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Superior Court of California
County of Los Angeles
06/01/2022
Sherri R. Carter, Executive Officer / Clerk of Court
By: M. Fregoso Deputy

5
6 Attorneys for Plaintiffs, JESUS G. DE LEON, JORGE OLIVARES CRUZ,
EDWIN BEDOLLA ZAPATA, ANNETTEE JIMENEZ, MARCUS MACK,
7 LUIS ALBERTO MEIJA MORALES, JOSE LUIS MORAN CORONA,
and PETER SIERRA, JR. on behalf of themselves and all others similarly situated
and aggrieved
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF LOS ANGELES - SPRING STREET COURTHOUSE**

11 JESUS G. DE LEON and JORGE OLIVARES
CRUZ, on behalf of themselves and all others
12 similarly situated and aggrieved,

CASE NO.: 19STCV18172

[Assigned to the Hon. Elihu M. Berle in Dept.
6]

13 Plaintiffs,

**FIRST AMENDED [~~PROPOSED~~] ORDER
GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT AND CERTIFYING
CLASS FOR SETTLEMENT PURPOSES
ONLY**

14 v.

15 WISMETTAC ASIAN FOODS, INC., a
California corporation; and DOES 1 through
16 100, inclusive,

17 Defendants.
18

19
20 This Court, having considered the Motion of plaintiffs Jesus G. De Leon, Jorge Olivares
21 Cruz, Edwin Bedolla Zapata, Annette Jimenez, Marcus Mack, Luis Alberto Meija Morales, Jose
22 Luis Moran Corona, and Peter Sierra, Jr. (collectively, "Plaintiffs"), for Preliminary Approval of the
23 Class Action Settlement and Provisional Class Certification for Settlement Purposes Only ("Motion
24 for Preliminary Approval"), the Declaration of David D. Bibiyan, the Stipulation for Class Action
25 and Representative Action Settlement (the "Settlement Agreement"), the Notice of Proposed Class
26 Action Settlement ("Class Notice"), and the other documents submitted in support of the Motion for
27 Preliminary Approval, hereby **ORDERS, ADJUDGES AND DECREES THAT:**

- 28 1. The definitions set out in the settlement Agreement are incorporated by reference

1 into this Order; all terms defined therein shall have the same meaning in this Order.

2 2. The Court certifies the following settlement class for the purpose of settlement only:
3 all current and former non-exempt, hourly-paid employees who worked for defendant Wismettac
4 Asian Foods, Inc. (“Defendant”), either directly hired and employed to work by Defendant or placed
5 to work for Defendant by a staffing agency or any other labor contractor, at any time from January
6 22, 2018 through May 9, 2021 (“Class Period”) in California (“Class Members”).

7 3. The Court preliminarily appoints named plaintiffs Jesus G. De Leon, Jorge Olivares
8 Cruz, Edwin Bedolla Zapata, Annette Jimenez, Marcus Mack, Luis Alberto Meija Morales, Jose
9 Luis Moran Corona, and Peter Sierra, Jr. as Class Representatives and David D. Bibiyan and Diego
10 Aviles of Bibiyan Law Group, P.C. as Class Counsel.

11 4. The Court preliminarily approves the proposed class settlement upon the terms and
12 conditions set forth in the Settlement Agreement. The Court finds, on a preliminary basis, that the
13 settlement appears to be within the range of reasonableness of settlement that could ultimately be
14 given final approval by the Court. It appears to the Court on a preliminary basis that the settlement
15 amount is fair, adequate and reasonable as to all potential settlement class members when balanced
16 against the probable outcome of further litigation relating to liability and damages issues. It further
17 appears that extensive and costly investigation and research has been conducted such that counsel
18 for the parties at this time are reasonably able to evaluate their respective positions. It further
19 appears to the Court that the settlement at this time will avoid substantial additional costs by all
20 parties, as well as the delay and risks that would be presented by the further prosecution of the
21 Action. It further appears that the settlement has been reached as the result of intensive, non-
22 collusive, arms-length negotiations utilizing an experienced third party neutral.

23 5. The Court, approves, as to form and content, the Class Notice that has been attached
24 hereto as Exhibit “A”.

25 6. The Court directs the mailing of the Class Notice by first-class mail to the Class
26 Members in accordance with the procedures set forth in the Settlement Agreement. The Court finds
27 that dissemination of the Class Notice set forth in the Settlement Agreement complies with the
28 requirements of law and appears to be the best notice practicable under the circumstances.

1 7. The Court hereby preliminarily approves the definition and disposition of the Gross
2 Settlement Amount of \$603,000.00, which is inclusive of: attorneys’ fees not to exceed thirty-five
3 percent (35%) of the Gross Settlement Amount, which, if not escalated pursuant to the Settlement
4 Agreement, amounts to \$211,050.00, in addition to actual costs incurred not to exceed \$25,000.00;
5 an incentive award of \$7,500.00 to Plaintiff De Leon, an award of \$7,500.00 to Plaintiff Cruz, each,
6 and \$3,500.00 each to Plaintiff Bedolla, Plaintiff Jimenez, Plaintiff Mack, Plaintiff Morales,
7 Plaintiff Moran, and Plaintiff Sierra.; costs of settlement administration of no more than \$15,000.00;
8 and Private Attorneys’ General Act of 2004 (“PAGA”) penalties in the amount of \$60,000.00, of
9 which \$45,000.00 (75%) will be paid to the Labor and Workforce Development Agency (“LWDA”)
10 and \$15,000.00 to “PAGA Settlement Members”, defined as Class Members working for Defendant
11 from April 1, 2018 through May 9, 2021 (“PAGA Period”).

12 8. The Gross Settlement Amount expressly excludes Employer Taxes, which will be
13 paid separately and apart by Defendant on the wages portion of the Gross Settlement Amount.

14 9. Defendant shall pay the Gross Settlement Amount within thirty (30) days of the
15 Court’s final approval of this Settlement.

16 10. Class Member’s “Workweeks” shall mean the number of workweeks that a Class
17 Member was employed by Defendant in a non-exempt, hourly position during the Class Period,
18 whether as a Direct Hire or Temporary Worker. The terms “Direct Hire” or “Direct Employee”
19 shall mean all Class Members who were directly hired and employed to work by Defendant. The
20 term “Temporary Worker” shall mean all Class Members who were placed to work for Defendant
21 by a staffing agency or any other labor contractor.

22 11. Defendant represents that there are no more than approximately thirty-eight thousand
23 one hundred ninety-seven (38,197) Workweeks worked by Direct Employees and approximately
24 ten thousand three hundred twenty-eight (10,328) Workweeks worked by Temporary Workers,
25 which combine for a total of approximately forty-eight thousand five hundred twenty-five (48,525)
26 Workweeks for the Class Period. In the event the actual total number of Workweeks for the Class
27 Period is determined by the Settlement Administrator to exceed 48,525 Workweeks by more than
28 seven percent (7%), or three thousand three hundred ninety-seven (3,397) Workweeks, for a total

1 greater than fifty-one thousand nine hundred twenty-two (51,922) Workweeks, then Defendants
2 shall increase the Gross Settlement Amount by the Workweek value per Workweek in excess of
3 48,525 Workweeks. The Workweek value shall be set at Thirteen Dollars and Seventy-Five Cents
4 (\$13.75). Thus, for example, should there be 53,000 Workweeks worked in the Class Period, then
5 the Gross Settlement Amount shall be increased by Sixty-One Thousand, Five Hundred Thirty-One
6 Dollars and Zero cents (\$61,531.00), for Workweeks attributable to Direct Employees, and Seven
7 Dollars and Fifty Cents (\$7.50), for Workweeks attributable to Temporary Workers. Should any
8 dispute arise among the Parties or their respective counsel regarding the increase in Workweeks,
9 counsel shall meet and confer in an attempt to resolve such disputes prior to submitting them to the
10 Court for resolution.

11 12. The Court deems ILYM Group, Inc. (“ILYM”) the Settlement Administrator, and
12 payment of administrative costs, not to exceed \$15,000.00, out of the Gross Settlement Amount for
13 services to be rendered by ILYM on behalf of the class.

14 13. The Court directs Defendants to, by June 6, 2022, provide the Settlement
15 Administrator with the “Class List” for Class Members. The Class List will include for Class
16 Members: (a) name, last known address(es) and last known telephone number(s) currently in
17 Defendants’ possession, custody, or control; (b) Social Security Number in Defendants’ possession,
18 custody, or control; and (c) the hire dates and termination dates (if applicable) for each Class
19 Member.

20 14. Because Social Security Numbers are included in the Class List, the Settlement
21 Administrator shall maintain the Class List in confidence, and shall only access and use the list to
22 administer the settlement in conformity with the Court’s orders.

23 15. Upon receipt of the Class List, the Settlement Administrator shall perform an address
24 search using the United States Postal Service National Change of Address (the “NCOA”) database
25 and update the addresses contained on the Class List with the newly found addresses, if any. To the
26 extent that this process yields an updated address, that updated address shall replace the last known
27 address and be treated as the new last known address for purposes of this Settlement, and for
28 subsequent mailings.

1 16. By June 20, 2022, the Settlement Administrator shall mail the Class Notice, in
2 English and Spanish, to the Settlement Class Members, via first-class regular U.S. Mail, using the
3 most current mailing address information available.

4 17. The deadline by which Class Members may dispute the number of Workweeks
5 worked, and the deadline by which Class Members may opt out or object, shall be August 19, 2022,
6 unless the Class Member had their Class Notice re-mailed. Class Members who are re-mailed a
7 Class Notice shall have fifteen (15) calendar days from the re-mailing, or August 19, 2022,
8 whichever is later, in which to postmark a Request for Exclusion, objection, or to dispute the
9 information provided in the Class Notice. This shall be known as the “Response Deadline.”

10 18. The Class Notice shall instruct Settlement Class Members on how to exclude
11 themselves from the Settlement Class. Any Settlement Class Member may request exclusion from
12 (i.e., “opt out” of) the Settlement by mailing a written request to be excluded from the Settlement
13 (the “Request for Exclusion”) to the Settlement Administrator, postmarked on or before August 19,
14 2022. To be valid, a Request for Exclusion must include the Class Member’s name, last four digits
15 of his or her Social Security Number, and should be signed by the Settlement Class Member or a
16 lawful representative. The Request for Exclusion must also include the following statement or
17 something to its effect: “Please exclude me from the Settlement Class in the *Jesus G. De Leon v.*
18 *Wismettac Asian Foods, Inc.* matter” or a statement of similar meaning. The date of the postmark
19 on the return mailing envelope receipt confirmation will be the exclusive means to determine
20 whether a Request for Exclusion has been timely submitted. All Requests for Exclusion will be
21 submitted to the Settlement Administrator, who will certify jointly to Class Counsel and counsel for
22 Defendants the Requests for Exclusion that were timely submitted.

23 19. Any Class Member who does not submit a timely and valid Request for Exclusion
24 shall be deemed a “Participating Class Member” and be bound by the terms of the Settlement,
25 including the releases provide therein.

26 20. Settlement Class Members will have an opportunity to dispute the information
27 provided in their Class Notice (the “Workweek Dispute”). A Workweek Dispute must be
28 communicated to the Settlement Administrator in writing by no later than August 19, 2022. The

1 communication shall state the Settlement Class Member's name, current address, phone number,
2 and the last four digits of his or her Social Security Number, and shall be signed by the Settlement
3 Class Member or a lawful representative. The communication shall clearly state the name of the
4 action, *Jesus G. De Leon v. Wismettac Asian Foods, Inc.*, the number of Workweeks that the
5 Settlement Class Member contends are incorrect, and attach any documentation in support of the
6 Workweek Dispute. Absent evidence rebutting Defendant's records, Defendant's records will be
7 presumed determinative. However, if a Class Member produces credible evidence to the contrary,
8 the Settlement Administrator will evaluate the evidence submitted by the Settlement Class Member
9 and will make the final decision as to the number of Workweeks that should be applied. The
10 Settlement Administrator shall confer with Defendant, as may be needed, to resolve any and all
11 timely Workweek Disputes that it receives from Settlement Class Members. All such disputes are
12 to be resolved no later than ten (10) calendar days after August 19, 2022.

13 21. Only Settlement Class Members who do not opt out of the Settlement (i.e.,
14 Participating Class Members) may object to the Settlement. In order for any Settlement Class
15 Member to object to this Settlement in writing, or any term of it, he or she must do so by mailing a
16 written objection to the Settlement Administrator at the address or phone number provided on the
17 Class Notice, postmarked on, or no later than, August 19, 2022. The Settlement Administrator shall
18 email a copy of the Objection forthwith to Class Counsel and Defendant's counsel, within three (3)
19 court days of receipt. Defendant's counsel shall lodge a copy of the Objection with the Court at
20 least sixteen (16) court days before the hearing on the Motion for Final Approval. The Objection
21 shall set forth in writing the objector's name, current address, last four digits of his or her Social
22 Security Number, and should be signed by the Settlement Class Member or a lawful representative.
23 The Objection must also state the name of the Action, that the Class Member wishes to object to the
24 Settlement, and the reason(s) for the Objection, along with whatever legal authority, if any, the
25 objector asserts in support of the Objection. If a Settlement Class Member objects to the Settlement,
26 the Settlement Class Member will remain a member of the Settlement Class and, if the Court
27 approves this Agreement, such Settlement Class Member will be bound by the terms of the
28 Settlement in the same way and to the same extent as a Settlement Class Member who did not object.

1 Class Counsel and Defendant’s counsel may respond to any Objection lodged with the Court by
2 September 9, 2022.

3 22. No later than seven (7) calendar dates after August 19, 2022, the Settlement
4 Administrator shall provide counsel for the Parties with a declaration attesting to the completion of
5 the notice process, including the number of attempts to obtain valid mailing addresses for and re-
6 sending of any returned Class Notices, as well as the identifies, number of, and copies of all Requests
7 for Exclusion and objections/comments received by the Settlement Administrator. Said declaration
8 shall be filed with the Court on or before September 9, 2022.

9 23. If a Settlement Class Members submits both an Objection and a Request for
10 Exclusion, the Request for Exclusion will control and the Objection will be void.

11 24. All papers filed in support of final approval, including supporting documents for
12 attorneys’ fees and costs, shall be filed by July 20, 2022.

13 25. A Final Approval Hearing shall be held with the Court on September 19, 2022 at
14 9:00 a.m. in Department “6” of the above-entitled Court to determine: (1) whether the proposed
15 settlement is fair, reasonable, and adequate and should be finally approved by the Court; (2) the
16 amount of attorneys’ fees and costs to award Class Counsel; (3) the amount of incentive award to
17 the Class Representatives; (4) the amount to be paid to the Settlement Administrator; and (5) the
18 amount to be apportioned to PAGA and/or paid to the LWDA and PAGA Settlement Members.

19 26. No more than fourteen (14) calendar days after payment by Defendant of the Gross
20 Settlement Amount, as well as payment by Defendant of the Employer Taxes, the Settlement
21 Administrator shall distribute all payments due under the Settlement.

22 27. The Individual Settlement Payments to Participating Class Members and the PAGA
23 Payments to PAGA Settlement Members shall be transmitted by U.S. Mail to the last-known
24 addresses. The Individual Settlement Payment checks shall contain language in the endorsement
25 section, which states:

26 The cashing, depositing, or negotiation of this settlement check shall be deemed to be
27 an opt-in by the Settlement Class Member to whom the check is endorsed, for the
28 purposes of the settlement and release of the Released Claims arising under the Fair
Labor Standards Act (“FLSA”) as described in the Settlement Agreement and Release

1 of Claims in *Jesus G. De Leon v. Wismettac Asian Foods, Inc.*, Los Angeles County
2 Superior Court Case No. 19STCV18172.

3 28. Furthermore, also within fourteen (14) calendar days after payment by Defendant of
4 the full Gross Settlement Amount as well as payment by Defendant of the Employer Taxes, the
5 Settlement Administrator shall pay the Court-approved payments for the Service Award to
6 Plaintiffs, attorneys' fees and litigation costs and expenses to Class Counsel, Settlement
7 Administration Costs to the Settlement Administrator, and the LWDA Payment.

8 29. Individual Settlement Payment checks and checks to PAGA Settlement Members
9 for their portion of the PAGA Payment shall remain valid and negotiable for one hundred and
10 eighty (180) calendar days after the date of their issuance. Within seven (7) calendar days after
11 expiration of that 180-day period, checks for such payments shall be canceled and funds associated
12 with such checks shall be considered unpaid, unclaimed, or abandoned cash residue, pursuant to
13 Code of Civil Procedure §384 (the "Unpaid Residue"). The Unpaid Residue plus accrued interest,
14 if any, as provided in Code of Civil Procedure §384, shall be transmitted as follows: to Legal Aid
15 at Work, 180 Montgomery St., Suite 600, San Francisco, California 94104 for use in Los Angeles
16 County. The Settlement Administrator shall prepare a report regarding the distribution plan,
17 pursuant to Code of Civil Procedure §384, and the report shall be presented to the Court by Class
18 Counsel along with a proposed amended judgment that is consistent with the provisions of Code
19 of Civil Procedure §384.

20 30. In the event the settlement does not become effective in accordance with the terms
21 of the Settlement, or the settlement is not finally approved, or is terminated, cancelled or fails to
22 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
23 and the parties shall revert to their respective positions as of the entry of the Settlement Agreement.

24
25 **IT IS SO ORDERED.**

26 Dated: _____, 2022



Elihu M. Berle

Judge of the Superior Court

Elihu M. Berle / Judge

EXHIBIT A

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND DATE
FOR FINAL APPROVAL HEARING**

Jesus G. De Leon, et al. v. Wismettac Asian Foods, Inc.

(County of Los Angeles, California Superior Court Case No. 19STCV18172)

As a current or former non-exempt, hourly-paid California employee of Wismettac Asian Foods, Inc. you are entitled to receive money from a class action settlement.

Please read this Notice carefully. This Notice relates to a proposed settlement of class action litigation. If you are a Class Member, it contains important information about your right to receive a payment from the Settlement fund.

You have received this Notice of Class Action Settlement because the records of Wismettac Asian Foods, Inc. (“Defendant”) shows you are a “Class Member,” and therefore entitled to a payment from this class action settlement. Class Members are all persons who currently work or formerly worked for Defendant as non-exempt, hourly-paid employee in the State of California, whether as a direct hire or a temporary worker, any time from January 22, 2018 through May 9, 2021 (“Class Period”).

- The settlement resolves a class-action lawsuit, *Jesus G. De Leon, et al. v. Wismettac Asian Foods, Inc.* (the “Lawsuit”), which alleges that Defendant: (1) failed to pay Class Members overtime and minimum wages; (2) failed to pay Class Members for all hours worked, (3) failed to provide Class Members legally-compliant meal and rest breaks, or associated premium payments, (4) failed to provide accurate itemized wage statements; (5) failed to pay all wages owed upon separation from employment; (6) failed to reimburse business expenses; and (7) engaged in unfair competition. Based on these and other alleged Labor Code violations, Plaintiffs also seek civil penalties under the California Labor Code Private Attorney Generals Act (“PAGA”).
- On [REDACTED], the Los Angeles Superior Court granted preliminary approval of this class action Settlement and ordered that all Class Members be notified of the Settlement. The Court has not made any determination of the validity of the claims in the Lawsuit. Defendant vigorously denies the claims in the Lawsuit and contends that it fully complied with all applicable laws. Defendant nevertheless desires to settle the Lawsuit for the purpose of avoiding the burden, expense, and uncertainty of continuing litigation, and for the purpose of putting to rest the controversies brought about in the Lawsuit.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE PAYMENT	Get a payment and give up your legal rights to pursue claims released by the settlement of the Lawsuit.
OPT OUT OF THE CLASS SETTLEMENT	Exclude yourself from the Class Settlement, get no payment for settlement of the class claims, and retain your legal rights to individually pursue the class claims that would otherwise be released by the settlement of the Lawsuit. If you worked from April 1, 2018 through and including May 9, 2021 (“PAGA Period”) as a non-exempt, hourly-paid employee of Defendant, whether as a direct hire or temporary worker, then you will also be deemed an “PAGA Settlement Member” and you will still receive your share of the proceeds available from the settlement of the PAGA Released Claims, defined below,

Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]

	(your “Individual PAGA Payment”) regardless of whether you opt out of the class settlement.
OBJECT TO THE SETTLEMENT	If you do not opt out, you may write to the Settlement Administrator, the ILYM Group, Inc., about why you object to the settlement, and they will forward your concerns to counsel which will then be provided to the Court. If the Court approves the Settlement despite your objection, you will still be bound by the Settlement. If you timely object, you or your attorney may also address the Court during the Final Approval Hearing scheduled for September 19, 2022 at 9:00 a.m. in Department 6 of the Spring Street Courthouse of Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012.

The Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at 9:00 a.m. on September 19, 2022, in the Spring Street Courthouse of Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012 in Department 6. You are not required to attend the Hearing, but you are welcome to do so.

Why Am I Receiving This Notice?

Defendant’s records show that you currently work, or previously worked, for Defendant as a non-exempt, hourly-paid employee in the State of California, as a direct hire and/or temporary worker, during the Class Period. You were sent this Class Notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all of your options before the Court decides whether to finally approve the settlement. If the Court approves the settlement and then any objections and appeals are resolved, a “Settlement Administrator” appointed by the Court will make the payments described in this Notice. This Notice explains the Lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

What Is This Case About?

Jesus G. De Leon, Jorge Olivares Cruz, Edwin Bedolla Zapata, Annette Jimenez, Marcus Mack, Luis Alberto Meija Morales, Jose Luis Moran Corona, and Peter Sierra, Jr. were all non-exempt employees of Defendant. They are the “Plaintiffs” in this case and are suing on behalf of themselves and Class Members for Defendant’s alleged failure to pay overtime and minimum wages; failure to pay all wages due for all hours worked; failure to provide them with legally-compliant rest and meal breaks, or associated premium wages; failure to provide accurate itemized wage statements; failure to pay all wages owed upon separation from employment; failure to reimburse work expenses; and unfair competition. Based on these and other alleged Labor Code violations, Plaintiffs also seek to recover penalties under the PAGA.

Defendant denies all of the allegations made by Plaintiffs and denies that it violated any law. Defendant desires to settle the Lawsuit to avoid the burden, expense, and uncertainty of continuing litigation, and resolve the disputed claims set forth in the Lawsuit. The Court has made no ruling on the merits of Plaintiffs’ claims. The Court has only preliminarily approved this Class Action Settlement. The Court will decide whether to give final approval to the Settlement at the Final Approval Hearing.

Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]

Summary of the Settlement Terms

Plaintiffs and Defendant have agreed to settle this case on behalf of themselves and the Class Members for the Gross Settlement Amount of \$603,000.00, which shall be paid by Defendant within thirty (30) calendar days from the Final Approval Date. The Gross Settlement includes: (1) Settlement Administration Costs up to \$15,000; (2) a service payments of up to \$7,500 to Plaintiff Jesus G. De Leon, \$7,500 to Plaintiff Jorge Olivares Cruz, \$3,500 to Plaintiff Edwin Bedolla Zapata, \$3,500 to Plaintiff Annette Jimenez, \$3,500 to Plaintiff Marcus Mack, \$3,500 to Plaintiff Luis Alberto Mejia Morales, \$3,500 to Plaintiff Jose Luis Moran Corona, and \$3,500 to Plaintiff Peter Sierra, Jr. for their time and effort in pursuing this case and in exchange for a broader release of claims against Defendant; (3) up to 35% in attorneys' fees which, unless escalated pursuant to the Settlement Agreement, shall amount to \$211,050; (4) up to \$25,000 in litigation costs to Class Counsel; and (5) payment allocated to PAGA penalties in the amount of \$60,000, of which 75% (or \$45,000.00) will be paid to the California Labor and Workforce Development Agency ("LWDA") and 25% (\$15,000.00) to PAGA Settlement Members. After deducting these sums, unless the Gross Settlement Amount is escalated pursuant to this Agreement, a total of approximately not less than \$255,950 will be available for distribution to Class Members ("Net Settlement Amount"), and \$15,000 will be available for distribution to PAGA Settlement Members.

Distribution to Class Members

Class Members who do not opt out, also known as "Participating Class Members", will receive a *pro rata* payment of the Net Settlement Amount based on the number of verified actual weeks worked by Class Members for Defendant, as a direct hire and/or temporary worker, during the Class Period ("Participating Class Workweeks"). The Settlement Administrator will determine the aggregate number of Workweeks for all Participating Class Members during the Class Period

Class Members' payments will be calculated by dividing the number of Participating Class Workweeks attributed to the Class Member by all Participating Class Workweeks attributed to members of the Settlement Class, multiplied by the Net Settlement Amount. The formula will be weighted based upon a Class Member's work either directly for Defendant ("Direct Hire") or as a temporary employee ("Temporary Employee"). The number of Participating Class Workweeks in which a Participating Class Member worked as a Direct Hire during the Class Period, if any, will be referred to as the "Direct Workweeks." The number of Participating Class Workweeks in which a Participating Class Member worked during the Class Period as a Temporary Employee, if any, will be referred to as "Temporary Workweeks."

Otherwise stated, the calculation for a Participating Class Member's Individual Settlement Share will be as follows:

- Step 1: (Total Direct Workweeks x 13.75) + (Total Temporary Workweeks x 7.50) = Weighted Workweeks
- Step 2: Net Settlement Amount ÷ Weighted Workweeks = Per Workweek Value for Participating Class Members ("Workweek Value")
- Step 3: (Participating Class Member's Direct Workweeks + Temporary Workweeks) × Workweek Value = Participating Class Member's Individual Settlement Share

In addition, current and former non-exempt, hourly-paid employees who worked in California for Defendant at any time during the PAGA Period, whether as a Direct Employee or Temporary Worker (*i.e.*, PAGA Settlement Members) will receive a *pro rata* share of the \$15,000 allocated as PAGA penalties, whether or not they opt out, based on the number of pay periods worked by each PAGA Settlement Member during the PAGA Period ("PAGA Pay Periods"). The Settlement Administrator will determine the aggregate number of Pay Periods for all PAGA

Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]

Settlement Members. The number of PAGA Pay Periods in which a PAGA Settlement Member worked as Direct Hire during the PAGA Period, if any, will be referred to as the “Direct Pay Periods.” The number of PAGA Pay Periods in which a PAGA Settlement Member worked as Temporary Employee during the PAGA Period, if any, will be referred to as the “Temporary Pay Periods.”

Otherwise stated, the calculation for a PAGA Settlement Member’s *pro rata* share of PAGA penalties will be as follows:

- Step 1: (Total Direct Pay Periods x 13.75) + (Total Temporary Pay Periods x 7.50) = Weighted Pay Periods
- Step 2: Fifteen Thousand Dollars and Zero Cents (\$15,000.00) (i.e., the portion of the PAGA Payment paid to PAGA Settlement Members) ÷ Weighted Pay Periods = Per Pay Period Value for PAGA Settlement Members (“Pay Period Value”)
- Step 3: (PAGA Settlement Member’s Direct Pay Periods + Temporary Pay Periods) × Pay Period Value = PAGA Settlement Member’s Individual PAGA Payment

Defendants’ records indicate that you worked [**Total Direct Workweeks**] and [**Total Temporary Workweeks**] as a non-exempt employee in California during the Class Period and [**Total Direct Pay Periods**] and [**Total Temporary Pay Periods**] during the PAGA Period. Based on these records, your estimated payment as a Class Member would be [**\$Estimated Award**] and your estimated payment as a PAGA Settlement Member would be [**\$Estimated Award**]. If you believe this information is incorrect and wish to dispute it, you must mail a dispute to the Settlement Administrator no later than August 19, 2022. Please include any documentation you have that you contend supports your dispute.

Tax Reporting

100% of the payments for PAGA penalties to PAGA Settlement Members will be allocated as penalties reported on IRS Form 1099. 20% of each Settlement Payment to Class Members who do not opt out will be allocated as wages and reported on an IRS Form W-2, and 80% will be allocated as penalties and interest reported on IRS Form 1099. This notice is not intended to provide legal or tax advice on your Settlement Share.

Your Options Under the Settlement

Option 1 – Do Nothing and Receive Your Payment

If you do not opt out (do nothing), you are automatically entitled to your Individual Settlement Payment (*i.e.*, your share of the Net Settlement Amount) because you are a Class Member. If you do not dispute your settlement share calculation and do not opt out of the settlement, you will receive a your Individual Settlement Payment, as well as your Individual PAGA Payment if you are also an PAGA Settlement Member, and you will be bound by the entire release in the settlement. **In other words, if you are a Class Member, you do not need to take any action to receive the settlement payment(s) set forth above.**

Class Members who do not submit a valid and timely opt out (pursuant to Option 2 below), will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Claims he or she may have or had upon final approval of this Settlement and payment by Defendants to the Settlement Administrator.

“Released Claims” refers to the release and discharge of the Released Parties from any and all claims, demands, rights, liabilities, obligations, penalties, costs, expenses, attorneys’ fees, damages, and/or causes of action of any

Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER**]**

nature and description whatsoever, against the Released Parties that were asserted in the original and amended complaints previously filed in the Action, or any and all claims that could have been asserted against the Released Parties based on the factual allegations in the original and amended complaints previously filed in the Action, as follows: For the duration of the Class Period, the release includes, without limitation, any claims under federal or state law for unpaid wages; claims for unpaid, agreed minimum, and overtime wages; claims for noncompliant meal and rest periods, and associated premium pay; claims for liquidated damages arising from alleged failure to pay minimum wages; claims of late/untimely payment of wages by separation of employment; claims for “waiting time penalties”; claims for unreimbursed business expenses; claims under Labor Code §§ 200, 201, 202, 203, 204, 226, 226.7, 246, 247, 510, 512, 1174, 1194, 1194.2, 1197, 1198, 1199, and 2802, and all derivative claims asserted through California Business & Professions Code § 17200, *et seq.* arising from the aforementioned Labor Code violations, as well as all derivative claims for attorneys’ fees and interest. This release shall also include claims for restitution and other equitable relief, liquidated damages, punitive damages, or penalties, claims under the Fair Labor Standards Act (“FLSA”), and any other benefit claimed on account of the claims or factual allegations asserted or that could have been asserted based on the factual allegations in the original or amended complaints filed in the Action. The claims covered by this release are the “Class Released Claims”.

For PAGA Settlement Members, the release includes all claims for civil penalties under PAGA arising out of Labor Code §§ 226.3, 558, 1197.1, and 2699 for the duration of the PAGA Period, based on the factual allegations and Labor Code sections alleged to have been violated in the original or amended complaints previously filed in this Action, which includes, without limitation, Labor Code §§ 200, 201, 202, 203, 204, 226, 226.3, 226.7, 227.3, 246, 247, 510, 512, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, and 2810.5 (the “PAGA Released Claims”).

Collectively, the Class Released Claims and PAGA Released Claims shall be referred to as the “Released Claims”.

“Released Parties” shall mean Defendant and each of its past, present, and future respective affiliates, parents, subsidiaries, predecessors, successors, divisions, joint ventures and assigns, and each of these entities’ past or present directors, officers, employees, partners, members, principals, agents, insurers, co-insurers, re-insurers, shareholders, attorneys, accountants, auditors, advisors, consultants, labor contractors, pension and welfare benefit plans, plan fiduciaries, administrators, trustees, and personal or legal representatives.

Option 2 – Opt Out of the Settlement

If you do not wish to receive your Individual Settlement Payment or release the Class Released Claims, you may exclude yourself by submitting a written request to be excluded from the Class. Your written request must expressly and clearly indicate that you do not want to participate in the Settlement, and you desire to be excluded from the Settlement. The written request for exclusion must include your full name, the last four digits of your Social Security Number, and the following statement or something to its effect: “Please exclude me from the Settlement Class in the *Jesus G. De Leon v. Wismettac Asian Foods, Inc.* matter.” Sign, date, and mail your written request for exclusion by U.S. First-Class Mail to the address below.

The proposed settlement includes the settlement of the PAGA Released Claims. An employee may not request exclusion from the settlement of a PAGA claim. Thus, if the court approves the settlement, then even if you request exclusion from the settlement, if you are a PAGA Settlement Member, you will still receive your Individual PAGA Payment and will be deemed to have released the PAGA Released Claims. A request for exclusion will preserve your right, if any, to individually pursue only the Class Released Claims.

Your written request for exclusion must be mailed to the Administrator no later than August 19, 2022.

Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]

Option 3 – File an Objection to the Settlement

If you wish to object to the Settlement, you may file an objection in writing stating why you object to the Settlement. Your written objection must provide your full name, your current address, the last four digits of your Social Security Number, your signature, the name of the Lawsuit, and a statement of the reasons why you believe that the Court should not approve the Settlement. Your written objection must be mailed the Settlement Administrator no later than August 19, 2022. Please note that you cannot both object to the Settlement and exclude yourself. If you exclude yourself, then your objection will be overruled. If the Court overrules your objection, you will be bound by the Settlement and will receive your Settlement Share.

Final Approval Hearing

You may, if you wish, also appear at the Final Approval Hearing set for September 19, 2022 at 9:00 a.m. in the Spring Street Courthouse of Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012 in Department 6 and orally object to the Settlement, discuss your written objections with the Court and the Parties, or otherwise comment on the Settlement at your own expense. You may also retain an attorney to represent you at the Hearing at your own expense.

Additional Information

This Notice of Class Action Settlement is only a summary of this case and the Settlement. For a more detailed statement of the matters involved in this case and the Settlement, you may visit www._____.com, call the Settlement Administrator at [PHONE NUMBER] or Class Counsel:

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You may also refer to the pleadings, the Settlement Agreement, and other papers filed in this case, which may be inspected at the Spring Street Courthouse of Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012, during regular business hours of each court day.

All inquiries by Class Members regarding this Notice of Class Action Settlement and/or the Settlement should be directed to the Settlement Administrator.

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE,
DEFENDANTS, OR DEFENDANTS' ATTORNEYS WITH INQUIRIES.**

Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 8484 Wilshire Blvd, Suite 500, Beverly Hills, California 90211

On May 19, 2022, I caused a true and correct copy of **FIRST AMENDED [PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND CERTIFYING CLASS FOR SETTLEMENT PURPOSES ONLY** to be served by electronic transmission via Case Anywhere to the parties and/or counsel who are registered to use Case Anywhere and set forth in the below service list:

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Attorneys for Defendant Wisemettac Asian Foods, Inc.

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

Executed on May 19, 2022 at Beverly Hills, California.

/s/ Emanuel Munguia _____
Emanuel Munguia