risks of non-payment and non-reimbursement, the delay in payment and cost reimbursement,
9 and the great results Plaintiff's Counsel has achieved for the Aggrieved Employees.

10 32. In addition, my firm incurred substantial costs, \$10,339.32 to date, which consist
11 of mediator fees, data analysis fees, filing fees and attorney service fees. A true and correct
12 summary of my firm's costs and expenses incurred to date is attached as **Exhibit 6** to this
13 declaration. As the evidence submitted herewith shows, all of these costs are documented and
14 reasonably incurred. Accordingly, they warrant the Court's approval.

15 ***Plaintiff's Service Award***

16 33. Plaintiff's Service Award is being paid to Plaintiff for her service to the State of
17 California and the Aggrieved Employees in prosecuting the Lawsuit and for her General
18 Release. Agreement ¶¶ I.16, III.3.c. *See generally* Declaration of Sebastiana Ixquiactap
19 ("Ixquiactap Decl.").

20 34. The PAGA statute does not forbid service awards. California federal district
21 court decisions recognize that incentive awards may be awarded in PAGA-only representative
22 actions. In *Mancini v. W.&S. Life Ins. Co.*, the court noted that the plaintiff had "asserted no
23 non-PAGA claims." *Mancini v. W.&S. Life Ins. Co.* (S.D. Cal. 2018) U.S. Dist. LEXIS 160320
24 at *7. The settlement agreement under consideration provided for \$5,000 as "an incentive award
25 to Plaintiff for his status as the PAGA representative." *Id.* at *7. The district court took no issue
26 with the fact that the case involved claims solely under PAGA, instead holding that the terms of
27 the settlement agreement – including "the provision[] for incentive awards" – were
28 "reasonable." *Id.* at *5. Further, in *Bruce v. Del Monte Foods, Inc.*, the district court granted an

incentive award to the named plaintiff out of a settlement sum “treated exclusively as a civil penalty under PAGA.” *Bruce v. Del Monte Foods, Inc.* (N.D. Cal. 2018) U.S. Dist. LEXIS 53800 at *1. Although the court ultimately reduced the named plaintiff’s requested incentive award, cautioning that “enhancement or incentive awards are to be treated with skepticism[,]” the court nonetheless granted an additional award to the named plaintiff, noting that the named plaintiff had made representations about “possible injury and expense above and beyond” that sustained by other Plaintiff. *Id.* at *7.

35. Plaintiff's Service Award of \$5,000 for her service to the State of California and the Aggrieved Employees in prosecuting the Lawsuit is entirely reasonable given Plaintiff's efforts in the Lawsuit and the risks she undertook on behalf of the Aggrieved Employees. *See generally* Ixquiactap Decl. Plaintiff devoted many hours advancing the interests of the Aggrieved Employees. *Id.* The work Plaintiff has done on this case includes hiring my firm, speaking with our office on many occasions by phone, explaining what her employment at TWS was like, explaining what her employment at TWS had in common with other employees who worked for TWS, explaining her claims to me and my staff, and communicating with me and my staff about the settlement agreement and related documents. In doing this, Plaintiff has been exposed to significant risks, including the risk of an order to pay Defendant's attorneys' fees and costs if this action had been unsuccessful and in bad faith (*See* Labor Code §§ 218.5-218.6). The efforts and risks that Plaintiff undertook on behalf of the Aggrieved Employees show that the proposed Service Award to Plaintiff is fair, adequate, and reasonable, and thus warrants approval. *See generally* Ixquiactap Decl.

Settlement Administration Costs

36. With regard to the settlement administration costs provision, it is reasonable. Before agreeing to ILYM Group, Inc. (“ILYM”), the parties sought and reviewed bids from other reputable third-party administrator and ILYM’s bid was comparable.

- A. Simpluris, Inc. = \$5,445.90
- B. ILYM Group, Inc.= \$5,550.00
- C. Phoenix Class Action Administration Solutions = \$5,745.90.

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

5 37. Furthermore, the Declaration of Lisa Mullins with attached exhibits, filed under
6 separate cover, sets forth ILYM's qualifications and costs to administer the settlement. *See*
7 *generally* Declaration of Lisa Mullins. Thus, the settlement administration costs provision
8 should be given approval.

9 ***Notice of Settlement to the LWDA***

10 38. Pursuant to Lab. Code § 2699(l)(2), Plaintiff submitted a copy of the Settlement
11 with the LWDA at the same time the Settlement is being filed with the Court. True and correct
12 copies of Plaintiff's submission with the LWDA and the confirmation email are collectively
13 attached as **Exhibit 10** to this declaration.

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

16 Executed on April 22, 2026, at Glendale, California.

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19 HAROUT MESSRELIAN,
20 Declarant
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EXHIBIT 1

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

Subject to the approval of the Court, this Settlement Agreement (“Settlement Agreement” or “Settlement”) is made and entered into between Plaintiff **Sebastiana Ixquiactap**, acting in a private attorney general capacity, on behalf of the State of California on behalf of herself and all PAGA Settlement Employees, and Defendant **Coastal Valley Enterprises** (collectively, the “Parties”).

I. DEFINITIONS

The following terms, when used in this Settlement Agreement, shall have the following meanings:

1. “Action” means the matter entitled *Sebastiana Ixquiactap v. Coastal Valley Enterprises, et al.*, pending in the Alameda County Superior Court of the State of California, Case No. 24CV094320.

2. “Complaint” means the operative pleading filed in the Action.

3. “Defendant” means Coastal Valley Enterprises, and any and all parents, subsidiaries and affiliate entities (including specifically TWS Restaurant Corporation), and each of their past, present, and future officers, directors, employees, agents, board members, shareholders, attorneys, insurers, reinsurers, partners, investors, members, representatives, predecessors, parent companies, subsidiaries, affiliates, divisions, successors, agents, and principals, and their heirs, estates, executors, administrators, servants, insurers, attorneys, assigns, benefit plans sponsored or administered by the Released Parties, any entities for whom Aggrieved Employees performed services through the employment relationship with Defendant or any of them, and any other person or entities acting on behalf of or in concert with any of the foregoing.

4. “Effective Date” of the Settlement means the date upon which the Court enters the order approving this Settlement.

5. “Gross Settlement Amount” is the sum of One Hundred Twenty-Five Thousand Dollars and Zero Cents (\$125,000.00), which represents the total amount payable by Defendant under this Settlement Agreement for the release of the Released Claims and includes payments to all PAGA Settlement Employees, payment to the LWDA, payment of Plaintiff’s attorneys’ fees and costs, payment to the Settlement Administrator, and payment to Plaintiff for Plaintiff’s Service Award.

6. “Individual PAGA Payment” means the pro rata amount to be paid to each PAGA Settlement Employee from the twenty-five percent (25%) portion of the PAGA Payment allocated to employees; such individual share to be based on the number of pay periods during which a PAGA Settlement Employee worked for Defendant during the PAGA Period.

7. “LWDA” means the California Labor and Workforce Development Agency.

8. “LWDA Letters” means the letters Plaintiff submitted to the LWDA on June 17, 2024, and July 13, 2024.

9. “Net Settlement Amount” or “PAGA Payment” is the amount remaining to distribute to the LWDA and PAGA Settlement Employees after the following amounts, if approved by the Court, are subtracted from the Gross Settlement Amount: (a) Plaintiff’s Attorneys’ Fees of up to 35% of the Gross Settlement Amount (Forty Three Thousand, Seven-Hundred and Fifty Dollars and Zero Cents (\$43,750.00)); (b) Plaintiff’s Costs up to Ten Thousand Five Hundred Dollars and Zero Cents (\$10,500.00); (c) Plaintiff’s Service Award up to Five Thousand Dollars and Zero Cents (\$5,000.00); and (d) PAGA Administration costs not to exceed Six Thousand Dollars and Zero Cents (\$6,000.00), currently estimated at Five Thousand Five Hundred Fifty Dollars and Zero Cents (\$5,550.00).

10. “Parties” means Plaintiff and Defendant.

11. “PAGA” means the California Labor Code Private Attorneys General Act, California Labor Code section 2698, *et seq.*

12. “PAGA Period” means the time period from June 17, 2023, through October 27, 2025, or an alternative date to be selected by Defendant, subject to the escalator clause provision set forth in section V.1 of this Settlement Agreement.

13. “PAGA Representative Counsel” means Messrelan Law Inc., located at 101 N. Brand Blvd., Suite 1450, Glendale, California 91203.

14. “PAGA Settlement Employee” or “PAGA Settlement Employees” means and includes all current and former non-exempt employees who worked for Defendant Coastal Valley Enterprises in the State of California during the PAGA Period.

15. “Plaintiff” means Sebastiana Ixquiactap.

16. “Service Award” means the amount payable to Plaintiff in recognition of her efforts and work in prosecuting the Action and in exchange for her General Release, in the amount of Five Thousand Dollars (\$5,000.00) to be approved by the Court.

17. “QSF” means qualified settlement fund.

18. “Released Claims” means all claims, rights, demands, liabilities, and causes of action for PAGA civil penalties, arising from or reasonably related to the claims which were asserted in the Action and Complaint under PAGA based on facts alleged in the operative Complaint in the Action and LWDA Letters, including a PAGA claim against Defendant for civil penalties on behalf of Plaintiff and the LWDA based on the following underlying Labor Code violations: 201, 202, 203, 204, 204b, 226, 226.3, 226.7, 233, 246, 351, 353, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698, 2800, 2802, and 2699 *et seq.*, violation of the Industrial Welfare Commission Wage Order No. 5-2001, and any other claims asserted in the Action and operative Complaint.

19. “Released Parties” means Coastal Valley Enterprises and any and all parents, subsidiaries and affiliate entities, and each of their past, present, and future officers, directors, employees, agents, board members, shareholders, attorneys, insurers, reinsurers, partners, investors, members, representatives, predecessors, parent companies, subsidiaries, affiliates, divisions, successors, agents, and principals, and their heirs, estates, executors, administrators,

servants, insurers, attorneys, assigns, benefit plans sponsored or administered by the Released Parties, any entities for whom Aggrieved Employees performed services through the employment relationship with Defendant or any of them, and any other person or entities acting on behalf of or in concert with any of the foregoing.

20. “Settlement Administrator” means ILYM Group, Inc.

21. “PAGA Settlement Administration Costs” means the cost, currently estimated at Five Thousand Five Hundred Fifty Dollars and Zero Cents (\$5,550.00) and will be no more than Six Thousand Dollars and Zero Cents (\$6,000.00), to be paid to the Settlement Administrator for administering the Settlement, including sending checks and Settlement Notices to the PAGA Settlement Employees.

22. “Settlement Notice” means an explanatory letter to be sent by the Settlement Administrator to PAGA Settlement Employees, substantially in the form attached hereto as **Exhibit A**.

II. RECITALS

1. Defendant employed Plaintiff during the PAGA Period.

2. On June 17, 2024, and July 13, 2024, Plaintiff provided written notice to the LWDA and Defendant pursuant to Labor Code section 2699.3 of *inter alia* alleged violations of the California Labor Code and Industrial Welfare Commission Orders.

3. On October 1, 2024, Plaintiff filed this Action against Defendant asserting a PAGA claim, brought on behalf of the State of California and other aggrieved employees, alleging multiple violations of the California Labor Code and Industrial Welfare Commission Order, including alleged failure to pay minimum wages, failure to provide reporting time pay, failure to pay overtime, failure to provide meal and rest breaks, failure to timely pay wage owed, failure to provide accurate itemized wage statements, failure to maintain records, failure to timely pay wages due upon separation of employment, failure to reimburse for necessary business expenses, unlawful collection of tips and gratuities, failure to provide sick leave, and failure to provide suitable seating.

4. As a result of Plaintiff’s execution of an arbitration agreement with a class action waiver, Plaintiff agreed to submit her individual claims to arbitration and stay her representative PAGA claims in the Superior Court pending completion of her individual claims in arbitration.

5. The Parties have independently analyzed and investigated the facts and law relevant to this case through discovery, including, but not limited to, the employment policies, procedures, and practices implicated by the Complaint and/or the LWDA Letters; timekeeping and payroll records for employees on whose behalf the Complaint and/or the LWDA Letters are asserted; and the number of employees allegedly affected by the policies, procedures, and practices implicated by the Complaint and/or the LWDA Letters.

6. After evaluating the strengths and weaknesses of their respective positions, after considering the time, expense, and risk associated with litigating this case to judgment, and after engaging in arm’s-length settlement negotiations through informed counsel and an experienced

mediator, the Parties agreed to fully and finally, and exclusively, resolve the Released Claims as to Plaintiff and the PAGA Settlement Employees, subject to Court approval.

7. This Settlement contemplates the entry of an Order by the Court approving the payment allocated for settlement of PAGA penalties to the LWDA, Plaintiff and PAGA Settlement Employees, and the dismissal with prejudice of the Action.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. **Non-Admission.** Nothing in this Settlement Agreement shall be construed to be an admission by Plaintiff that her claims do not have merit or by Defendant of any liability or wrongdoing as to Plaintiff, PAGA Settlement Employees or any other person, and Defendant specifically disclaims any such liability or wrongdoing. Defendant specifically disclaims any liability to Plaintiff or any other allegedly aggrieved employee for any alleged violation of his/her/their rights, or for any alleged violation of any order, law, statute, duty or contract. The Parties have entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and risks. This Settlement Agreement and any related court documents or orders are not and may not be cited or admitted as evidence of liability.

2. **Gross Settlement Amount.** Defendant shall pay One Hundred Twenty-Five Thousand Dollars and Zero Cents (\$125,000.00) as the Gross Settlement Amount. Defendant will not pay more than the Gross Settlement Amount, except as otherwise stated in this Agreement. Defendant shall deposit the Gross Settlement Amount with the Settlement Administrator within forty-five (45) days after the Effective Date.

3. **Net Settlement Amount.** The Parties agree that the following amounts should be subtracted from the Gross Settlement Amount, if approved by the Court, resulting in a Net Settlement Amount to be distributed to the LWDA and PAGA Settlement Employees:

a. **Plaintiff's Attorneys' Fees and Costs.** Defendant will not oppose Plaintiff's request for Plaintiff's Attorneys' Fees of up to 35% of the Gross Settlement Amount (Forty Three Thousand, Seven-Hundred and Fifty Dollars and Zero Cents (\$43,750.00)), and Plaintiff's Costs up to Ten Thousand Five Hundred Dollars and Zero Cents (\$10,500.00) incurred in prosecuting this Action. In the event the Court approves a payment of less than the amount of fees and costs requested by Plaintiff, the difference will be added to the PAGA Payment.

b. **Administration Cost.** Defendant will not oppose the Settlement Administrator's costs, currently estimated at Five Thousand Five Hundred Fifty Dollars and Zero Cents (\$5,550.00), for administering the Settlement. In the event the Court approves a payment of less than this amount, the difference will be added to the PAGA Payment.

c. **Plaintiff's Service Award Payment.** Defendant will not oppose a request for service payment to Plaintiff in an amount up to Five Thousand Dollars and Zero Cents (\$5,000.00) in recognition of her efforts and work in prosecuting this Action and in exchange for her General Release. In the event the Court approves a payment of less than this amount, the difference will be added to the PAGA Payment.

4. **PAGA Payment.** A portion of the PAGA Payment will be allocated to the LWDA and the remainder will be allocated to PAGA Settlement Employees in settlement of the Released Claims. The PAGA Payment will be subject to Court approval consistent with California Labor Code section 2699.3(b)(4). Upon approval, the PAGA Payment shall be allocated as follows:

a. Seventy-five percent (75%) will be paid to the LWDA, as required by California Labor Code section 2699(i).

b. Twenty-five percent (25%) will be paid to the PAGA Settlement Employees, divided on a pro rata basis among them and distributed by the Settlement Administrator as Individual PAGA Payments, as required by California Labor Code section 2699(i).

c. The payments will be reported as penalties on IRS Forms 1099 issued to the LWDA and each PAGA Settlement Employee. The Settlement Administrator will be responsible for issuing to PAGA Settlement Employees and PAGA Representative Counsel any 1099 or other tax forms as may be required by law for all amounts paid pursuant to this Settlement.

5. **Representative PAGA Release.** As of the Effective Date, and subject to Defendant's full payment of the Gross Settlement Amount, all PAGA Settlement Employees and the State of California shall be bound by this Agreement and shall have recourse exclusively to the benefits, rights, and remedies provided hereunder. Plaintiff, PAGA Settlement Employees, and the State of California shall be deemed to have, and by operation of the Order granting approval of the payment of the PAGA Payment as described in this Agreement, fully, finally, and forever released, relinquished, and discharged each and all of the Released Parties from the Released Claims. This release is limited to periods of employment with Defendant in California during the PAGA Period.

6. **Released Claims.** Upon the Effective Date, and subject to Defendant's full payment of the Gross Settlement Amount, the Released Parties shall be entitled to a release from Plaintiff, the State of California, and Aggrieved Employees, for any and all claims for civil penalties under PAGA based on the labor code violations alleged in the operative Complaint or Plaintiff's notices sent to the LWDA, or which could have been alleged based on the facts set forth on the operative complaint or Plaintiff's LWDA Notices. This includes, penalties based on or arising from alleged violations of California Labor Code sections 201, 202, 203, 204, 204b, 226, 226.3, 226.7, 233, 246, 351, 353, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698, 2800, 2802, and 2699 *et seq.*, violation of the Industrial Welfare Commission Wage Order No. 5-2001, and including attorneys' fees and costs related thereto.

7. **Plaintiff's General Release.** Upon the Effective Date, and subject to Defendant's full payment of the Gross Settlement Amount, Plaintiff hereby fully and finally releases and discharges the Released Parties from any and all of the Released Claims and from any and all claims, charges, complaints, liens, demands, causes of action, obligations, damages and liabilities, known or unknown, suspected or unsuspected, that Plaintiff had, now has, or may hereafter claim to have against the Released Parties arising out of, or relating in any way to, the Plaintiff's hiring by, employment with, separation of employment with, or otherwise relating to the Released Parties

(collectively with Released Claims, "Plaintiff's Released Claims"), arising or accruing through the date of Plaintiff's signature on this Agreement.

Plaintiff's Released Claims include, but are not limited to, claims arising from or dependent on the California Labor Code; the Wage Orders of the California Industrial Welfare Commission; California Business and Professions Code § 17200 et seq.; the California Fair Employment and Housing Act, Cal. Gov't Code § 12900 et seq.; the California common law of contract and tort; Title VII of the Civil Rights Act of 1964; the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.; the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.; the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.; the Portal to Portal Act, 29 U.S.C. § 251 et seq.; other federal, state or local employment practices, legislation or regulations; federal or state common law; and/or retaliation, harassment, wrongful termination, or breach of express or implied contract or against public policy.

In addition to the above, Plaintiff expressly waives and relinquishes all rights and benefits of section 1542 of the Civil Code of the State of California, and does so understanding and acknowledging the significance and consequence of specifically waiving section 1542. Section 1542 of the Civil Code of the State of California states as follows: **A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

Thus, Plaintiff expressly acknowledges this Settlement Agreement is intended to include in its effect, without limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff's favor at the time of signing this Settlement Agreement, and that this Settlement Agreement contemplates the extinguishment of any such claims.

8. Filing of Request for Approval of PAGA Settlement by Plaintiff's Counsel.

The Parties will cooperate in obtaining, through an unopposed or joint motion/stipulation, an order from the Court approving the terms of this Agreement at the earliest possible date following the execution of this Agreement. Plaintiff's counsel shall be responsible for filing either a joint or unopposed motion / stipulation for approval of the Settlement. Plaintiff shall provide the requisite notice of this Settlement Agreement to the LWDA on or before the date Plaintiff requests approval of this Settlement Agreement from the Court. If the Court approves this Settlement, the Parties shall request that the Court enter an Order approving the settlement.

As part of the request to approve the Settlement, Plaintiff shall submit a proposed order granting approval of this Settlement. The Order granting approval of the settlement shall provide for a dismissal, with prejudice, of the entire Action and the Complaint. The Court shall retain jurisdiction to enforce the terms of this Agreement. This Settlement is expressly conditioned upon the Court entering such an Order approving this Settlement as set forth herein.

IV. ADMINISTRATION OF SETTLEMENT

1. **Settlement Administrator.** The Settlement Administrator will be responsible for establishing a QSF and issuing payments and appropriate tax forms to PAGA Settlement Employees, the LWDA, and Plaintiff's counsel.

2. **Provision of Information for PAGA Settlement Employees.** Within thirty (30) calendar days after the Effective Date, Defendant will provide the information regarding the PAGA Settlement Employees to the Settlement Administrator. This information will include the name, most recently known address, social security number, and total pay periods worked for each of the PAGA Settlement Employees during the PAGA Period. The list shall also include the sum total of all pay periods worked by PAGA Settlement Employees during the PAGA Period. As social security numbers are included in the list, the Settlement Administrator will maintain the list in confidence, and access shall be limited to those with a need to use the list as part of the administration of the Settlement.

The Settlement Administrator will calculate the amount to be received by each PAGA Settlement Employee. Within five (5) calendar days of receiving the Gross Settlement Amount, the Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the estimated individual settlement payments to each PAGA Settlement Employee, and the data used to calculate said payments. The Settlement Administrator shall obtain approval from all counsel of the calculations before mailing Individual PAGA Payments.

3. **Explanatory Letter and Individual PAGA Payments.** Upon receipt of the information for PAGA Settlement Employees, the Settlement Administrator will perform a search on the National Change of Address database to update the PAGA Settlement Employees' addresses.

Within ten (10) court days of receiving approval from counsel of the payment calculations as provided above, the Settlement Administrator will issue payments to: (a) PAGA Settlement Employees along with an explanatory letter ("Settlement Notice"); (b) the LWDA; (c) Plaintiff's counsel; (d) Plaintiff; and (e) itself.

4. **Undeliverable Notices.** Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip trace, or other search using the name, address or social security number of the PAGA Settlement Employees involved, and will then perform a single re-mailing. Individual PAGA Payment checks will remain negotiable for one hundred eighty (180) calendar days from issuance, and PAGA Settlement Employees will have one hundred eighty (180) calendar days from the date of issuance to cash their Individual PAGA Payment checks. If a PAGA Settlement Employee's check is returned to the Settlement Administrator with a forwarding address provided by the United States Postal Service, the Settlement Administrator will promptly resend the check to that PAGA Settlement Employee to that address, but this re-mailing will not extend the 180-day period to cash a check. Funds represented by Individual PAGA Payment checks returned as undeliverable and those Individual PAGA Payment checks remaining un-cashed for more than one hundred eighty (180) calendar days after issuance will be distributed to the State of California unclaimed property fund to be held in the Aggrieved Employee's name.

Defendant fully discharges its obligations to those PAGA Settlement Employees who are entitled to an Individual PAGA Payment through the Settlement Administrator's mailing of a

check, regardless of whether such checks are actually received and/or negotiated by PAGA Settlement Employees.

5. **Accounting.** Within fifteen (15) calendar days of receiving approval from both Parties' counsels of the payment calculations, the Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid from the Settlement, via a declaration or otherwise.

6. **Tax Consequences.** Individual PAGA Payments made under this Settlement will be attributed one hundred percent (100%) as penalties and paid via IRS Form 1099 issued to each PAGA Settlement Employee. The Parties and their counsel make no representations or warranties with respect to tax consequences of any payment under this Settlement Agreement.

V. MISCELLANEOUS PROVISIONS

1. **Escalator Clause.** As of the mediation date of August 28, 2025, Defendant estimated there were approximately 8,544 eligible pay periods worked during the PAGA Period by PAGA Settlement Employees. Should the total number of pay periods exceed 9,399 total pay periods (8,544 estimated pay periods plus 10% buffer), Defendant, at its election, can either reduce the PAGA Period to a date when the total pay period reaches 9,399 or increase the Gross Settlement Amount by multiplying the pay period value of \$14.63 by the number of additional pay periods over 9,399. Defendant shall verify the pay periods and notify Plaintiff's counsel of Defendant's election prior to the filing of a motion/stipulation for approval of the Settlement.

2. **Mutual Preparation and Drafting.** The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement. The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties through informed counsel and that neither Party shall be considered the "drafter" of this Settlement Agreement for purposes of having terms construed against that Party.

3. **No Impact on Benefit Plans.** Neither the Settlement Agreement nor any amounts paid to Plaintiff or any PAGA Settlement Employee under the Settlement will modify any previously credited hours or service under any employee benefit plan, policy or bonus program sponsored by Defendant. Such amounts will not form the basis for additional contributions to, benefits under or any other monetary entitlement under Defendant's sponsored benefit plans, policies or bonus programs. The payments made under the terms of this Settlement Agreement shall not be applied retroactively, currently or on a going-forward basis, as salary, earnings, wages or any other form of compensation for the purposes of any Defendant's benefit plan, policy, or bonus program. Defendant retains the right, if necessary, to modify the language of its benefit plans, policies and bonus programs to effect this intent, and to make clear that any amounts paid pursuant to this Settlement Agreement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies, and bonus programs for purposes of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Settlement Agreement.

4. **Successors.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, and successors.

5. **Costs and Fees.** The Parties shall each bear their own costs, attorneys' fees, and other fees incurred in connection with this Settlement Agreement, the Action, and Plaintiff's claims, except as otherwise set forth specifically herein.

6. **Authority.** Defendant represents and warrants that the undersigned have the authority to act on behalf of Defendant and to bind Defendant to the terms of this Settlement Agreement. Plaintiff represents and warrants that Plaintiff has the authority to enter into this Settlement Agreement.

7. **Governing Law.** This Settlement Agreement shall be construed under and governed by the laws of the State of California.

8. **Complete Agreement.** The Parties each acknowledge and represent that no promise or representation not contained in this Settlement Agreement has been made to them, and acknowledge and represent that this Settlement Agreement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the PAGA claim. This Settlement Agreement cannot be amended or modified except by a writing signed by the Parties hereto.

9. **Nullification of Settlement Agreement.** In the event that: (i) the Court does not approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then this Settlement Agreement and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions, without prejudice. Neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect.

10. **Dismissal and Continuing Jurisdiction.** After approval of this Settlement and dismissal of the Action, the Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) Settlement administration matters, and (iii) such matters as may be appropriate under court rules or as set forth in this Settlement Agreement.

The Parties further agree that upon the occurrence of the dismissal of the Action pursuant to the terms of this Agreement, this Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure Section 664.6 and the Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties and PAGA Settlement Employees to interpret and enforce the terms, conditions and obligation of the Agreement.

11. **Entire Agreement.** This Settlement Agreement constitutes the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements may be deemed binding on the Parties.

12. **Amendment or Modification.** This Settlement Agreement may be amended or modified only by a written instrument, signed by either the Parties or their successors-in-interest.

13. **Binding on Successors and Assigns.** This Settlement Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

14. **Execution and Counterparts.** This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, including facsimile, DocuSign, and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

15. **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action, and have arrived at this settlement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this settlement.

16. **Invalidity of Any Provision.** Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Settlement Agreement valid and enforceable. Invalidation of any material portion of this Agreement shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

17. **Severability.** If any term or provision of this Settlement Agreement is held to be invalid or unenforceable, the remaining portions of this Settlement Agreement will continue to be valid and will be performed, construed and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

18. **Waiver.** No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right or remedy.

19. **Enforcement Action.** In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

20. **Dispute(s).** Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, the Parties agree to submit any such dispute(s) to the Court. To the extent any Party seeks to enforce any of the terms

of this Agreement in or before the Court, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

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

22. **Representation by Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

23. **No Public Comment.** Neither the Parties nor their counsel shall make or issue any public statements to the press or any other third party, nor post any information on websites or other public forums, concerning the Action in any way.

24. **Cooperation and Execution of Necessary Documents.** All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

25. **Binding Agreement.** The Parties warrant that they understand and have full authority to enter into this settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

26. **Denial of Liability.** The Parties expressly recognize that the making of this Settlement Agreement does not in any way constitute an admission or concession of wrongdoing on the part of Defendant. Nothing in this settlement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of this Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation of any federal, state or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Settlement Agreement may be used in any court proceeding that has as its purpose the interpretation, implementation or enforcement of the settlement or any orders or judgments of the Court entered into in connection therewith.

27. **Publicity.** The Parties agree that Plaintiff and Plaintiff's Counsel will not communicate the fact of, or the terms of, this Settlement to members of the press, including the Verdicts and Settlements. Plaintiff and Plaintiff's Counsel will not publish the fact of, or terms of, this Settlement or any related information on their website, for advertising purposes and/or in publication materials generally available to the public.

IN WITNESS THEREOF, the Parties each acknowledge that she/it has read the foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement, and hereby executes it voluntarily and with full understanding of its consequences.

Dated: October ¹⁷, 2025

By: ~~Sebastian I.~~
Sebastiana Ixquiactap (Oct 17, 2025 12:39:48 PDT)
Plaintiff Sebastiana Ixquiactap

Dated: October , 2025

By: _____
Rosa Fuentes, Director of Operations on behalf of
Defendant Coastal Valley Enterprises

Approved as to form:

MESSRELIAN LAW INC.

Dated: October 17, 2025


Harout Messrelian
Maralle Messrelian, Of Counsel
Attorney for Plaintiff Sebastiana Ixquiactap

LITTLER MENDELSON, P.C.

Dated: October , 2025

Gregory G. Iskander
Benjamin Sanchez
Attorneys for Defendant Coastal Valley Enterprises

IN WITNESS THEREOF, the Parties each acknowledge that she/it has read the foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement, and hereby executes it voluntarily and with full understanding of its consequences.

Dated: October __, 2025

By: _____
Plaintiff Sebastiana Ixquiactap

Dated: October 21, 2025

By:  _____
Rosa Fuentes, Director of Operations on behalf of
Defendant Coastal Valley Enterprises

Approved as to form:

MESSRELIAN LAW INC.

Dated: October __, 2025

Harout Messrelian
Maralle Messrelian, Of Counsel
Attorney for Plaintiff Sebastiana Ixquiactap

LITTLER MENDELSON, P.C.

Dated: October 22, 2025

 _____
Gregory G. Iskander
Benjamin Sanchez
Attorneys for Defendant Coastal Valley Enterprises

EXHIBIT A

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

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

Plaintiff,

v.

TWS RESTAURANT CORPORATION;
COASTAL VALLEY ENTERPRISES;
PAYRIGHT PAYROLL SERVICES INC.;
and DOES 1 to 25, inclusive,

Defendants.

Case No. 24CV094320

**NOTICE OF SETTLEMENT OF
PRIVATE ATTORNEYS GENERAL ACT
CLAIM (CAL. LABOR CODE § 2698 *ET
SEQ.*)**

You have been identified as an individual who worked for Defendant Coastal Valley Enterprises (“Defendant”) in California between June 17, 2023, and October 27, 2025 (“PAGA Settlement Employee”).

On October 1, 2024, Plaintiff Sebastiana Ixquiatap (the “Plaintiff”) commenced a lawsuit in the Alameda County Superior Court, case number 24CV094320 (the “Lawsuit”). Plaintiff alleges in the Lawsuit that Defendant failed to pay all minimum and overtime wages due, failed to provide reporting time pay, failed to provide all meal and rest periods, failed to reimburse all business expenses, failed to issue complete and accurate wage statements, failed to maintain records, failed to pay sick leave, failed to reimburse necessary business expenses, failed to timely pay wages owed, unlawfully collected tips and gratuities, and failed to provide suitable seating. For these alleged violations, Plaintiff seeks penalties pursuant to the California Labor Code’s Private Attorneys General Act of 2004, codified at Labor Code § 2698 *et seq.* (“PAGA”).

Defendant denies Plaintiff’s allegations and disputes all of Plaintiff’s claims. The Parties reached a settlement which takes into account the uncertainties and risks of proceeding with litigation.

The Court approved the settlement on [REDACTED] and has determined that the settlement is fair and reasonable. The payment which accompanies this notice is made to you pursuant to the terms of the Settlement.

The Court-approved settlement contains the following release of claims, to which you are bound:

Upon the Effective Date, the Released Parties shall be entitled to a release from Plaintiff, the State of California, and Aggrieved Employees, for any and all claims for civil penalties under PAGA based on the labor code violations alleged in the operative Complaint or Plaintiff's notices sent to the LWDA, or which could have been alleged based on the facts set forth on the operative complaint or Plaintiff's LWDA Notices. This includes, penalties based on or arising from alleged violations of California Labor Code sections 201, 202, 203, 204, 204b, 226, 226.3, 226.7, 233, 246, 351, 353, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698, 2800, 2802, and 2699 *et seq.*, violation of the Industrial Welfare Commission Wage Order No. 5-2001, and including attorneys' fees and costs related thereto.

The "Released Parties" are Coastal Valley Enterprises and any and all parents, subsidiaries and affiliate entities, and each of their past, present, and future officers, directors, employees, agents, board members, shareholders, attorneys, insurers, reinsurers, partners, investors, members, representatives, predecessors, parent companies, subsidiaries, affiliates, divisions, successors, agents, and principals, and their heirs, estates, executors, administrators, servants, insurers, attorneys, assigns, benefit plans sponsored or administered by the Released Parties, any entities for whom Aggrieved Employees performed services through the employment relationship with Defendant or any of them, and any other person or entities acting on behalf of or in concert with any of the foregoing.

Please be advised that checks that are not cashed within 180 days of issuance will be transmitted to the State of California Unclaimed Property Fund in the name of the Aggrieved Employee who did not cash his/her check. Regardless of what you do with the check issued to you, by law and Court order, you have released the Released Parties from the Released Claims described herein. Your payment under this settlement is subject to taxation and will be reported to the IRS and state tax authorities. You will receive appropriate tax forms pertaining to your individual settlement payment and you are responsible for payment of any taxes that are due as a result of this payment.

If you have any questions, please contact the Settlement Administrator, [REDACTED] at (###) ###-####.

EXHIBIT 2

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

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

Plaintiff,

v.

TWS RESTAURANT CORPORATION;
COASTAL VALLEY ENTERPRISES;
PAYRIGHT PAYROLL SERVICES INC.;
and DOES 1 to 25, inclusive,

Defendants.

Case No. 24CV094320

**NOTICE OF SETTLEMENT OF
PRIVATE ATTORNEYS GENERAL ACT
CLAIM (CAL. LABOR CODE § 2698 *ET
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You have been identified as an individual who worked for Defendant Coastal Valley Enterprises (“Defendant”) in California between June 17, 2023, and October 27, 2025 (“PAGA Settlement Employee”).

On October 1, 2024, Plaintiff Sebastiana Ixquiatap (the “Plaintiff”) commenced a lawsuit in the Alameda County Superior Court, case number 24CV094320 (the “Lawsuit”). Plaintiff alleges in the Lawsuit that Defendant failed to pay all minimum and overtime wages due, failed to provide reporting time pay, failed to provide all meal and rest periods, failed to reimburse all business expenses, failed to issue complete and accurate wage statements, failed to maintain records, failed to pay sick leave, failed to reimburse necessary business expenses, failed to timely pay wages owed, unlawfully collected tips and gratuities, and failed to provide suitable seating. For these alleged violations, Plaintiff seeks penalties pursuant to the California Labor Code’s Private Attorneys General Act of 2004, codified at Labor Code § 2698 *et seq.* (“PAGA”).

Defendant denies Plaintiff’s allegations and disputes all of Plaintiff’s claims. The Parties reached a settlement which takes into account the uncertainties and risks of proceeding with litigation.

The Court approved the settlement on [REDACTED] and has determined that the settlement is fair and reasonable. The payment which accompanies this notice is made to you pursuant to the terms of the Settlement.

The Court-approved settlement contains the following release of claims, to which you are bound:

Upon the Effective Date, the Released Parties shall be entitled to a release from Plaintiff, the State of California, and Aggrieved Employees, for any and all claims for civil penalties under PAGA based on the labor code violations alleged in the operative Complaint or Plaintiff's notices sent to the LWDA, or which could have been alleged based on the facts set forth on the operative complaint or Plaintiff's LWDA Notices. This includes, penalties based on or arising from alleged violations of California Labor Code sections 201, 202, 203, 204, 204b, 226, 226.3, 226.7, 233, 246, 351, 353, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698, 2800, 2802, and 2699 *et seq.*, violation of the Industrial Welfare Commission Wage Order No. 5-2001, and including attorneys' fees and costs related thereto.

The "Released Parties" are Coastal Valley Enterprises and any and all parents, subsidiaries and affiliate entities, and each of their past, present, and future officers, directors, employees, agents, board members, shareholders, attorneys, insurers, reinsurers, partners, investors, members, representatives, predecessors, parent companies, subsidiaries, affiliates, divisions, successors, agents, and principals, and their heirs, estates, executors, administrators, servants, insurers, attorneys, assigns, benefit plans sponsored or administered by the Released Parties, any entities for whom Aggrieved Employees performed services through the employment relationship with Defendant or any of them, and any other person or entities acting on behalf of or in concert with any of the foregoing.

Please be advised that checks that are not cashed within 180 days of issuance will be transmitted to the State of California Unclaimed Property Fund in the name of the Aggrieved Employee who did not cash his/her check. Regardless of what you do with the check issued to you, by law and Court order, you have released the Released Parties from the Released Claims described herein. Your payment under this settlement is subject to taxation and will be reported to the IRS and state tax authorities. You will receive appropriate tax forms pertaining to your individual settlement payment and you are responsible for payment of any taxes that are due as a result of this payment.

If you have any questions, please contact the Settlement Administrator, [REDACTED] at (###) ###-####.

EXHIBIT 3



VIA ELECTRONIC FILING

June 17, 2024

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

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

TWS RESTAURANT CORPORATION
JOSEPH N. RUBIN
400 SANTA CLARA ST., SUITE 206
VALLEJO, CA 94590

PAYRIGHT PAYROLL SERVICES INC.
468 GREAT ROAD
ACTON, MA 01720

SEBASTIANA IXQUIACTAP v. TWS RESTAURANT CORPORATION; JOSEPH N. RUBIN; PAYRIGHT PAYROLL SERVICES INC.

RE: PRIVATE ATTORNEYS GENERAL ACT NOTICE

To Whom It May Concern:

Please be informed that our client, Ms. Sebastiana Ixquiactap (hereinafter “Ms. Ixquiactap” or “our client”) seeks penalties on behalf of the State of California and all current and former non-exempt or hourly paid California employees (“aggrieved employees”) who worked for TWS RESTAURANT CORPORATION, JOSEPH N. RUIZ, and PAYRIGHT PAYROLL SERVICES INC. (hereinafter collectively referred to as “TWS”) **at all of their restaurant locations in the State of California**, during the relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”). The purpose of this letter is to comply with the statutory requirements of California Labor Code section 2699.3 and shall constitute notice of the same. Individual JOSEPH N. RUBIN is being included in this PAGA notice pursuant to Labor Code section 558.1 in that he was and is the managing agent, owner, and/or director of TWS RESTAURANT CORPORATION, was involved in the day-to-day operations of the business, including the wage and hour practices and policies, and as such, controlled the wages, hours, and/or working conditions of Ms. Ixquiactap and other hourly employees.

Ms. Ixquiactap started working at TWS on or around September or October 2021 as a cashier. Ms. Ixquiactap is and was classified as an hourly, non-exempt employee. Ms. Ixquiactap’s last



rate of pay was \$21.50 per hour. Ms. Ixquiactap generally worked 5 days per week at approximately 8 hours per day. In addition to cashier duties, Ms. Ixquiactap also packed orders, helped in the burrito station, and prepped some ingredients like chicken. Ms. Ixquiactap stopped working for TWS on or around June 2, 2024.

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

In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and other employees, it allows for suits broader than the specific violations the named employee experienced. Therefore, even if the employee did not personally experience the Labor Code violations, the employer may still be liable to under PAGA. Consequently, it is our position that Ms. Ixquiactap can equivocally bring the following labor code violations on behalf of all other employees, including ALL hourly, non-exempt employees who worked for TWS anywhere in the state of California (at all different restaurant locations) during the relevant PAGA period.

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

TWS violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay our client and other similarly situated aggrieved employees for all hours worked, including the statutory minimum wage for all hours worked and for “off the clock” work. This is so because TWS had a company policy wherein they would disproportionately round down the number of hours worked, resulting in “time shaving” and further resulting in aggrieved employees not being paid for all hours worked. In addition, Ms. Ixquiactap worked “off the clock” both before her scheduled shift and after her scheduled shift. Ms. Ixquiactap would arrive approximately 10 minutes early once or twice per week in order to open the store and take care of the products that had arrived to the store. This latter work was done prior to formally clocking in for work. In terms of after her scheduled



shifts, Ms. Ixquiactap would clock out and stay for about 10 to 15 minutes in order to have the new products that were delivered ready for the following workday. Since Ms. Ixquiactap was not compensated for the latter described duties and time, it would be akin to a minimum wage violation. Furthermore, and to the extent that Ms. Ixquiactap worked through her meal periods while clocked out for lunch, the latter would also be a minimum wage violation. Moreover, TWS failed to provide its employees with proper and accurate reporting time pay.

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

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

TWS violated Labor Code §§ 512 and 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 5 because it failed to provide hourly, non-exempt employees, including Ms. Ixquiactap and others, the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment. TWS did not completely relieve Ms. Ixquiactap and other employees of all duty during said meal periods. TWS did not pay to Ms. Ixquiactap and its hourly, non-exempt employees one additional hour of pay at their regular rate of compensation for each workday that one or more statutory meal periods was not provided. Like the rest breaks, receiving a consistent thirty-minute uninterrupted and timely meal break was not part of the company culture and was not enforced by TWS. In fact, during every work week, Ms. Ixquiactap would have to



clock out for her meal (to show compliance on paper), continue working through her meal period, and then clock back in. During the latter situation, Ms. Ixquiactap would not get a chance to eat anything during her meal break. Moreover, Ms. Ixquiactap's meal periods were also interrupted by her manager (would ask her questions about customer that had called) and also by employees who would interrupt to ask her to help with orders or with the cash register. To the extent that other aggrieved employees even received meal periods, they were either late or consistently interrupted by work obligations as well. Consequently, it was the normal practice and custom of TWS not to authorize, permit, and enforce timely statutory meal periods. If TWS had our client sign a meal period waiver, it would not be valid and enforceable since our client and others generally worked more than a 5-hour shift. Furthermore, under California law, however, employees must make an affirmative decision every day regarding whether to waive their meal periods. August 13, 2003 DLSE Opinion Letter ("The decision to forego a meal period may not, therefore, be based on a specific requirement of the employer or on a policy or practice which could reasonably be perceived to be a condition of employment. Therefore, blanket "waivers" of meal periods ...whether written or oral, will not be considered valid."). If TWS had our client sign an on-duty meal period agreement wherein our client agreed to work through the meal periods, it would be invalid and unenforceable because the nature of our client's job does not and did not prevent her from taking a meal period and the company could have hired "breakers" to relieve Ms. Ixquiactap of her job duties so that she can actually take a timely, uninterrupted meal period. Moreover, any such "on duty" meal period agreement did not allow for our client to revoke such an agreement even if it was signed. As such, our client and others did not always receive statutory, timely meal periods during their employment. To the extent that TWS argues that employees receive meal break premium pay for missed meal periods, that argument is inconsequential for PAGA penalty purposes since the PAGA penalties are for the violations themselves, irrespective of whether an employee received the premium payment for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, "section 226.7 does not give employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour of pay." See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the violation; the employer has still committed a violation even if the remedy for the violation has been paid. See *Wert v. U.S. Bancorp.*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work environment and culture at TWS was not conducive to receiving consistent, timely, statutory meal breaks under California law. Moreover, any meal or rest break premiums paid were not compensated at the weighted average regular rate, inclusive of bonuses and/or incentive payments as well as overtime compensation.

Furthermore, during the relevant time period, and due to the above labor code violations, TWS failed to pay our client and other similarly situated aggrieved employees all wages due to them within any time period specified by California Labor Code section 204. Since Ms. Ixquiactap was not compensated for his "off the clock" work and since Ms. Ixquiactap did not receive meal and rest break premiums, Ms. Ixquiactap would still be owed wages pursuant to Labor Code Section 204. TWS was also in violation of California Labor Code section 226(a) by failing to include pertinent information on the wage statements, including but not limited to, the correct hourly rate, all hours worked, overtime hours worked, correct overtime pay, gross wages earned, net wages



earned, premium pay for missed meal and rest breaks, all deductions, the correct start and end of the pay period, all employee identifying information, the correct and complete name and address of the legal employer, and reimbursement for business expenses, among others. As such, TWS did not provide our client and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

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

TWS also violated Labor Code § 203 because it willfully failed to pay Ms. Ixquiactap and other similarly situated aggrieved employees earned and due wages upon separation of employment, either immediately upon involuntary termination, or within 72 hours of resignation. These earned but unpaid wages include compensation for all hours worked, including minimum wages, overtime compensation, and premium pay for missed meal and rest breaks.

During the relevant time period, Ms. Ixquiactap and other aggrieved employees incurred necessary, business-related expenses and costs that were not reimbursed by TWS. These costs include, but are not limited to uniforms, use of personal cell phones for work purposes, and masks. In terms of personal cell phone use, Ms. Ixquiactap was contacted on her personal cell phone and was given work instructions or was provided additional information regarding orders even if Ms. Ixquiactap was already at home (yet another example of “off the clock” work). Accordingly, TWS was in violation of California Labor Code sections 2800 and 2802.

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

Furthermore, TWS did not provide proper and correct/accurate sick pay (inclusive of all bonuses/shift differentials/incentive payments) that was also delineated on employee pay stubs and also failed to provide proper sick leave in violation of Labor Code sections 233 and 246. Moreover, there were no suitable seating/rest break facilities for the employees pursuant to Wage Order no. 5-2001 as employees did not have a designated break area and would have to take meal breaks at the same table as customers.

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

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



MESSRELIAN LAW
ATTORNEYS AT LAW

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

Tel: (818) 484-6531
Fax: (818) 956-1983

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

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

Very Truly Yours,

Harout Messrelian, Esq.



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ATTORNEYS AT LAW

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

Tel: (818) 484-6531
Fax: (818) 956-1983

VIA ELECTRONIC FILING

July 13, 2024

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

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

COASTAL VALLEY ENTERPRISES
c/o JOSEPH N RUBIN
400 SANTA CLARA STREET, STE 206
VALLEJO, CA 94590

TWS RESTAURANT CORPORATION
PAYRIGHT PAYROLL SERVICES INC.
COASTAL VALLEY ENTERPRISES
c/o BENJAMIN SANCHEZ, ESQ.
LITTLER MENDELSON, P.C.
TREAT TOWERS
1255 TREAT BOULEVARD, SUITE 600
WALNUT CREEK, CA 94597

SEBASTIANA IXQUIACTAP v. TWS RESTAURANT CORPORATION; JOSEPH N. RUBIN; PAYRIGHT PAYROLL SERVICES INC.; COASTAL VALLEY ENTERPRISES

RE: PRIVATE ATTORNEYS GENERAL ACT NOTICE
CASE NO: LWDA-CM-1034347-24

To Whom It May Concern:

This is a supplemental notice. The original notice dated June 17, 2024 is enclosed herewith and incorporated by reference.

In the previous notice, we inadvertently omitted an employer, COASTAL VALLEY ENTERPRISES from our definition of “TWS”. The claims stated in the previous notice against “TWS” shall also apply with equal force and effect to COASTAL VALLEY ENTERPRISES.

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.* (“PAGA”), Ms. Sebastiana Ixquiactap (hereinafter “Ms. Ixquiactap” or “our client”) seeks penalties on behalf of the State of California and all current and former non-exempt or hourly paid



MESSRELIAN LAW
ATTORNEYS AT LAW

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

Tel: (818) 484-6531
Fax: (818) 956-1983

California employees (“aggrieved employees”) who worked for TWS RESTAURANT CORPORATION, COASTAL VALLEY ENTERPRISES, JOSEPH N. RUIZ, and PAYRIGHT PAYROLL SERVICES INC. (hereinafter collectively referred to as “TWS”) at **all of their restaurant locations in the State of California**, during the relevant PAGA period predicated on the facts included in the original notice.

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

Very Truly Yours,

Harout Messrelian, Esq.

EXHIBIT 4

1 **MESSRELIAN LAW INC.**

2 Harout Messrelian, Esq. (SB# 272020)

3 hm@messrelianlaw.com

4 Maralle Messrelian, Esq., Of Counsel (SB#316974)

5 maralle@messrelianlaw.com

6 500 N. Central Ave., Suite 840

7 Glendale, California 91203

8 Telephone: (818) 484-6531

9 Facsimile: (818) 956-1983

10 Attorneys for Plaintiff,

11 SEBASTIANA IXQUIACTAP, and all others similarly situated

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **FOR THE COUNTY OF ALAMEDA**

14 **(UNLIMITED JURISDICTION)**

15 SEBASTIANA IXQUIACTAP,

16 *Plaintiff,*

17 vs.

18 TWS RESTAURANT CORPORATION;
19 COASTAL VALLEY ENTERPRISES;
20 JOSEPH N. RUBIN; PAYRIGHT PAYROLL
21 SERVICES INC.; and DOES 1 to 25, inclusive,

22 *Defendants.*

Case No.: **24CV094320**

COMPLAINT FOR DAMAGES FOR:

**1) PRIVATE ATTORNEYS
GENERAL ACT ("PAGA");**

ELECTRONICALLY FILED

Superior Court of California,

County of Alameda

10/01/2024 at 08:21:18 PM

By: Milagros Cortez,
Deputy Clerk

COMES NOW, Plaintiff, SEBASTIANA IXQUIACTAP (hereafter “Plaintiff”), and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Alameda in this judicial district because Defendants TWS RESTAURANT CORPORATION; COASTAL VALLEY ENTERPRISES; JOSEPH N. RUBIN; PAYRIGHT PAYROLL SERVICES INC.; and DOES 1 to 25, inclusive (hereafter “TWS” or “Defendants”) do business in the County of Alameda and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Alameda is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$35,000.

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

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant TWS RESTAURANT CORPORATION is and was a California corporation, doing business in Santa Clara County, California, and which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant COASTAL VALLEY ENTERPRISES is and was a California corporation, doing business in Santa Clara County, California, and which employed Plaintiff

5. Defendant JOSEPH N. RUBIN is a citizen of California based on Plaintiff’s information and belief.

6. In relevant part, Labor Code section 558.1 states:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

7. Plaintiff is informed and believes and thereon alleges that JOSEPH N. RUBIN is a natural person and an owner, director, officer, and/or managing agent of Defendants TWS

1 RESTAURANT CORPORATION and COASTAL VALLEY ENTERPRISES, who directly or
2 indirectly, or through an agent or any other person, employed or exercised control over the wages,
3 hours, or working conditions of Plaintiff and the aggrieved employees (as defined below).
4 Therefore, he is liable to Plaintiff and the aggrieved employees for his violations of, or causing
5 Defendants to violate, Labor Code sections 203, 226, 226.7, 1193.6, 1194, 2802, and the Wage
6 Order (no. 5) pursuant to Labor Code section 558.1.

7 8. The “aggrieved employees” are all current and former non-exempt or hourly paid
8 employees who worked for Defendants at any of their California restaurant locations during the
9 relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code
10 Private Attorneys General Act of 2004 (“PAGA”).

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

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

23 **GENERAL ALLEGATIONS**

24 11. Plaintiff started working for Defendants on or around September 11, 2021 as a
25 cashier at its El Pollo Loco restaurant located at 24119 Mission Blvd., Hayward, California 94544.
26 Plaintiff is and was classified as an hourly, non-exempt employee. Plaintiff’s last rate of pay was
27 \$21.50 per hour. Plaintiff generally worked 5 days per week at approximately 8 hours per day. In
28 addition to cashier duties, Plaintiff also packed orders, helped in the burrito station, and prepped

1 some ingredients like chicken. Plaintiff stopped working for Defendants on or around June 2,
2 2024. Defendants terminated Plaintiff's employment on or around June 5, 2024.

3 12. It is Plaintiff's position that TWS has violated numerous Labor Code Sections
4 against Plaintiff and other similarly situated aggrieved employees, who include all non-exempt,
5 hourly employees who worked for TWS at their various locations/restaurants in the State of
6 California during the relevant PAGA period.

7 13. TWS violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to
8 pay Plaintiff and other similarly situated aggrieved employees for all hours worked, including the
9 statutory minimum wage for all hours worked and for "off the clock" work. This is so because
10 TWS had a company policy wherein they would disproportionately round down the number of
11 hours worked, resulting in "time shaving" and further resulting in aggrieved employees not being
12 paid for all hours worked. In addition, Plaintiff worked "off the clock" both before her scheduled
13 shift and after her scheduled shift. Plaintiff would arrive approximately 10 minutes early once or
14 twice per week in order to open the store and take care of the products that had arrived to the
15 store. This latter work was done prior to formally clocking in for work. In terms of after her
16 scheduled shifts, Plaintiff would clock out and stay for about 10 to 15 minutes in order to have
17 the new products that were delivered ready for the following workday. Since Plaintiff was not
18 compensated for the latter described duties and time, it would be akin to a minimum wage
19 violation. Furthermore, and to the extent that Plaintiff worked through her meal periods while
20 clocked out for lunch, the latter would also be a minimum wage violation. Moreover, TWS failed
21 to provide its employees with proper and accurate reporting time pay.

22 14. Due to the above "off the clock" violations, TWS also violated Labor Code §510
23 because it failed to pay Plaintiff and other aggrieved employees overtime compensation, even
24 though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week
25 throughout their employment. Plaintiff's and other aggrieved employees' actual work hours
26 entitled them to overtime compensation, however, TWS did not compensate its hourly, non-
27 exempt employees with the correct amount of overtime due to the "off the clock" work and time
28 shaving as described above. Furthermore, TWS failed to include bonuses/incentive payments

1 (which were received by Plaintiff approximately twice per year) in calculating employees' regular
2 rate of pay for use in deciphering the correct overtime rate of pay. Additionally, the incentive,
3 shift differential, and bonus payments were also not factored into employees' regular rate for
4 purposes of receiving meal and rest break premiums per the *Ferra v. Loews* case.

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

21 16. TWS violated Labor Code §§ 512 and 226.7 and the appropriate Industrial Welfare
22 Commission Wage Order no. 5 because it failed to provide hourly, non-exempt employees,
23 including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods for every five
24 (5) hours of work throughout their employment. TWS did not completely relieve Plaintiff and
25 other employees of all duty during said meal periods. TWS did not pay to Plaintiff and its hourly,
26 non-exempt employees one additional hour of pay at their regular rate of compensation for each
27 workday that one or more statutory meal periods was not provided. Like the rest breaks, receiving
28 a consistent thirty-minute uninterrupted and timely meal break was not part of the company

1 culture and was not enforced by TWS. In fact, during every work week, Plaintiff would have to
2 clock out for her meal (to show compliance on paper), continue working through her meal period,
3 and then clock back in. During the latter situation, Plaintiff would not get a chance to eat anything
4 during her meal break. Moreover, Plaintiff's meal periods were also interrupted by her manager
5 (would ask her questions about customer that had called) and also by employees who would
6 interrupt to ask her to help with orders or with the cash register. To the extent that other aggrieved
7 employees even received meal periods, they were either late or consistently interrupted by work
8 obligations as well. Consequently, it was the normal practice and custom of TWS not to authorize,
9 permit, and enforce timely statutory meal periods. If TWS had Plaintiff sign a meal period waiver,
10 it would not be valid and enforceable since Plaintiff and others generally worked more than a 5-
11 hour shift.

12 17. Furthermore, under California law, however, employees must make an affirmative
13 decision every day regarding whether to waive their meal periods. August 13, 2003 DLSE
14 Opinion Letter ("The decision to forego a meal period may not, therefore, be based on a specific
15 requirement of the employer or on a policy or practice which could reasonably be perceived to be
16 a condition of employment. Therefore, blanket "waivers" of meal periods ...whether written or
17 oral, will not be considered valid."). If TWS had Plaintiff sign an on-duty meal period agreement
18 wherein Plaintiff agreed to work through the meal periods, it would be invalid and unenforceable
19 because the nature of Plaintiff's job does not and did not prevent her from taking a meal period
20 and the company could have hired "breakers" to relieve Plaintiff of her job duties so that she can
21 actually take a timely, uninterrupted meal period. Moreover, any such "on duty" meal period
22 agreement did not allow for Plaintiff to revoke such an agreement even if it was signed. As such,
23 Plaintiff and others did not always receive statutory, timely meal periods during their
24 employment. To the extent that TWS argues that employees receive meal break premium pay for
25 missed meal periods, that argument is inconsequential for PAGA penalty purposes since the
26 PAGA penalties are for the violations themselves, irrespective of whether an employee received
27 the premium payment for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire*
28 *Protection, Inc.*, the Court stated, "section 226.7 does not give employers a lawful choice between

1 providing *either* meal and rest breaks *or* an additional hour of pay.” See *Kirby v. Immoos Fire*
2 *Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay
3 does not excuse the violation; the employer has still committed a violation even if the remedy for
4 the violation has been paid. See *Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL
5 1110302 at *4). As such, the work environment and culture at TWS was not conducive to
6 receiving consistent, timely, statutory meal breaks under California law. Moreover, any meal or
7 rest break premiums paid were not compensated at the weighted average regular rate, inclusive
8 of bonuses and/or incentive payments as well as overtime compensation.

9 18. Furthermore, during the relevant time period, and due to the above labor code
10 violations, TWS failed to pay Plaintiff and other similarly situated aggrieved employees all wages
11 due to them within any time period specified by California Labor Code section 204. Since Plaintiff
12 was not compensated for his “off the clock” work and since Plaintiff did not receive meal and rest
13 break premiums, Plaintiff would still be owed wages pursuant to Labor Code Section 204. TWS
14 was also in violation of California Labor Code section 226(a) by failing to include pertinent
15 information on the wage statements, including but not limited to, the correct hourly rate, all hours
16 worked, overtime hours worked, correct overtime pay, gross wages earned, net wages earned,
17 premium pay for missed meal and rest breaks, all deductions, the correct start and end of the pay
18 period, all employee identifying information, the correct and complete name and address of the
19 legal employer, and reimbursement for business expenses, among others. As such, TWS did not
20 provide Plaintiff and other similarly situated aggrieved employees with complete, accurate
21 itemized wage statements.

22 19. During the relevant time period, TWS also failed to keep accurate and complete
23 payroll records showing the actual hours worked per day and the wages paid to Plaintiff and others
24 pursuant to California Labor Code sections 1174(d).

25 20. TWS also violated Labor Code § 203 because it willfully failed to pay Plaintiff
26 and other similarly situated aggrieved employees earned and due wages upon separation of
27 employment, either immediately upon involuntary termination, or within 72 hours of resignation.
28 These earned but unpaid wages include compensation for all hours worked, including minimum

1 wages, overtime compensation, and premium pay for missed meal and rest breaks.

2 21. During the relevant time period, Plaintiff and other aggrieved employees incurred
3 necessary, business-related expenses and costs that were not reimbursed by TWS. These costs
4 include, but are not limited to uniforms, use of personal cell phones for work purposes, and masks.
5 In terms of personal cell phone use, Plaintiff was contacted on her personal cell phone and was
6 given work instructions or was provided additional information regarding orders even if Plaintiff
7 was already at home (yet another example of “off the clock” work). Accordingly, TWS was in
8 violation of California Labor Code sections 2800 and 2802.

9 22. Additionally, TWS violated Labor Code Section 351 and 353 by taking some of
10 the tips meant for employees and also deducting the tips from employees’ earned wages. TWS
11 also deducted the credit card fee from employees’ tips and did not timely provide the credit card
12 and even cash tips to aggrieved employees. As such, aggrieved employees were not given accurate
13 tips to which they were entitled.

14 23. Furthermore, TWS did not provide proper and correct/accurate sick pay (inclusive
15 of all bonuses/shift differentials/incentive payments) that was also delineated on employee pay
16 stubs and also failed to provide proper sick leave in violation of Labor Code sections 233 and
17 246. Moreover, there were no suitable seating/rest break facilities for the employees pursuant to
18 Wage Order no. 5-2001 as employees did not have a designated break area and would have to
19 take meal breaks at the same table as customers.

20 24. Accordingly, Plaintiff now seeks civil penalties on behalf of herself and the
21 aggrieved employees based on Defendants’ alleged violations of the California Labor Code and
22 the Wage Order.

23 **FIRST (AND ONLY) CAUSE OF ACTION**

24 **PRIVATE ATTORNEYS GENERAL ACT**

25 **Representative Claim for PAGA penalties under California Labor Code sections 201, 202,**
26 **203, 204 and/or 204b, 226, 226.3, 226.7, 233, 246, 351, 353, 510, 512, 558, 558.1, 1174,**
27 **1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698, 2699, 2800, 2802, and the applicable**
28 **Industrial Welfare Commission Wage Order No. 5-2001**

(Against All Named Defendants and all DOE Defendants)

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

1 paragraphs 1 through 24, inclusive, of this Complaint as though fully set forth herein.

2 26. Pursuant to law, on June 17, 2024 and July 13, 2024, Plaintiff provided the
3 required written notice to the California Labor & Workforce Development Agency (LWDA) and
4 Defendants of the specific violations of the California Labor Code that Defendants and DOE
5 defendants have violated and continue to violate.

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

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

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

18 30. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the
19 alleged violator and had one or more of the alleged violations committed against her, and therefore
20 is properly suited to represent the interests of all current and former non-exempt or hourly paid
21 employees who worked for Defendants at any of their California locations during the relevant
22 time period.

23 31. Based on the acts alleged above, Plaintiff, on behalf of herself and others, seeks
24 penalties under California Labor Code sections 2698 and 2699 because of Defendants' violations
25 of numerous provisions of the California Labor Code as alleged in this Complaint.

26 32. Plaintiff therefore has exhausted all administrative remedies required of her under
27 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this cause
28 of action and pursue penalties in a representative action for Defendants' violations of the Labor

1 Code.

2 33. California Labor Code section 2699 et seq. imposes penalties upon culpable
3 Defendants for violating the Labor Code.

4 34. California Labor Code section 558 establishes a civil penalty as follows: Any
5 employer or other person action on behalf of an employer who violates, or causes to be violated,
6 a section of this chapter or any provision regulating hours and days of work in any order of the
7 Industrial Welfare Commission (including the “Hours and Days of Work” section of the Wage
8 Order) shall be subject to a civil penalty of (1) for any initial violation, fifty dollars (\$50) for each
9 underpaid employee for each pay period for which the employee was underpaid ...; (2) for each
10 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
11 period for which the employee was underpaid ...;

12 35. Plaintiff seeks penalties for Defendants’ misconduct as alleged herein as permitted
13 by law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
14 seeking individual/victim specific relief or underpaid wages under this particular cause of action.

15 36. Specifically, Plaintiff seeks penalties under California Labor Code section 2699,
16 for the following:

17 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 226, 226.3,
18 226.7, 233, 246, 351, 353, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1,
19 1198, 2800, and 2802 via 2698 and 2699, and any other Labor Codes and Wage Order no.
20 5 violated on the facts alleged in this Complaint.

21 37. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney’s
22 fees, costs, and civil penalties on behalf of Plaintiff and other current and former Aggrieved
23 Employees as alleged herein in an amount to be shown according to proof at trial and within the
24 jurisdictional limits of this Court.

25 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
26 follows:

- 27 1. For the imposition of civil penalties;
28 2. For maximum civil penalties available under Labor Code Section 2699 against

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Defendants in a manner and amount authorized by that statute, as described more particularly in the Complaint and representative PAGA claims;

3. For all costs and disbursements incurred in this suit;

4. Reasonable attorney’s fees where available by law, including but not limited to, pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, and/or other applicable laws; and

5. For such other and further relief as this Court may deem proper.

Respectfully submitted,

MESSRELIAN LAW INC.

Dated: September 30, 2024

By Maralle Messrelia
Harout Messrelia, Esq.
Maralle Messrelia, Esq., Of Counsel
Attorneys for Plaintiff, SEBASTIANA
IXQUIACTAP

EXHIBIT 5

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6

7 Attorneys for Defendants
TWS RESTAURANT CORPORATION AND
COASTAL VALLEY ENTERPRISES
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF ALAMEDA

11 SEBASTIANA IXQUIACTAP,

12 Defendants,

13 v.
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15 TWS RESTAURANT CORPORATION;
COASTAL VALLEY ENTERPRISES;
16 JOSEPH N. RUBIN; PAYRIGHT PAYROLL
SERVICES INC.; and DOES 1 to 25, inclusive,

17 Defendants.
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Case No. 24CV094320

ASSIGNED FOR ALL PURPOSES TO
JUDGE JENNA WHITMAN, DEPT. 25

**DEFENDANTS TWS RESTAURANT
CORPORATION AND COASTAL
VALLEY ENTERPRISES' ANSWER TO
PLAINTIFF'S COMPLAINT**

Complaint Filed: October 1, 2024

Defendants TWS RESTAURANT CORPORATION and COASTAL VALLEY ENTERPRISES (“Defendants”) hereby answer the Complaint (“Complaint”) filed by SEBASTIANA IXQUIACTAP (“Plaintiff”) as follows:

GENERAL DENIAL

Defendants generally deny each and every material allegation contained in the Complaint pursuant to Section 431.30 of the California Code of Civil Procedure and deny that Plaintiff and/or the allegedly aggrieved employees were injured or damaged as alleged or at all.

AFFIRMATIVE DEFENSES

Defendants allege the following affirmative defenses against the claims of Plaintiff and any and all allegedly aggrieved employee that Plaintiff purports to represent. In so doing, Defendants do not concede that they have the burden of production or proof as to any affirmative defense asserted below. To the extent that any defenses or legal theories asserted herein may be interpreted as being inconsistent, such defenses or legal theories are pleaded in the alternative. Defendants do not presently know all the facts concerning the conduct of Plaintiff sufficient to state all defenses. Defendants will seek leave of this Court to amend this answer should it later discover facts demonstrating the existence of additional defenses. Subject to and without waiving the foregoing, and without waiving Plaintiff’s burden to show otherwise, Defendants plead as follows:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

1. As a separate and distinct affirmative defense, Defendants allege the Complaint, and each and every alleged cause of action therein, fails to state facts sufficient to constitute a cause of action upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Avoidable Consequences)

2. As a separate and distinct affirmative defense, Defendants allege the Complaint is barred, or any recovery should be reduced, pursuant to the doctrine of avoidable consequences because Defendants took reasonable steps to prevent and correct any of the harms/violations alleged. Plaintiff and/or the allegedly aggrieved employees Plaintiff seeks to represent unreasonably failed to use the

1 preventative and corrective opportunities provided to them by Defendants, and reasonable use of
2 Defendants' procedures would have prevented at least some, if not all, of the harm that Plaintiff and/or
3 the aggrieved employees Plaintiff seeks to represent allegedly suffered.

4 **THIRD AFFIRMATIVE DEFENSE**

5 **(Statutes of Limitations)**

6 3. As a separate and distinct affirmative defense, Defendants allege that the Complaint,
7 and each and every cause of action alleged therein, is barred, in whole or in part, by the applicable
8 statute(s) of limitations, including, but not limited to, California Code of Civil Procedure sections
9 2699.3 and Code of Civil Procedure 335.1 and/or 340.

10 **FOURTH AFFIRMATIVE DEFENSE**

11 **(Claims Discharged)**

12 4. As a separate and distinct affirmative defense, Defendants allege that the Complaint,
13 and each cause of action set forth therein, or some of them, are barred because all or a portion of the
14 wages, premium pay, interest, attorneys' fees, penalties and/or other relief sought by Plaintiff on her
15 own behalf and/or on behalf of the allegedly aggrieved employees were already or will be before the
16 conclusion of this action, paid or collected, and therefore, Plaintiff's and/or the allegedly aggrieved
17 employees' claims have been partially or completely discharged.

18 **FIFTH AFFIRMATIVE DEFENSE**

19 **(Laches, Waiver, Consent, Estoppel and/or Unclean Hands)**

20 5. As a separate and distinct affirmative defense, Defendants allege that some or all of the
21 purported causes of action alleged in the Complaint are barred in whole or in part by the equitable
22 doctrines of laches, waiver, consent, estoppel and/or unclean hands. To the extent Plaintiff's and/or
23 the allegedly aggrieved employees' own actions or inactions resulted in alleged violations by
24 Defendants, Plaintiff and/or the allegedly aggrieved employees must not be permitted to gain from the
25 same. These equitable defenses are applicable, at least in part, due to the Complaint that Plaintiff's
26 prayer for relief includes "further relief as this Court may deem proper."

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1 **SIXTH AFFIRMATIVE DEFENSE**

2 **(Offset)**

3 6. As a separate and distinct affirmative defense, to the extent Plaintiff and/or the
4 allegedly aggrieved employees she seeks to represent are entitled to any additional compensation,
5 which Defendants deny, such additional compensation must be offset by the amount of any
6 compensation and/or other monies Plaintiff and/or the allegedly aggrieved employees received from
7 Defendants in excess of the compensation to which they were legally entitled for the work performed,
8 including but not limited to hours paid for time in which no work was performed, and/or any monies
9 recovered by or previously paid to Plaintiff and/or allegedly aggrieved employees for the same or
10 similar claims.

11 **SEVENTH AFFIRMATIVE DEFENSE**

12 **(Good Faith)**

13 7. As a separate and distinct affirmative defense, Defendants allege that any violation of
14 the California Labor Code or an Order of the Industrial Welfare Commission was an act or omission
15 made in good faith and Defendants had reasonable grounds for believing that its practices complied
16 with applicable laws and that any such act or omission was not a violation of the California Labor
17 Code or any Order of the Industrial Welfare Commission.

18 **EIGHTH AFFIRMATIVE DEFENSE**

19 **(Bad Faith or Frivolous Claims)**

20 8. As a separate and distinct affirmative defense, Defendants allege that further
21 investigation and discovery will reveal, and on that basis alleges, that Plaintiff's claims are
22 unreasonable, were filed in bad faith, and/or are frivolous and, for such reasons, justify an award of
23 attorneys' fees and costs against Plaintiff and/or her attorneys pursuant to California law including,
24 but not limited to section 218.5 of the California Labor Code, and section 128.5 of the California Code
25 of Civil Procedure.

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1 **NINTH AFFIRMATIVE DEFENSE**

2 **(No Unlawful Policy)**

3 9. As a separate and distinct affirmative defense, Defendants allege that Plaintiff's and/or
4 the allegedly aggrieved employees' alleged damages were not proximately caused by any unlawful
5 policy, custom, practice and/or procedure promulgated and/or tolerated by Defendants.

6 **TENTH AFFIRMATIVE DEFENSE**

7 **(Meal Periods and Rest Breaks – Failure to Follow Instructions - Labor Code §§ 226.7, 512)**

8 10. As a separate and distinct affirmative defense, Defendants allege that civil penalties
9 pursuant to Labor Code section 558 predicated on Labor Code sections 226.7 and 512 are inappropriate
10 because, to the extent, if any, that Plaintiff and/or the allegedly aggrieved employees did not take meal
11 periods or rest breaks, it was the result of their failure to follow Defendant's reasonable instructions.

12 **ELEVENTH AFFIRMATIVE DEFENSE**

13 **(Meal Period and Rest Break Waiver)**

14 11. As a separate and distinct affirmative defense, Defendants allege that civil penalties
15 pursuant to Labor Code section 558 predicated on Labor Code sections 226.7 and 512 are inappropriate
16 because, to the extent, if any, Plaintiff and/or the allegedly aggrieved employees did not take their
17 meal periods or rest breaks, it was because they: (1) voluntarily elected not to take meal periods or rest
18 breaks that were provided to them by Defendants in compliance with California law; (2) chose not to
19 take rest breaks that were authorized and permitted by Defendants; or (3) waived their right to meal
20 periods and/or rest breaks.

21 **TWELFTH AFFIRMATIVE DEFENSE**

22 **(Meal Breaks – No Automatic Liability)**

23 12. As a separate and distinct affirmative defense, Defendants allege that to the extent
24 Plaintiff and/or any allegedly aggrieved employees Plaintiff seeks to represent have time records that
25 appear to show missed, short, or delayed meal periods, automatic liability does not result, because
26 Plaintiff and/or any allegedly aggrieved employees were either compensated for noncompliant meal
27 periods or were provided compliant meal periods during which they chose to work. *See Donohue v.*
28 *AMN Servs., LLC*, 11 Cal. 5th 58, 77 (2021).

1 **THIRTEENTH AFFIRMATIVE DEFENSE**

2 **(Waiting Time Penalties)**

3 13. As a separate and distinct affirmative defense, Defendants allege that Plaintiff and/or
4 the allegedly aggrieved employees' claims pursuant to California Labor Code section 203 are barred,
5 in whole or in part, because: (a) Defendants did not willfully fail to pay such additional compensation
6 owed, if any is owed; (b) a good faith dispute exists as to whether wages are owed; (c) the
7 compensation/premiums sought do not constitute wages; and (d) to impose penalties in this case would
8 be inequitable and unjust.

9 **FOURTEENTH AFFIRMATIVE DEFENSE**

10 **(Labor Code §§ 201 - 202 – Bona Fide Dispute)**

11 14. As a separate and distinct affirmative defense, Defendants allege that Plaintiff's and/or
12 the allegedly aggrieved employees' claims for penalties, including, but not limited to penalties
13 predicated on Labor Code §§ 201-203, are barred because (1) there are bona fide disputes as to whether
14 Defendants failed to timely pay all wages due, (2) there are bona fide disputes as to whether
15 Defendants failed to present wage statements on a timely basis, and (3) Defendants have not willfully
16 failed to pay such compensation, if any is owed.

17 **FIFTEENTH AFFIRMATIVE DEFENSE**

18 **(Labor Code § 203 – Not Intentional or Willful)**

19 15. As a separate and distinct affirmative defense, Defendants allege that any claim for
20 penalties pursuant to Labor Code § 203 is barred, in whole or in part, because any failure to pay the
21 wages allegedly due and unpaid upon the termination of Plaintiff's and/or the allegedly aggrieved
22 employees' employment with Defendants was not intentional or willful.

23 **SIXTEENTH AFFIRMATIVE DEFENSE**

24 **(Wage Statements – Not Knowing and Intentional)**

25 16. As a separate and distinct affirmative defense, Defendants allege that any claims for
26 penalties pursuant to Labor Code section 226 are barred, in whole or in part, because Plaintiff and/or
27 the allegedly aggrieved employees were not "injured" thereby and/or because Defendants' alleged
28 failure to comply with Labor Code sections 226(a) was not a "knowing and intentional failure" under

1 Labor Code section 226(e).

2 **SEVENTEENTH AFFIRMATIVE DEFENSE**

3 **(Wage Statements – Lack of Injury)**

4 17. As a separate and distinct affirmative defense, Defendants allege that Plaintiff and/or
5 the allegedly aggrieved employees sustained no injury from any alleged failure by Defendants to
6 comply with Labor Code section 226.

7 **EIGHTEENTH AFFIRMATIVE DEFENSE**

8 **(De Minimis)**

9 18. As a separate and distinct affirmative defense, Defendants allege that Plaintiff and/or
10 the allegedly aggrieved employees may not recover penalties related to some or all of the disputed
11 unpaid time allegedly worked to the extent such time is or was *de minimis* and thus not compensable
12 as a matter of law.

13 **NINETEENTH AFFIRMATIVE DEFENSE**

14 **(Res Judicata/Collateral Estoppel)**

15 19. As a separate and distinct affirmative defense, Defendants allege the Complaint, and
16 each purported cause of action therein cannot be maintained and/or are barred to the extent Plaintiff
17 and/or the allegedly aggrieved employees have previously pursued claims under the concepts of res
18 judicata and collateral estoppel.

19 **TWENTIETH AFFIRMATIVE DEFENSE**

20 **(Penalties)**

21 20. As a separate and distinct affirmative defense, Defendants alleges that the Complaint,
22 and each cause of action set forth therein, or some of them, are barred because, as applied in this action,
23 an award of civil penalties would result in the imposition of excessive, replicating fines or penalties in
24 violation of the Eighth Amendment to the United States Constitution and Article I, Section 7 of the
25 California Constitution and Defendants' fundamental constitutional rights to due process under the
26 Fourteenth Amendment of the United States Constitution and Constitution and laws of the State of
27 California. *See, e.g., State Farm Mutual Automobile Insurance Company v. Campbell*, 538 U.S. 408
28 (2003); *People ex rel Lockyer v. R.J. Reynolds Tobacco Co.*, 37 Cal. 4th 707 (2005)

1 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

2 **(Unjust Enrichment)**

3 21. As a separate and distinct affirmative defense, Defendants allege that Plaintiff's and/or
4 the allegedly aggrieved employees' are barred, in whole or in part, on the grounds of unjust
5 enrichment.

6 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

7 **(Double Recovery)**

8 22. As a separate and distinct affirmative defense, Defendants allege that, to the extent
9 multiple penalties are sought for the same alleged violations, such claims are barred by the prohibition
10 on double recovery and would violate Defendants' due process rights under the Fourteenth
11 Amendment of the United States Constitution and under the Constitution and laws of the State of
12 California.

13 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

14 **(Failure to Mitigate)**

15 23. As a separate and distinct affirmative defense to the Complaint and each purported
16 cause of action therein, Defendants allege, based upon the belief that further investigation and
17 discovery will reveal that Plaintiff and/or the allegedly aggrieved employees have failed to take
18 reasonable steps to mitigate their alleged damages, and that any penalty must be discounted
19 accordingly.

20 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

21 **(Accord and Satisfaction)**

22 24. As a separate and distinct affirmative defense, Defendants allege that the Complaint
23 and each cause of action set forth therein, or some of them, are barred by the doctrine of accord and
24 satisfaction, to the extent that Plaintiff and/or the allegedly aggrieved employees have received, or will
25 receive, compensation for any outstanding wages, penalties and/or damages purportedly due.

26 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

27 **(Secreted or Absented)**

28 25. As a separate and distinct affirmative defense, Defendants allege that the claims of

1 Plaintiff, and/or the allegedly aggrieved employees Plaintiff seeks to represent for alleged failure to
2 pay wages fail, in whole or in part, to the extent that Defendants did not reasonably know hours were
3 worked by Plaintiff and/or the allegedly aggrieved employees, to the extent Plaintiff and/or the
4 aggrieved employees deliberately prevented Defendants from acquiring knowledge of the hours
5 worked and/or to the extent Plaintiff and/or the aggrieved employees secreted or absented themselves
6 to avoid payment of wages.

7 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

8 **(Plaintiff's Breach of Duties)**

9 26. As a separate and distinct affirmative defense, Defendants allege that the claims of
10 Plaintiff, and/or allegedly aggrieved employees are barred by their own breach of the duties owed to
11 Defendants pursuant to the California Labor Code, including but not limited to California Labor Code
12 sections 2853, 2854, 2856, 2857 and/or 2859 and/or the refusal or failure by Plaintiff and/or the
13 aggrieved employees to meet Defendants' reasonable expectations and the job performance
14 requirements.

15 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

16 **(Defendant Maintained Accurate Payroll Records and Provided Wage Statements that**
17 **Accurately Reported the Hours and Rates in Effect)**

18 27. As a separate and distinct affirmative defense, Defendants allege that any underlying
19 claims for failure to maintain accurate payroll records and/or for penalties pursuant to Labor Code
20 section 226 are barred, in whole or in part, because Plaintiff and the allegedly aggrieved employees
21 she seeks to represent were provided wage statements that accurately set forth the amount of the wages
22 they received as well as the hours and rates that were used to calculate such wages, and thus, Plaintiffs'
23 wage statement claim fails.

24 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

25 **(Retroactive Penalties Unconstitutional)**

26 28. As a separate and distinct affirmative defense, Defendants allege that it would be
27 unconstitutional and a violation of due process to impose retroactive *penalties* based on the California
28 Supreme Court's interpretation of California law in *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal.5th

858 (2021), to the extent that *Ferra* applies to the facts in the Complaint.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(Plaintiff Not Employed by Defendant TWS RESTAURANT CORPORATION)

29. As a separate and distinct affirmative defense, Defendants allege that the Complaint and each cause of action set forth therein are barred against Defendant TWS RESTAURANT CORPORATION because Plaintiff was not employed by this defendant.

THIRTIETH AFFIRMATIVE DEFENSE

(Arbitration)

30. As a separate and distinct affirmative defense, Defendants allege that the Complaint, and each and every cause of action alleged therein, is barred, in whole or in part, to the extent Plaintiff and/or the putative class members are bound by valid and enforceable arbitration agreements that require such claims to be submitted to binding arbitration.

THIRTY-FIRST AFFIRMATIVE DEFENSE

(PAGA – Claims Not Suitable on a Representative Basis)

31. As a separate and distinct affirmative defense, Defendants allege that Plaintiff's claims are not suitable for determination/litigation on a representative basis particularly given the diversity in the group of allegedly aggrieved employees which covers varying: (1) numerous, unrelated non-exempt positions with varying work schedules and responsibilities; (2) legal issues asserted; and (3) policies and practices potentially at issue. Additionally: (1) such a determination requires complex individualized factual issues particularly given the diversity in the group of allegedly aggrieved employees, legal issues asserted, and policies and practices potentially at issue; (2) penalties cannot be calculated on a representative basis; (3) any penalties that might be proved would not be identical for all allegedly aggrieved employees; (4) trying such a representative action would be unmanageable particularly given the diversity in the group of allegedly aggrieved employees, legal issues asserted, and policies and practices potentially at issue; and (5) trying such a representative action would be contrary to the legislative intent of the PAGA.

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1 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

2 **(PAGA – Standing)**

3 32. As a separate and distinct affirmative defense, Defendants are informed and believe
4 that further investigation and discovery will reveal, and on that basis allege, that Plaintiff lacks
5 standing to bring claims for civil penalties on behalf of others because she is not an “aggrieved
6 employee” and/or has failed to identify said “aggrieved employees” pursuant to the PAGA.

7 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

8 **(PAGA – Failure to Exhaust PAGA Prerequisites)**

9 33. As a separate and distinct affirmative defense, Defendants allege that Plaintiff’s
10 Complaint is barred, in whole or in part, based on Plaintiff’s failure to comply with the pre-filing
11 notice and exhaustion requirements set forth in California Labor Code section 2699.3, or any other
12 provision of the California Labor Code. Plaintiff failed to provide the Labor Workforce Development
13 Agency (“LWDA”) sufficient notice of his claims, the identity of the “aggrieved employees” on whose
14 behalf she intended to seek penalties, and/or the facts and theories underlying her claims to permit the
15 LWDA to make a reasoned determination regarding whether to investigate Plaintiff’s claims –
16 particularly by failing to identify facts and theories of alleged violations beyond simply reciting the
17 law.

18 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

19 **(PAGA – Claims Exceed Scope of Notice)**

20 34. As a separate and distinct defense, Defendants allege that Plaintiff’s Complaint is
21 barred, in whole or in part, because assuming *arguendo* that Plaintiff did exhaust her administrative
22 remedies with the LWDA, the Labor Code and /or Wage Order violations asserted in the Complaint
23 exceed the scope of the Labor Code and Wage Order violations identified in Plaintiff’s notice to the
24 LWDA.

25 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

26 **(PAGA – Stacking of Penalties Impermissible)**

27 35. As a separate and distinct affirmative defense, Defendants allege that Plaintiff and/or
28 the allegedly aggrieved employees’ claims for penalties under the PAGA are impermissible because

1 stacking of penalties is unsupported by law.

2 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

3 **(PAGA-Violates Due Process Rights as Applied to this Case)**

4 36. As a separate and distinct affirmative defense, Defendants allege that the Complaint is
5 barred, in whole or in part, because the PAGA both in general and as applied to this case, violates
6 Defendants' due process rights, both procedural and substantive, in violation of the Fourteenth
7 Amendment of the United States and California Constitutions. Plaintiff must first establish that her
8 claims or defenses are typical of the claims or defenses of the other employees she purports to
9 represent, and/or must first establish there are common questions of law and fact as to all the
10 employees whom Plaintiff purports to represent.

11 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

12 **(PAGA-Penalties for Future Violations Violate Due Process)**

13 37. As a separate and distinct affirmative defense, Defendants allege that the civil penalties
14 sought by Plaintiff for alleged Labor Code violations occurring after the date of the "written notice"
15 provided by Plaintiff to the LWDA pursuant to Labor Code section 2699.3 ("future violations") are
16 barred because under Labor Code section 2699(e)(1), the court has the discretion of the LWDA, or
17 any of its departments, divisions, commissions, boards, agencies, or employees in assessing a civil
18 penalty, which includes the discretionary authority not to pursue claims or penalties against a "person"
19 (as defined by the Labor Code Private Attorneys General Act of 2004) and an award of penalties for
20 future violations violates Defendants' due process rights under the United States Constitution and the
21 California Constitution.

22 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

23 **(PAGA-Penalties for Future Violations Barred – *Qui Tam*, Lacks Governmental Oversight)**

24 38. As a separate and distinct affirmative defense, Defendants allege that the civil penalties
25 sought by Plaintiff for alleged Labor Code violations occurring after the date of the "written notice"
26 provided by Plaintiff to the LWDA pursuant to Labor Code section 2699.3 ("future violations") are
27 barred because a representative PAGA action, to the extent it is a *qui tam* action, lacks governmental
28 oversight of the action provided in other types of *qui tam* actions such as the California False Claims

Act (“FCA”), justifying the recovery for future violations under the FCA by *qui tam* plaintiffs.

THIRTY-NINTH AFFIRMATIVE DEFENSE

(PAGA-Violates Equal Protection as Applied to this Case)

39. As a separate and distinct affirmative defense, Defendants allege that Plaintiff and/or the allegedly aggrieved employees’ claims for statutory penalties are barred to the extent the provisions of California law allowing the award of statutory penalties, and the substantive rules, procedures and standards for determining whether or not to award them, and, if so, in what amount, violate Defendants’ rights to equal protection under the United States and California Constitutions – specifically, PAGA allows for carve-out of certain employers but not others, violating Defendants’ equal protection rights.

FORTIETH AFFIRMATIVE DEFENSE

(Substantial Compliance)

40. As a separate and distinct affirmative defense, Defendants allege that any claim for penalties predicated on the Labor Code, or any applicable Wage Order, must fail because and to the extent Defendants substantially complied with the applicable laws, statutes, regulations, and applicable Wage Orders. For the same reason, should the Court find a violation of the Labor Code occurred, and such violation gives rise to potential penalties, the Court must exercise its discretion and significantly discount or eliminate any potential penalties owed by Defendants due to its good faith efforts to comply with the Labor Code and/or substantial compliance with the Labor Code.

FORTY-FIRST AFFIRMATIVE DEFENSE

(PAGA Unconstitutional – Excessive Fines and Punishment)

41. As a separate and distinct affirmative defense, Defendants allege that Plaintiff’s Complaint is barred, in whole or in part, because an award of penalties would result in the imposition of excessive fines in violation of the Eighth and Fourteenth Amendments of the United States Constitution and Article 1, sections 7 and 8 of the California Constitution, including the prohibition against excessive fines and punishment, particularly to the extent Plaintiff seek to “stack” PAGA penalties and/or recover civil penalties in addition to statutory penalties. *See State Farm Mutual Insurance Company v. Campbell*, 538 U.S. 408 (2003); *Timbs v. Indiana*, 138 S.Ct. 682, 689 (U.S.

Feb. 20, 2019) (Excessive Fines Clause of the Eighth Amendment prohibits the government from imposing “excessive fines” as punishment); *United States v. Mackby*, 261 F.3d 821, 830 (9th Cir. 2001) (civil sanctions under False Claims Act should be analyzed under “the Excessive Fines Clause because the sanctions represent a payment to the government, at least in part, as punishment.”); *City & Cty. of San Francisco v. Sainez*, 77 Cal. App. 4th 1302, 1321 (2000) (applying the prohibition of excessive fines to penalties imposed under California’s Building Code: “The law is settled that a civil penalty such as the one here, by virtue of its partially punitive purpose, is a fine for purposes of the constitutional protection.”).

FORTY-SECOND AFFIRMATIVE DEFENSE

(PAGA – Initial Violation)

42. As a separate and distinct defense, Defendants allege that, insofar as Defendants have never been cited by the Labor Commissioner, or received a judgment against it in a court of law, with respect to any of Plaintiff’s and/or any alleged aggrieved employees’ underlying Labor Code claims and/or legal theories, any civil penalties awarded to Plaintiff on behalf of herself or any other alleged aggrieved employee under the PAGA must be limited to those penalties applicable to an initial violation. *See Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334, 346 (“To assist the trial court on remand, we note that the increased \$200 civil penalty for ‘subsequent violation[s]’ does not apply unless Gunther presents evidence that the Labor Commission or a court notified Alaska that it was in violation of the Labor Code.”); *see also Amaral v Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008).

FORTY-THIRD AFFIRMATIVE DEFENSE

(Reservation of Rights)

43. As a separate and distinct affirmative defense, Defendants presently have insufficient knowledge or information upon which to form a belief as to whether there may be additional, as yet unstated, defenses and reserve the right to assert additional defenses or affirmative defenses in the event discovery indicates such defenses are appropriate.

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PRAYER FOR RELIEF

WHEREFORE, Defendant prays:

1. That the Complaint be dismissed in its entirety with prejudice;
 2. That Plaintiff and/or the allegedly aggrieved employees take nothing by this action;
 3. That Defendants be awarded their costs of suit and attorneys' fees incurred herein;
- and
4. That Defendants be awarded such other and further relief as the Court deems just and proper.

Dated: January 30, 2025

LITTLER MENDELSON, P.C.



Gregory G. Iskander
Benjamin Sanchez

Attorneys for Defendants
TWS RESTAURANT CORPORATION AND
COASTAL VALLEY ENTERPRISES

EXHIBIT 6

Sebastiana Ixquiactap v. Coastal Valley Enterprises, et al.
(Superior Court of California, Alameda - 24CV094320)

Messrelian Law Inc. Costs and Expenses	Total
LWDA Notice Filing Fee	\$ 75.00
Complaint Filing	\$ 469.65
Atty Service Fees	\$ 180.00
Data Analyst for Mediation	\$ 1,400.00
Mediator Fees	\$ 8,000.00
Court Filing Costs	\$ 127.22
PAGA Motion filing fee	\$ 87.45
Current Costs through 04/22/2026	\$ 10,339.32

EXHIBIT 7

Estimate Number:	20250930-PJI-06	Prepared By:	Patrick J. Ivie
Estimate Date:	9/30/2025	Telephone Number (mobile):	310.995.6455
Estimate Expiration Date:	12/29/2025	Email:	pjvie@simpluris.com

<u>Attorney Contact</u>		<u>Opposing Counsel Contact</u>	
Attorney:	Maralle Messrelian, Esq.	Attorney:	Gregory Iskander, Esq.
Firm:	Messrelian Law Inc.	Firm:	Littler
Email:	maralle@messrelianlaw.com	Email:	giskander@littler.com

Case Name: *Ixquiactap v. TWS Restaurant Corporation*
PAGA Settlement

Assumptions

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

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

Class/Aggrieved Employees:	400	Undeliverable Rate:	10%
Claims Rate:	n/a	Call Rate:	n/a
Opt-out Rate:	n/a	Average Call Length:	n/a
Language(s) for Communication	EN/SP	Fund Distribution:	Simpluris
Reminder Mailing:	n/a	Number of Distributions:	1
Unclaimed Funds:	Escheat	State(s):	CA
Length of Administration:	7 Months	Tax Year(s):	1

Case Setup

- Data compilation: develop case-specific response tracking

Category	Unit Value	# of Units	Total
Project Manager - Case Setup	\$110.00	1	\$110.00
Database Manager - Initial Data Analysis	\$125.00	2	\$250.00
Total:			\$360.00

Award Disbursement

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

Category	Unit Value	# of Units	Total
Disbursement Data Preparation	\$125.00	2	\$250.00
Disbursement Manager - Data Validation	\$90.00	2	\$180.00
Setup Banking Account/QSF	\$675.00	1	\$675.00
QSF Monthly Reconciliation and Maintenance	\$125.00	7	\$875.00
Spanish Translation (assuming 450 words)	\$0.25	450	\$112.50
NCOA/CASS/LACS	\$0.14	400	\$56.00
Print & Mail Distribution Check and Tax Docs	\$1.40	400	\$560.00
Postage	\$0.72	400	\$288.00
Process Returned Checks	\$0.20	40	\$8.00
Skip Trace Search Undeliverable Checks	\$0.12	40	\$4.80
Remail Checks (includes postage)	\$2.40	40	\$96.00
Escheat Uncashed Checks	\$500.00	1	\$500.00
QSF Reporting and Final Declaration	\$500.00	1	\$500.00
Reissue Checks / Mailing	\$2.50	4	\$10.00
Reissue 1099s	\$2.50	4	\$10.00
Responding to IRS/State/Agency Inquiries	\$75.00	2	\$150.00
QSF Annual Tax Reporting and Reconciliation	\$850.00	1	\$850.00
Distribution Manager	\$90.00	2	\$180.00
Total:			\$5,305.30

Case Completion

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

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

Total Estimated Cost of Administration:	\$5,945
Less Client Courtesy Discount:	-\$500
Discounted Total:	<u>\$5,445</u>

Terms and Conditions

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

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

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

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

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

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

6. Bank Accounts: Simpluris will establish a demand deposit checking account for funds received related to a distribution, unless directed otherwise in writing by the parties or unless the settlement agreement stipulates otherwise. Simpluris may derive financial benefits from financial institutions in connection with the deposit of such settlement funds with such institutions. Such amounts may be retained by Simpluris as a financial benefit and to offset administration costs including FDIC deposit insurance recordkeeping. In addition, Simpluris may also be required to establish a Qualified Settlement Fund ("QSF") to hold the settlement funds. Simpluris may derive financial benefits from the QSF in the form of interest payments derived therefrom. The amounts held pursuant to these Terms and Conditions are at the sole risk of Client and, without limiting the generality of the foregoing, Simpluris shall have no responsibility or liability for any diminution of the fund that may result from any deposit made with a financial institution including any losses resulting from a default by such institution or other credit losses. It is acknowledged and agreed that Simpluris will have acted prudently in depositing the fund at such institution.

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

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

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

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

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

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

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

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

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

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

16. Survival: Any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 8 - Limitation of Liability; Disclaimer of Warranties, Section 10 – Rights in Data, and Section 15- Jurisdiction, 17 -Confidentiality, and Section 18 – Indemnification.

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

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

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

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

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

EXHIBIT 8



September 30, 2025

CASE ASSUMPTIONS

Class Members	400
Opt Out Rate	N/A
Opt Outs Received	
Total Class Claimants	400
Subtotal Admin Only	\$5,745.90

Flat Fee Total \$5,745.90

For 400 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Spanish Translation, Printing & Mailing Included

Case: Ixquiactap v. TWS Restaurant Corporation, PAGA Administration

Phoenix Contact: Michael E. Moore
Contact Number: 949.331.0131
Email: mike@phoenixclassaction.com

Requesting Attorney: Maralle Messrelian
Firm: Messrelian Law, Inc.
Contact Number: 818.484.6531
Email: maralle@messrelianlaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PHX will need to adjust this Estimate accordingly.
Estimate is based on 400 Class Members. Class data **Must** be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of \$150 per hour will be charged for any additional analysis or programming. Pricing good for 90 days.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)			
Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$100.00	2	\$200.00
Programming Database & Setup	\$100.00	2	\$200.00
Toll Free Setup*	\$100.00	1	\$100.00
Call Center & Long Distance	\$2.50	64	\$160.00
NCOA (USPS)	\$100.00	1	\$100.00
Total			\$760.00

* Up to 120 days after disbursement

Data Merger & Scrub / PAGA Letter & Check / Postage / Spanish Translation			
Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$100.00	1	\$100.00
Spanish Translation	\$150.00	1	\$150.00
Data Merge & Duplication Scrub	\$0.09	400	\$36.00
PAGA Letter and Check Packet	\$1.00	400	\$400.00
Estimated Postage (up to 1 oz.)*	\$0.70	400	\$280.00
Total			\$966.00

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



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing PAGA Packets / Tracking & Programming Undeliverables			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Associate	\$55.00	4	\$220.00
Skip Tracing Undeliverables	\$0.75	100	\$75.00
Remail PAGA Packets	\$1.00	97	\$97.00
Estimated Postage	\$0.70	97	\$67.90
Programming Undeliverables	\$50.00	1	\$50.00
Total			\$509.90

Case Management			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Associate	\$55.00	5	\$275.00
Case Manager	\$85.00	3	\$255.00
Total			\$530.00

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

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



CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$75.00	1	\$75.00
Remail Undeliverable Checks (Postage Included)	\$1.50	60	\$90.00
Case Associate	\$55.00	3	\$165.00
Reconcile Uncashed Checks	\$85.00	4	\$340.00
Conclusion Reports	\$115.00	2	\$230.00
Case Manager Conclusion	\$85.00	2	\$170.00
Final Reporting & Declarations	\$115.00	3	\$345.00
QSF Annual Tax Reporting *	\$700.00	1	\$700.00
(State Tax Reporting & Escheating Uncashed Checks to the State of CA included)			
Total			\$2,115.00

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

Estimate Total: \$5,745.90



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

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

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

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

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

Tax Reporting Requirements

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

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

EXHIBIT 9

Case Name: Ixquiactap v. TWS Restaurant Corporation
Tuesday, September 30, 2025

Requesting Attorney:

Maralle Messrelian
MESSRELIAN LAW INC.
maralle@messrelianlaw.com
818.810.7747

ILYM Group Contact:

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

Estimate For Administrative Solutions: PAGA

KEY ASSUMPTIONS	
Total Number of Aggreived Employees	400
Estimated Percentage of Remails	15%
Certified Spanish Translation	Yes
ILYM Group Static Website	No
NCOA	Yes
Case Duration (Years)	1

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

Case Startup:	\$1,476.00
Distribution (Includes EIN, Bank Acct * /QSF Setup):	\$3,504.00
Case Conclusion:	\$570.00

Estimated ILYM Fees & Expenses: \$5,550.00

ILYM | GROUP, Inc.

CLASS ACTION ADMINISTRATION

Case Name: Ixquiactap v. TWS Restaurant Corporation

Tuesday, September 30, 2025

Requesting Attorney's Name: Maralle Messrelian

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - <i>Import and Formatting of Data*</i>	Hourly	\$150.00	1	\$150.00
Project Manager (Case notification and maintenance)	Hourly	\$120.00	2	\$240.00
Certified Spanish Translation	Flat Fee	\$750.00	1	\$750.00
NCOA	Flat Rate	\$140.00	1	\$140.00
Toll-Free Customer Service Representative	Flat Rate	\$196.00	1	\$196.00

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

Subtotal \$1,476.00

DISTRIBUTION (Includes EIN, Bank Acct /QSF Setup)*				
Distribution Setup & Management	Hourly	\$150.00	2	\$300.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	2	\$250.00
Notice, Check, Stub & Release - (including 1099)	Per Check	\$1.50	400	\$600.00
USPS First Class 1oz Postage	Per Piece	\$0.75	400	\$300.00
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.00	52	\$104.00
Preparation of Taxes	Hourly	\$150.00	3	\$450.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

**Additional Bank fees may apply*

Subtotal \$3,504.00

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	1	\$100.00
Process Unclaimed Funds	Flat Fee	\$350.00	1	\$350.00
Declaration	Hourly	\$120.00	1	\$120.00

Subtotal \$570.00

Estimated ILYM Fees & Expenses: \$5,550.00

ILYM Group's Terms and Conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT 10