

**FILED**  
2025 FEB 20 A 9:05  
CITY OF SAN DIEGO SUPERIOR COURT  
SAN DIEGO, CALIFORNIA

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Attorneys for PLAINTIFF

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

JOSE RAMON DE LA CRUZ, an individual,  
on behalf of himself, and on behalf of all  
persons similarly situated;

Plaintiff,

vs.

GALPAO GAUCHO TWO, LLC, a Texas  
limited liability company; GALPAO  
GAUCHO THREE, LLC, a California limited  
liability company; GALPAO GAUCHO FOUR  
LLC, a California limited liability company;  
GALPAO GAUCHO FIVE LLC, a California  
limited liability company; GALPAO  
GAUCHO EIGHT LLC, a California limited  
liability company; GALPAO GAUCHO NINE  
LLC, a California limited liability company;  
and DOES 1-50, Inclusive,

Defendants.

Case No. C23-01770

**~~PROPOSED~~ SECOND AMENDED  
ORDER GRANTING PLAINTIFF'S  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS AND PAGA  
ACTION SETTLEMENT**

Judge: Hon. Judge Edward G. Weil  
Dept.: 39

1 This matter having come before the Honorable Judge Edward G. Weil of the Superior Court of  
2 the State of California, in and for the County of Contra Costa, with Jean-Claude Lapuyade, Esq., of the  
3 JCL Law Firm, APC and Shani O. Zakay, Esq. of the Zakay Law Group, APLC as counsel for Plaintiff  
4 JOSE RAMON DE LA CRUZ (“Plaintiff”), and Farella Braun + Martell LLP, appearing for  
5 Defendants GALPAO GAUCHO TWO, LLC; GALPAO GAUCHO THREE, LLC; GALPAO  
6 GAUCHO FOUR LLC; GALPAO GAUCHO FIVE LLC; GALPAO GAUCHO EIGHT LLC; and  
7 GALPAO GAUCHO NINE LLC (“Defendants”). The Court, having carefully considered the briefs,  
8 argument of counsel and all the matters presented to the Court, and good cause appearing, hereby  
9 GRANTS Plaintiff’s Motion for Preliminary Approval of Class and PAGA Action Settlement.

10 **Background and Settlement Terms**

11 The original complaint was filed on July 12, 2022, raising class action claims on behalf of non-  
12 exempt employees, alleging that defendants violated the Labor Code in various ways, including failure  
13 to pay minimum and overtime wages, failure to provide meal breaks, failure to provide proper wage  
14 statements, failure to reimburse necessary business expenses, and failure to pay all wages due on  
15 separation.

16 The settlement would create a gross settlement fund of \$750,000. The class representative  
17 payment to the plaintiff would be \$10,000. Attorney’s fees would be \$241,666.67 (one-third of the  
18 settlement). Litigation costs would not exceed \$30,000. The settlement administrator’s costs (Apex  
19 Class Action Administration) were bid at \$13,950. PAGA penalties would be \$30,000, resulting in a  
20 payment of \$19,500 to the LWDA and \$10,500 to plaintiffs. (These percentages assume that the recent  
21 statutory amendments modifying the previous 75/25 split applies to this case.) The net amount paid  
22 directly to the class members would be about \$399,333.33. The fund is non-reversionary. There are an  
23 estimated 1,350 class members. Based on the estimated class size, the average net payment for each  
24 class member is approximately \$295.

25 The proposed settlement would certify a class of all current and former non-exempt employees  
26 employed by Defendants in California from July 20, 2019 through July 1, 2024.

27 An escalator clause provides that if the number of work weeks increases by more than 10% above  
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1 the current estimate, the gross settlement amount will be increased proportionately.

2 The class members will not be required to file a claim. Class members may object or opt out of  
3 the settlement. (Aggrieved employees cannot opt out of the PAGA portion of the settlement.) Funds  
4 would be apportioned to class members based on the number of workweeks worked during the class  
5 period.

6 Various prescribed follow-up steps will be taken with respect to mail that is returned as  
7 undeliverable. Checks undelivered or uncashed 180 days after mailing will be voided, and will be paid  
8 to tendered to the California Controller's Unclaimed Property Fund in the name of the Class  
9 Members who did not cash their checks.

10 The settlement contains release language covering "all class claims alleged, or reasonable could  
11 have been alleged based on the facts alleged, in the operative complaint." Under recent appellate  
12 authority, the limitation to those claims with the "same factual predicate" as those alleged in the  
13 complaint is critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 ["A court  
14 cannot release claims that are outside the scope of the allegations of the complaint." "Put another way,  
15 a release of claims that goes beyond the scope of the allegations in the operative complaint' is  
16 impermissible." (*Id.*, quoting *Marshall v. Northrop Grumman Corp.* (C.D. Cal.2020) 469 F.Supp.3d  
17 942, 949.) PAGA claims are released to the extent they were "alleged in the operative complaint in the  
18 Action and Plaintiff's PAGA notice to the LWDA[.]"

19 Informal written discovery was undertaken, some of which was reviewed by retained statisticians  
20 and economists. The matter settled after arms-length negotiations, which included a session with an  
21 experienced mediator, in July of 2024.

22 Counsel also has provided an analysis of the case, and how the settlement compares to the  
23 potential value of the case, after allowing for various risks and contingencies. This included an  
24 estimate of defendant's exposure for the class claims of about \$3,499,826.10.

25 The potential liability needs to be adjusted for various evidence and risk-based contingencies,  
26 including problems of proof. PAGA penalties are difficult to evaluate for a number of reasons: they  
27 derive from other violations, they include "stacking" of violations, the law may only allow application  
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1 of the “initial violation” penalty amount, and the total amount may be reduced in the discretion of the  
2 court. (See Labor Code, § 2699(e)(2) [PAGA penalties may be reduced where “based on the facts and  
3 circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary  
4 and oppressive, or confiscatory.”])

5 Counsel attest that notice of the proposed settlement was transmitted to the LWDA concurrently  
6 with the filing of the motion.

7 **A. Legal Standards**

8 The primary determination to be made is whether the proposed settlement is “fair, reasonable,  
9 and adequate,” under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801, including “the  
10 strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the  
11 risk of maintaining class action status through trial, the amount offered in settlement, the extent of  
12 discovery completed and the state of the proceedings, the experience and views of counsel, the presence  
13 of a governmental participant, and the reaction ... to the proposed settlement.” (*See also Amaro v.*  
14 *Anaheim Arena Mgmt., LLC*, supra, 69 Cal.App.5th 521.)

15 Because this matter also proposes to settle PAGA claims, the Court also must consider the  
16 criteria that apply under that statute. Recently, the Court of Appeal’s decision in *Moniz v. Adecco USA,*  
17 *Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the “fair,  
18 reasonable, and adequate” standard applicable to class actions applies to PAGA settlements (*Id.*, at 64.)  
19 The Court also held that the trial court must assess “the fairness of the settlement’s allocation of civil  
20 penalties between the affected aggrieved employees[.]” (*Id.*, at 64-65.)

21 California law provides some general guidance concerning judicial approval of any settlement.  
22 First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3  
23 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy.  
24 (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th  
25 1121, 1127.) Moreover, “[t]he court cannot surrender its duty to see that the judgment to be entered is  
26 a just one, nor is the court to act as a mere puppet in the matter.” (*California State Auto. Assn. Inter-*  
27 *Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted  
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1 that Neary does not always apply, because “[w]here the rights of the public are implicated, the  
2 additional safeguard of judicial review, though more cumbersome to the settlement process, serves a  
3 salutatory purpose.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141  
4 Cal.App.4th 48, 63.)

5 **B. Attorney fees**

6 Plaintiff seeks one-third of the total settlement amount as fees, relying on the “common fund”  
7 theory. Even a proper common fund-based fee award, however, should be reviewed through a lodestar  
8 cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court  
9 endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is  
10 reasonable. It stated: “If the multiplier calculated by means of a lodestar cross-check is extraordinarily  
11 high or low, the trial court should consider whether the percentage used should be adjusted so as to  
12 bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make  
13 such an adjustment.” (*Id.*, at 505.) Following typical practice, however, the fee award will not be  
14 considered at this time, but only as part of final approval.

15 Similarly, litigation costs and the requested representative payment of \$10,000 for plaintiff will  
16 be reviewed at time of final approval. Criteria for evaluation of representative payment requests are  
17 discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.

18 **C. Conclusion**

19 The Court finds only one minor flaw blocking approval: the change in the PAGA penalty split  
20 from 75/25 to 65/35 applies only to actions filed after June 19, 2024. (See Labor Code § 2699(m), (v).)  
21 Accordingly, the provision of the settlement using the 65/35 split must be amended.

22 Counsel are directed to prepare an order reflecting this tentative ruling with the single change,  
23 the other findings in the previously submitted proposed order, and to obtain a hearing date for the  
24 motion for final approval from the Department clerk. Other dates in the scheduled notice process should  
25 track as appropriate to the hearing date. The ultimate judgment must provide for a compliance hearing  
26 after the settlement has been completely implemented. Plaintiffs’ counsel are to submit a compliance  
27 statement one week before the compliance hearing date. 5% of the attorney’s fees are to be withheld  
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1 by the claims administrator pending satisfactory compliance as found by the Court.

2 **IT IS HEREBY ORDERED:**

3 1. The Court preliminarily approves the Joint Stipulation of Class and Representative  
4 Action Settlement (“Settlement Agreement” or “Agreement”) and Amendment No. 1 to the Agreement,  
5 true and correct copies of which is attached hereto as Exhibit “1” and Exhibit “2”, respectively. This  
6 is based on the Court’s determination that the Settlement Agreement is within the range of possible  
7 final approval, pursuant to the provisions of Section 382 of the California Code of Civil Procedure and  
8 California Rules of Court, rule 3.769.

9 2. This Order incorporates by reference the definitions in the Agreement, and all terms  
10 defined therein shall have the same meaning in this Order as set forth in the Agreement.

11 3. Subject to the terms of the Settlement Agreement, the Gross Settlement Amount that  
12 Defendant shall pay is Nine Hundred Eight-Eight Thousand, One Hundred Seventy-Five Dollars and  
13 Zero Cents (\$988,175.00). It appears to the Court on a preliminary basis that the settlement amount  
14 and terms are fair, adequate, and reasonable as to all Class Members when balanced against the probable  
15 outcome of further litigation relating to certification, liability, and damages issues. It further appears  
16 that investigation and research have been conducted such that counsel for the Parties are able to  
17 reasonably evaluate their respective positions. It further appears to the Court that settlement at this time  
18 will avoid substantial additional costs by all Parties, as well as avoid the delay and risks that would be  
19 presented by the further prosecution of the litigation. It further appears that the Settlement has been  
20 reached as the result of intensive, serious, and non-collusive arms-length negotiations.

21 4. The Court preliminarily finds that the Settlement appears to be within the range of  
22 reasonableness of a settlement that could ultimately be given final approval by this Court. The Court  
23 has reviewed the monetary recovery that is being granted as part of the Settlement and preliminarily  
24 finds that the monetary settlement awards made available to the Class Members are fair, adequate, and  
25 reasonable when balanced against the probable outcome of further litigation relating to certification,  
26 liability, and damages issues.

27 5. Plaintiff seeks Class Counsel Award in the amount of up-to one-third of the Gross  
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1 Settlement Amount for attorneys' fees, currently estimated at Three Hundred Twenty-Nine Thousand,  
2 Three Hundred Ninety-One Dollars and Sixty-Six Cents (\$329,391.66), plus costs of up to Thirty  
3 Thousand Dollars (\$30,000.00), and proposed Class Representative Service Award to the Class  
4 Representative, Jose Ramon De La Cruz, in an amount of not more than Ten Thousand Dollars  
5 (\$10,000.00). While these awards appear to be within the range of reasonableness, the Court will not  
6 approve the Class Council Award or Class Representative Service Award until the Final Approval  
7 Hearing.

8           6.       The Court recognizes that Plaintiff and Defendants stipulate and agree to certification of  
9 a class for settlement purposes only. This stipulation will not be deemed admissible in this, or any other  
10 proceeding should this Settlement not become final. For settlement purposes only, the Court  
11 conditionally certifies the following Class:

12                   “All persons who are or previously were employed by Defendants Galpao  
13                   Gaucho Two, LLC, Galpao Gaucho Three, LLC, Galpao Gaucho Four LLC,  
14                   Galpao Gaucho Five LLC, Galpao Gaucho Eight LLC, or Galpao Gaucho  
15                   Nine LLC in California and classified as non-exempt employees during the  
16                   period from July 20, 2019 to July 1, 2024.”

17           7.       The Court concludes that, for settlement purposes only, the Class meets the requirements  
18 for certification under section 382 of the California Code of Civil Procedure in that: (a) the Class is  
19 ascertainable and so numerous that joinder of all members of the Class Members is impracticable; (b)  
20 common questions of law and fact predominate, and there is a well-defined community of interest  
21 amongst the Class Members with respect to the subject matter of the litigation; (c) the claims of the  
22 Class Representative is typical of the claims of the Class Members; (d) the Class Representative will  
23 fairly and adequately protect the interests of the Class Members; (e) a class action is superior to other  
24 available methods for the efficient adjudication of this controversy; and (f) Class Counsel are qualified  
25 to act as counsel for the Class Representative in his individual capacities and as the representative of  
26 the Class Members.

27           8.       The Court provisionally appoints Plaintiff JOSE RAMON DE LA CRUZ as the  
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1 representative of the Class.

2 9. The Court provisionally appoints Jean-Claude Lapuyade, Esq., of the JCL Law Firm,  
3 APC and Shani Zakay, Esq. of Zakay Law Group, APLC, as Class Counsel for the Class Members.

4 10. The Court hereby approves, as to form and content, the Court Approved Notice of Class  
5 Action Settlement and Hearing Date for Final Court Approval (“Class Notice”) attached to the  
6 Agreement as **Exhibit “A”**. The Court finds that the notice appears to fully and accurately inform the  
7 Class Members and Aggrieved Employees of all material elements of the proposed Settlement,  
8 including the right of any Class Member to be excluded from the Class by submitting a written request  
9 for exclusion, and of each Class Member’s right and opportunity to object to the Settlement. The Court  
10 further finds that the distribution of the notices substantially in the manner and form set forth in the  
11 Agreement and this Order meets the requirements of due process, is the most reasonable notice under  
12 the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The  
13 Court orders the mailing of the notices by first class mail, pursuant to the terms set forth in the  
14 Agreement.

15 11. The Court hereby appoints Apex Class Action Administration as Settlement  
16 Administrator. Within fifteen (15) calendar days after the Preliminary Approval Date, Defendant shall  
17 provide the Settlement Administrator with the Class Data, including information regarding Class  
18 Members that Defendant will in good faith compile from its records, including each Class Member’s  
19 full name; last known address; Social Security Number; start dates and end dates of employment; and  
20 any other information the Settlement Administrator deems necessary to accurately calculate the number  
21 of Workweeks and Pay Period worked by each Class Member and Aggrieved Employee during the  
22 Class and PAGA Periods. No later than fourteen (14) calendar days after receiving the Class Data from  
23 Defendant, the Settlement Administrator shall mail copies of the Class Notice to all Class Members via  
24 first class U.S. Mail.

25 12. The Court hereby preliminarily approves the proposed procedure for exclusion from the  
26 Settlement. Any Class Member may individually choose to opt out of and be excluded from the  
27 Settlement as provided in the Class Notice by following the instructions for requesting exclusion from  
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1 the Settlement of the Released Claims that are set forth in the Class Notice. All requests for exclusion  
2 must be postmarked or received by the Response Deadline which is forty-five (45) calendar days after  
3 the Settlement Administrator mails the Class Notice to Class Members or, in the case of re-mailed  
4 Notice, not more than fifteen (15) days from the original Response Deadline. Any such person who  
5 chooses to opt out of and be excluded from the Settlement will not be entitled to a Class Settlement  
6 Payment under the Settlement and will not be bound by the Class Settlement, or have any right to  
7 object, appeal or comment thereon, but will still be bound by the terms of the PAGA settlement. Class  
8 Members who have not requested exclusion shall be bound by all determinations of the Court, the  
9 Agreement, and Judgment.

10 13. Any Class Member may appear at the final approval hearing, regardless of whether they  
11 have submitted a timely written objection and notice of intention to appear. Class Members may express  
12 their views regarding the Settlement and may present evidence and file briefs or other papers that may  
13 be proper and relevant to the issues to be heard and determined by the Court as provided in the Notice.  
14 Class Members will have forty-five (45) days from the date the Class Notices are mailed to postmark  
15 their written objections to the Settlement Administrator. Class Members who fail to timely submit  
16 objections in the manner specified above shall be deemed to have waived any objections and shall be  
17 foreclosed from making any written objection (whether by appeal or otherwise) to the Settlement. Class  
18 Members who fail to timely submit a written objection may still appear at the Final Approval Hearing  
19 to object orally in person.

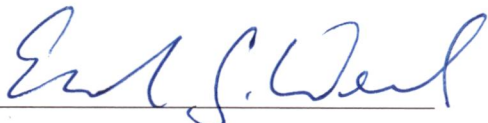
20 14. A hearing on Plaintiff's Motion for Final Approval of Class Action and PAGA  
21 Settlement and Plaintiff's Motion Class Counsel Award and Class Representative Service Award for  
22 shall be held before this Court on **June 26, 2025, at 9:00 AM** in Department <sup>39</sup>~~12~~ of the Contra Costa  
23 County Superior Court to determine all necessary matters concerning the Settlement, including:  
24 whether the proposed settlement of the Action on the terms and conditions provided for in the  
25 Agreement is fair, adequate and reasonable and should be finally approved by the Court; whether an  
26 Order Granting Final Approval should be entered herein; whether the plan of allocation contained in  
27 the Agreement should be approved as fair, adequate and reasonable to the Class; and to finally approve  
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1 the award of Class Counsel Award, Class Representative Service Award, and the Settlement  
2 Administration Expenses. All papers in support of the motion for final approval and the motion for  
3 Class Counsel Award and Class Representative Service Award shall be filed with the Court and served  
4 on all counsel within twenty-eight (28) days following the expiration of the Response Deadline.

5 15. In the event the Settlement does not become effective in accordance with the terms of the  
6 Agreement, or the Settlement is not finally approved, or is terminated, canceled, or fails to become  
7 effective for any reason, this Settlement Agreement shall be rendered null and void and shall be vacated,  
8 and the Parties shall revert to their respective positions as of before entering into the Agreement. In  
9 such an event, the Court's orders regarding the Settlement, including this Preliminary Approval Order,  
10 shall not be used or referred to in litigation for any purpose. Nothing in this paragraph is intended to  
11 alter the terms of the Settlement Agreement with respect to the effect of the Settlement Agreement if it  
12 is not approved.

13 16. The Court reserves the right to adjourn or continue the date of the final approval hearing  
14 and all dates provided for in the Agreement without further notice to Class Members and retains  
15 jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

16  
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18  
19 Dated: FEB 18 2025

  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT  
Edward G. Weil

# **EXHIBIT 1**

1 **JCL LAW FIRM, APC**  
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11  
 12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
 13 **IN AND FOR THE COUNTY OF CONTRA COSTA**

14 JOSE RAMON DE LA CRUZ, an individual,  
 on behalf of himself, and on behalf of all  
 15 persons similarly situated,

16 Plaintiff,

17 v.

18 GALPAO GAUCHO TWO, LLC, a Texas  
 limited liability company; GALPAO  
 19 GAUCHO THREE, LLC, a California limited  
 liability company; GALPAO GAUCHO FOUR  
 20 LLC, a California limited liability company;  
 GALPAO GAUCHO FIVE LLC, a California  
 21 limited liability company; GALPAO  
 GAUCHO EIGHT LLC, a California limited  
 22 liability company; GALPAO GAUCHO NINE  
 LLC, a California limited liability company;  
 23 and DOES 1-50, Inclusive,

24 Defendants.  
 25

Case No. C23-01770

[Complaint Filed: July 20, 2023]

**STIPULATION OF SETTLEMENT OF  
 CLASS AND PAGA ACTION CLAIMS  
 AND RELEASE OF CLAIMS**

Judge: Hon. Charles S. Treat  
 Dept. 12

1 This Stipulation of Settlement of Class Action and PAGA Claims and Release of Claims is  
2 entered into by and between Plaintiff Jose Ramon De La Cruz (hereinafter collectively "Plaintiff"),  
3 an individual, on behalf of himself, and on behalf of all persons similarly situated, and in his  
4 representative capacity on behalf of the State of California and the Aggrieved Employees, and  
5 Defendants Galpao Gaucho Two, LLC, Galpao Gaucho Three, LLC, Galpao Gaucho Four LLC,  
6 Galpao Gaucho Five LLC, Galpao Gaucho Eight LLC, and Galpao Gaucho Nine LLC (hereinafter  
7 "Defendants"):

8 **I. DEFINITIONS**

- 9 A. "Action" shall mean the putative class action lawsuit designated *De La Cruz v.*  
10 *Galpao Gaucho Two LLC, et. al.*, Contra Costa County Superior Court, Case No.  
11 C23-01770, filed July 20, 2023.
- 12 B. "Aggrieved Employees" shall mean all non-exempt employees who are or previously  
13 were employed by any of the Defendants in California at any time during the PAGA  
14 Period.
- 15 C. "Aggrieved Employee Payment" shall mean the Aggrieved Employees' pro-rata share  
16 of the 35% portion of the PAGA Payment (\$10,500) allocated and distributed to the  
17 Aggrieved Employees.
- 18 D. "Agreement" or "Settlement Agreement" means this Stipulation of Settlement of  
19 Class and PAGA Action Claims and Release of Claims.
- 20 E. "Class Counsel" shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC and  
21 Shani Zakay of Zakay Law Group, APLC.
- 22 F. "Class Counsel Award" means the award of fees and expenses that the Court  
23 authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff  
24 and the Class in the Action, consisting of attorneys' fees currently not to exceed one-  
25 third of the Gross Settlement Amount currently estimated to be \$241,666.67 out of  
26 \$725,000.00, plus costs and expenses in the amount up to \$30,000.00. Class  
27 Counsel's award for attorneys' fees will be divided equally between Class Counsel  
28 (50% to JCL Law Firm, APC; and 50% to Zakay Law Group, APLC).

- 1           G.     “Class Data” means information regarding Class Members that Defendants will in  
2                     good faith compile from their records and provide to the Settlement Administrator. It  
3                     shall be formatted as a Microsoft Excel spreadsheet and shall include: each Class  
4                     Member’s full name; last known address; Social Security Number; start dates and end  
5                     dates of employment; and any other information the Settlement Administrator deems  
6                     necessary to accurately calculate the number of Workweeks and Pay Period worked  
7                     by each Class Member and Aggrieved Employee during the Class and PAGA Periods.
- 8           H.     “Class Members” or the “Class” means all persons who are or previously were  
9                     employed by Defendants in California and classified as non-exempt employees  
10                    during the Class Period.
- 11          I.     “Class Period” means the period from July 20, 2019 to July 1, 2024.
- 12          J.     “Class Representative” shall mean plaintiff Jose Ramon De La Cruz.
- 13          K.     “Class Representative Service Award” means the amount of up to and not to exceed  
14                    Ten Thousand Dollars and Zero Cents (\$10,000.00) that the Court authorizes to be  
15                    paid to the Class Representative, in addition to his Individual Class Payment and his  
16                    Aggrieved Employee Payment, in recognition of his efforts and risks in assisting with  
17                    the prosecution of the Action.
- 18          L.     “Court” means the Superior Court for the State of California, County of Contra Costa  
19                    currently presiding over the Action.
- 20          M.     “Defendants” shall mean Defendants Galpao Gaucho Two, LLC, Galpao Gaucho  
21                    Three, LLC, Galpao Gaucho Four LLC, Galpao Gaucho Five LLC, Galpao Gaucho  
22                    Eight LLC, and Galpao Gaucho Nine LLC.
- 23          N.     “Effective Date” means the earliest date, following entry by the Court of an order and  
24                    judgment finally approving this Settlement, upon which one of the following have  
25                    occurred: (i) if no objection is filed to the settlement and no objector appears at the  
26                    hearing on final approval, the date of the Court’s entry of the order granting final  
27                    approval, (ii) if an objection is filed to the settlement and/or an objector appears at the  
28                    hearing on final approval, then the earlier of the following: (a) the expiration of all

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potential appeal periods without a filing of a notice of appeal of the final approval order or judgment; (b) final affirmance of the final approval order and judgment by an appellate court as a result of any appeal(s), or (c) final dismissal or denial of all such appeals (including any petition for review, rehearing, certiorari, etc.) such that the final approval order and judgment is no longer subject to further judicial review.

O. "Funding Date" shall mean sixty (60) days after the Effective Date and is the date Defendants transfer the Gross Settlement Amount into the QSF in accordance with the terms of this Agreement.

P. "Gross Settlement Amount" means Seven Hundred Twenty-Five Thousand Dollars and Zero Cents (\$725,000.00) that Defendants must pay into the QSF in connection with this Settlement, inclusive of the sum of the Individual Class Payments, the Class Representative Service Award, the Class Counsel Award, PAGA Payment and the Settlement Administration Expenses and *exclusive* of the employer's share of payroll tax, if any, triggered by any payment under this Settlement.

Q. "Individual Class Payment" means the amount payable from the Net Settlement Amount to each Settlement Class Member and excludes any amounts distributed to Aggrieved Employees pursuant to PAGA.

R. "LWDA Payment" shall mean the sixty-five percent (65%) of the PAGA Payment (\$19,500) allocated to the California Labor and Workforce Development Agency.

S. "Net Settlement Amount" or "NSA" means the Gross Settlement Amount, less Class Counsel Award, Class Representative Service Award, PAGA Payment, and Settlement Administration Expenses.

T. "Notice Packet" means the Class Notice to be provided to the Class Members by the Settlement Administrator in the form set forth as **Exhibit A** to this Agreement (other than formatting changes to facilitate printing by the Settlement Administrator).

U. "PAGA" means the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698 *et seq.*

1 V. "PAGA Payment" shall mean Thirty Thousand Dollars and Zero Cents (\$30,000.00)  
2 to be allocated from the Gross Settlement Amount in settlement of the Released  
3 PAGA Claims. Sixty-Five percent (65%) of the PAGA Payment shall be allocated to  
4 the LWDA and the remaining thirty-five percent (35%) shall be allocated and  
5 distributed to the Aggrieved Employees.

6 W. "PAGA Payment Ratio" means the respective pay periods during the PAGA Period  
7 for each Aggrieved Employee divided by the sum-total of the pay periods for all  
8 Aggrieved Employees during the PAGA Period.

9 X. "PAGA Pay Periods," for purposes of calculating the distribution of the Aggrieved  
10 Employee Payment, as defined herein, means the number of pay periods of  
11 employment during the PAGA Period that each Aggrieved Employee worked in  
12 California.

13 Y. "PAGA Period" means the period beginning July 1, 2023 to July 1, 2024.

14 Z. "Parties" means Plaintiff and Defendants, collectively, and "Party" shall mean either  
15 Plaintiff or Defendants, individually.

16 AA. "Payment Ratio" means the respective Workweeks for each Class Member divided  
17 by the sum-total Workweeks for all Class Members.

18 BB. "Plaintiff" shall mean Jose Ramon De La Cruz.

19 CC. "QSF" means the Qualified Settlement Fund established, designated, and maintained  
20 by the Settlement Administrator to fund the Gross Settlement Amount.

21 DD. "Released Class Claims" means all class claims alleged, or reasonably could have  
22 been alleged based on the facts alleged, in the operative complaint in the *Jose Ramon*  
23 *De La Cruz v. Galpão Gaucho Two, LLC et al.* Action which occurred during the  
24 Class Period, and expressly excluding all other claims, including claims for vested  
25 benefits, wrongful termination, unemployment insurance, disability, social security,  
26 workers' compensation, and class claims outside of the Class Period.

27 EE. "Released PAGA Claims" means all PAGA claims alleged in the operative complaint  
28 in the Action matter and Plaintiff's PAGA notice to the LWDA which occurred during



- 1 the PAGA Period, and expressly excluding all other claims, including claims for  
2 vested benefits, wrongful termination, unemployment insurance, disability, social  
3 security, workers' compensation, and PAGA claims outside of the PAGA Period.
- 4 FF. "Released Party" shall mean Defendants and any of their past, present and future  
5 direct or indirect parents, subsidiaries, predecessors, successors, affiliates, and all  
6 entities that could be held to be joint employers, as well as each of its or their past,  
7 present and future officers, directors, employees, partners, members, shareholders and  
8 agents, attorneys, insurers, reinsurers, and any individual or entity which could be  
9 jointly liable with Defendants.
- 10 GG. "Response Deadline" means the date forty-five (45) days after the Settlement  
11 Administrator mails Notice Packets to Class Members and the last date on which  
12 Class Members may submit requests for exclusion or objections to the Settlement.
- 13 HH. "Settlement" means the disposition of the Action pursuant to this Agreement.
- 14 II. "Settlement Administrator" means Apex Class Action LLC, 18 Technology Drive,  
15 Suite 164 Irvine, CA 92618. The Settlement Administrator establishes, designates  
16 and maintains, as a QSF under Internal Revenue Code section 468B and Treasury  
17 Regulation section 1.468B-1, into which the amount of the Gross Settlement Amount  
18 is deposited for the purpose of resolving the claims of Settlement Class Members.  
19 The Settlement Administrator shall maintain the funds until distribution in an  
20 account(s) segregated from the assets of Defendants and any person related to  
21 Defendants. ***All accrued interest shall be paid and distributed to the Settlement Class***  
22 ***Members as part of their respective Individual Class Payment.***
- 23 JJ. "Settlement Administration Expenses" shall mean the amount to be paid for the costs  
24 of administration of the Settlement from the Gross Settlement Amount in an amount  
25 not to exceed \$14,000.00.
- 26 KK. "Settlement Class Members" or "Settlement Class" means all Class Members who  
27 have not submitted a timely and valid request for exclusion as provided in this  
28 Agreement.

1 LL. "Workweeks", for purposes of calculating the distribution of the Net Settlement  
2 Amount, means the number of weeks of employment during the Class Period that  
3 each Class Member was employed by Defendants in California.

4 **II. RECITALS**

5 A. On July 1, 2024, Plaintiff filed a Notice of Violations with the Labor and Workforce  
6 Development Agency (LWDA) and served the same on Defendants.

7 B. On July 13, 2023, Plaintiff filed a Class Action complaint in the Superior Court for  
8 the State of California, County of Contra Costa Case No. C23-01770, alleging causes  
9 of action for:

- 10 1. Unfair Competition in Violation of Cal. Bus. & Prof. Code §17200 et seq.;
- 11 2. Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197
- 12 & 1197.1;
- 13 3. Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510, et seq;
- 14 4. Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§
- 15 226.7 & 512 and the applicable IWC Wage Order;
- 16 5. Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§
- 17 226.7 & 512 and the applicable IWC Wage Order;
- 18 6. Failure to Provide Accurate Itemized Statements in Violation of Cal. Lab.
- 19 Code § 226;
- 20 7. Failure To Provide Wages When Due in Violation of Cal. Lab. Code §§ 201,
- 21 202 and 203;
- 22 8. Failure To Reimburse Employees For Required Expenses in Violation of Cal.
- 23 Lab. Code § 2802; and
- 24 9. Failure to Provide Gratuities in Violation of Cal. Lab. Code § 351.

25 C. On August 23, 2024, the Parties stipulated to the filing of a First Amended Complaint  
26 to add an additional cause of action for violations of PAGA.

27 D. The Class Representative believes he has meritorious claims based on alleged  
28 violations of the California Labor Code, and the Industrial Wage Commission Orders,

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and that class certification is appropriate because the prerequisites for class certification can be satisfied in the Action, and this action is manageable as a PAGA representative action.

E. Defendants deny any liability or wrongdoing of any kind associated with the claims alleged in the Action, dispute any wages, damages and penalties claimed by the Class Representative are owed, and further contend that, for any purpose other than settlement, the Action is not appropriate for class or representative action treatment. Defendants contend, among other things, that at all times they complied with the California Labor Code and the Industrial Wage Commission Orders.

F. Class Counsel represent the Class Representative. Class Counsel conducted a thorough investigation into the facts relevant to the Action, including conducting an independent investigation as to the allegations, reviewing documents and information exchanged through informal discovery, and reviewing documents and information provided by Defendants pursuant to informal requests for information to prepare for mediation. Defendants produced for the purpose of settlement negotiations certain employment data concerning the Settlement Class, which Class Counsel reviewed and analyzed. Based on their own independent investigation and evaluation, Class Counsel are of the opinion that the Settlement with Defendants is fair, reasonable and adequate, and is in the best interest of the Settlement Class in light of all known facts and circumstances, including the risks of significant delay, defenses asserted by Defendants, uncertainties regarding class certification, and numerous potential appellate issues. Although it denies any liability, Defendants agree to this Settlement solely to avoid the inconveniences and cost of further litigation. The Parties and their counsel have agreed to settle the claims on the terms set forth in this Agreement.

G. On July 1, 2024, the Parties participated in mediation presided over by Tripper Ortman, Esq., a mediator of wage and hour class and PAGA actions. The mediation concluded with a settlement after both sides agreed to a Mediator’s proposal which

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was subsequently memorialized in the form of a Memorandum of Understanding (“MOU”).

H. This Agreement replaces and supersedes any other agreements, understandings, or representations between the Parties. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendants that the claims in the Action of Plaintiff or the Class Members have merit or that Defendants bear any liability to Plaintiff or the Class on those claims or any other claims, or as an admission by Plaintiff that Defendants’ defenses in the Action have merit.

I. The Parties believe that the Settlement is fair, reasonable and adequate. The Settlement was arrived at through arm’s-length negotiations, considering all relevant factors. The Parties recognize the uncertainty, risk, expense and delay attendant to continuing the Action through trial and any appeal. Accordingly, the Parties desire to fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or relating to the Action.

J. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the settlement does not become effective, Defendants reserve the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Action.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

**III. TERMS OF AGREEMENT**

A. Settlement Consideration and Settlement Payments by Defendants.

1. Settlement Consideration. In full and complete settlement of the Action, and in exchange for the releases set forth below, Defendants will pay the sum of the Individual Class Payment, the Class Representative Service Award, the Class Counsel Award, PAGA Payment, and the Settlement Administration Expenses, as specified in this Agreement, equal to the Gross Settlement Amount of Seven Hundred Twenty-Five Thousand Dollars and Zero Cents

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(\$725,000.00). The Parties agree that this is a non-reversionary Settlement and that no portion of the Gross Settlement Amount shall revert to Defendants. Other than the Defendants’ share of employer payroll taxes and as provided for in Section III(A)(2) below, if any, Defendants shall not be required to pay more than the Gross Settlement Amount, except as provided hereinbelow.

2. Class Size. At the time of mediation, Defendants estimated that the Settlement Class was comprised of 1,350 Class Members who collectively worked approximately 25,500 Workweeks (“Projected Workweeks”) during the Class Period. Should the number of workweeks increase by more than 10% of what was represented at the mediation during the Class Period, the Gross Settlement Amount will increase proportionally for the number of workweeks over 110% of 25,500, for example, if the total workweeks in the Class Period are 125% of 25,500, the Gross Settlement Amount shall increase by 15%. In regard hereto, Defendants will provide a declaration under penalty of perjury at least two (2) weeks before the deadline for filing the motion for preliminary approval of the settlement, confirming the number of applicable Class Members and workweeks they worked during the applicable Class Period.

3. Settlement Payment. Defendants and the Released Parties, and each of them, are jointly and severally liable for payment of the Gross Settlement Amount. Defendants shall pay the Gross Settlement Amount to the Settlement Administrator on the Funding Date.

4. Defendants’ Share of Payroll Taxes. Defendants’ share of employer side payroll taxes is separate and in addition to the Gross Settlement Amount and shall be paid together with the Gross Settlement Amount.

B. Release by Settlement Class Members. As of the Funding Date, in exchange for the consideration set forth in this Agreement, Plaintiff and the Settlement Class Members release the Released Parties from the Released Class Claims for the Class Period.

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C. Release by the Plaintiff and State of California. As of the Funding Date, in exchange for the consideration set forth in this Agreement, the Plaintiff, the Aggrieved Employees, the LWDA, and the State of California release the Released Parties from the Released PAGA Claims for the PAGA Period. As a result of this release, the Aggrieved Employees shall be precluded from bringing claims against Released Parties for the Released PAGA Claims.

D. General Release by Plaintiff. Upon funding of the Gross Settlement Amount, Plaintiff waives, releases, acquits and forever discharges the Defendant and Released Parties from any and all claims, whether known or unknown, which exist or may exist on his behalf as of the date of this Agreement, including but not limited to any and all tort claims, contract claims, wage claims, wrongful termination claims, disability claims, benefit claims, public policy claims, retaliation claims, statutory claims, personal injury claims, emotional distress claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit claims, and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance, including, but not limited to claims for violation of the Fair Labor Standards Act, the California Labor Code, the Wage Orders of California’s Industrial Welfare Commission, other state wage and hour laws, the Americans with Disabilities Act, the Age Discrimination in Employment Act (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, the California Family Rights Act, the Family Medical Leave Act, California’s Whistleblower Protection Act, California Business & Professions Code Section 17200 et seq., and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance. Plaintiff also waives and relinquishes any and all claims, rights or benefits that he may have under California Civil Code § 1542, which provides as follows:

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***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, notwithstanding the provisions of section 1542, and to implement a full and complete release and discharge of the Released Parties, 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 Agreement, and that this Agreement contemplates the extinguishment of any such claims. Plaintiff warrants that Plaintiff has read this Agreement, including this waiver of California Civil Code section 1542, and that Plaintiff has consulted with or had the opportunity to consult with counsel of Plaintiff's choosing about this Agreement and specifically about the waiver of section 1542, and that Plaintiff understands this Agreement and the section 1542 waiver, and so Plaintiff freely and knowingly enters into this Agreement. Plaintiff further acknowledges that Plaintiff later may discover facts different from or in addition to those Plaintiff now knows or believes to be true regarding the matters released or described in this Agreement, and even so Plaintiff agrees that the releases and agreements contained in this Agreement shall remain effective in all respects notwithstanding any later discovery of any different or additional facts. Plaintiff expressly assumes any and all risk of any mistake in connection with the true facts involved in the matters, disputes, or controversies released or described in this Agreement or with regard to any facts now unknown to Plaintiff relating thereto.

E. Conditions Precedent: This Settlement will become final and effective only upon the occurrence of all of the following events:

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1. The Court enters an order granting preliminary approval of the Settlement;
2. The Court enters an order granting final approval of the Settlement and a Final Judgment;
3. If an objector appears at the final approval hearing, the time for appeal of the Final Judgment and Order Granting Final Approval of Class Action Settlement expires; or, if an appeal is timely filed, there is a final resolution of any appeal from the Judgment and Order Granting Final Approval of Class Action Settlement; and
4. Defendants fully fund the Gross Settlement Amount.

F. Nullification of Settlement Agreement. In the event that this Settlement Agreement is not preliminarily or finally approved by the Court, fails to become effective, or is reversed, withdrawn or modified by the Court, or in any way prevents or prohibits Defendants from obtaining a complete resolution of the Released Class Claims, or if Defendants fail to fully fund the Gross Settlement Amount:

1. This Settlement Agreement shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural;
2. The conditional class certification (obtained for any purpose) shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; and
3. None of the Parties to this Settlement will be deemed to have waived any claims, objections, defenses or arguments in the Action, including with respect to the issue of class certification.
4. If Defendants fail to fully fund the Gross Settlement Amount, Defendants shall bear the sole responsibility for any cost to issue or reissue any curative



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notice to the Settlement Class Members and all Settlement Administration Expenses incurred to the date of nullification.

G. Certification of the Settlement Class. The Parties stipulate to conditional class certification of the Class for the Class Period for purposes of settlement only. In the event that this Settlement is not approved by the Court, fails to become effective, or is reversed, withdrawn or modified by the Court, or in any way prevents or prohibits Defendants from obtaining a complete resolution of the Released Class Claims, the conditional class certification (obtained for any purpose) shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural.

H. Tax Liability. The Parties make no representations as to the tax treatment or legal effect of the payments called for, and Class Members and/or Aggrieved Employees are not relying on any statement or representation by the Parties in this regard. Class Members and/or Aggrieved Employees understand and agree that they will be responsible for the payment of any taxes and penalties assessed on the Individual Class Payments and/or Aggrieved Employee Payment described and will be solely responsible for any penalties or other obligations resulting from their personal tax reporting of Individual Class Payments and/or Aggrieved Employee Payment.

I. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section, the “acknowledging party” and each Party to this Agreement other than the acknowledging party, an “other party”) acknowledges and agrees that: (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department circular 230 (31 CFR part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon

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the recommendation of any other Party or any attorney or advisor to any other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging party, and (3) no attorney or adviser to any other Party has imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

J. Preliminary Approval Motion. Plaintiff shall draft and file with the Court a Motion for Order Granting Preliminary Approval and supporting papers within a reasonable period of time after complete execution of this agreement and will provide Defendants with a draft of the Motion at least three (3) business days prior to the filing of the Motion to give Defendants an opportunity to propose changes or additions to the Motion.

K. Settlement Administrator. The Settlement Administrator shall be responsible for: establishing and administering the QSF; calculating, processing and mailing payments to the Class Representative, Class Counsel, LWDA and Class Members; printing and mailing the Notice Packets to the Class Members as directed by the Court; receiving and reporting the objections and requests for exclusion; calculating, deducting and remitting all legally required taxes from Individual Class Payments and distributing tax forms for the Wage Portion and Non-Wage Portion of the Individual Class Payments and/or Aggrieved Employee Payment; processing and mailing tax payments to the appropriate state and federal taxing authorities; providing declaration(s) as necessary in support of preliminary and/or final approval of this Settlement; and other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform. The Settlement Administrator shall keep the Parties timely apprised of the performance of all Settlement Administrator responsibilities by among other things, sending a weekly status report to the Parties’ counsel stating the date of the mailing,

1 the of number of Elections Not to Participate in Settlement it receives (including the  
2 numbers of valid and deficient), and number of objections received.

3 L. Notice Procedure.

4 1. Class Data. No later than fifteen (15) calendar days after the Preliminary  
5 Approval Date, Defendants shall provide the Settlement Administrator with  
6 the Class Data for purposes of preparing and mailing Notice Packets to the  
7 Class Members.

8 2. Notice Packets.

9 a) The Notice Packet shall contain the Notice of Class Action Settlement  
10 in a form substantially similar to the form attached as Exhibit A and  
11 will include Spanish translation. The Notice of Class Action  
12 Settlement shall inform Class Members and Aggrieved Employees  
13 that they need not do anything in order to receive an Individual Class  
14 Payment and/or Aggrieved Employee Payment and to keep the  
15 Settlement Administrator apprised of their current mailing address, to  
16 which the Individual Class Payments and/or Aggrieved Employee  
17 Payment will be mailed following the Funding Date. The Notice of  
18 Class Action Settlement shall set forth the release to be given by all  
19 members of the Class who do not request to be excluded from the  
20 Settlement Class and/or Aggrieved Employees' in exchange for an  
21 Individual Class Payment and/or Aggrieved Employee Payment, the  
22 number of Workweeks worked by each Class Member during the  
23 Class Period and PAGA Period, if any, and the estimated amount of  
24 their Individual Class Payment if they do not request to be excluded  
25 from the Settlement and each Aggrieved Employee's share of the  
26 PAGA Payment, if any. The Settlement Administrator shall use the  
27 Class Data to determine Class Members' Workweeks and PAGA Pay  
28 Periods. The Notice will also advise the Aggrieved Employees that

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they will release the Released PAGA Claims and will receive their share of the PAGA Payment regardless of whether they request to be excluded from the Settlement.

b) The Notice Packet’s mailing envelope shall include the following language: “IMPORTANT LEGAL DOCUMENT- YOU MAY BE ENTITLED TO PARTICIPATE IN A CLASS ACTION SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED NOTICE.”

3. Notice by First Class U.S. Mail. Upon receipt of the Class Data, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct any known or identifiable address changes. No later than fourteen (14) calendar days after receiving the Class Data from Defendants, the Settlement Administrator shall mail copies of the Notice Packet to all Class Members via regular First-Class U.S. Mail. The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Class Member. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Class Member.

4. Undeliverable Notices. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to any forwarding address provided. The Settlement Administrator will re-mail Notices within five (5) days of receiving a returned Notice. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine a correct address by lawful use of skip-tracing, or other search using the name, address and/or Social Security number of the Class Member involved, and shall then perform a re-mailing, if another mailing address is identified by the Settlement Administrator. In addition, if any

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Notice Packets, which are addressed to Class Members who are currently employed by Defendants, are returned to the Settlement Administrator as non-delivered and no forwarding address is provided, the Settlement Administrator shall notify Defendants. Defendants will request that the currently employed Class Member provide a corrected address and transmit to the Administrator any corrected address provided by the Class Member. Class Members who received a re-mailed Notice Packet shall have their Response Deadline extended fifteen (15) days from the original Response Deadline.

5. Disputes Regarding Individual Class Payments. Class Members will have the opportunity, should they disagree with Defendants' records regarding the start and end dates of employment, to provide documentation and/or an explanation to show contrary dates. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Class Payments under the terms of this Agreement. The Settlement Administrator's determination of the eligibility for and amount of any Individual Class Payment shall be binding upon the Class Member and the Parties, except as provided herein below in Section III(K)(6).

6. Disputes Regarding Administration of Settlement. Any disputes not resolved by the Settlement Administrator concerning the administration of the Settlement will be resolved by the Court under the laws of the State of California. Before any such involvement of the Court, counsel for the Parties will confer in good faith to resolve the disputes without the necessity of involving the Court.

7. Exclusions. The Notice of Class Action Settlement contained in the Notice Packet shall state that Class Members who wish to exclude themselves from the Settlement must submit a signed copy of the Request for Exclusion form that will be mailed together with the Notice Packet to all Class Members. The

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Request for Exclusion will not be valid if it is not timely submitted, if the Class Member does not sign it, or if it does not contain the name and address and last four digits of the Social Security number of the Class Member. The date of the postmark on the mailing envelope or fax stamp on the Request for Exclusion shall be the exclusive means used to determine whether the request for exclusion was timely submitted. Any Class Member who submits a timely Request for Exclusion shall be excluded from the Settlement Class will not be entitled to an Individual Class Payment and will not be otherwise bound by the terms of the Settlement or have any right to object, appeal or comment thereon. However, any Class Member that submits a timely Request for Exclusion that is also a member of the Aggrieved Employees will still receive his/her pro rata share of the PAGA Payment, as specified below, and in consideration, will be bound by the Release by the Aggrieved Employees as set forth herein. Settlement Class Members who fail to submit a valid and timely Request for Exclusion on or before the Response Deadline shall be bound by all terms of the Settlement and any final judgment entered in this Action if the Court approves the Settlement. No later than fifteen (15) calendar days after the Response Deadline, the Settlement Administrator shall provide counsel for the Parties with a final list of the Class Members who have timely submitted timely Requests for Exclusion. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage members of the Class to submit Requests for Exclusion from the Settlement. Defendants maintain the right, in their sole discretion, to revoke the settlement and their stipulation to class certification prior to the final fairness hearing in the event that five percent (5%) or more of Class Members opt out of the settlement.

8. Objections. The Notice of Class Action Settlement contained in the Notice Packet shall state that Class Members who wish to object to the Settlement may submit to the Settlement Administrator a written statement of objection

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by the Response Deadline. The postmark date of mailing shall be deemed the exclusive means for determining that a Notice of Objection was served timely. The Notice of Objection, if in writing, must be signed by the Settlement Class Member and state: (1) the case name and number; (2) the name of the Settlement Class Member; (3) the address of the Settlement Class Member; (4) the last four digits of the Settlement Class Member’s Social Security number; and (5) the basis for the objection. Class Members who fail to make objections in writing in the manner specified above may still make their objections orally at the Final Approval/Settlement Fairness Hearing with the Court’s permission. Settlement Class Members will have a right to appear at the Final Approval/Settlement Fairness Hearing to have their objections heard by the Court regardless of whether they submitted a written objection. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to file or serve written objections to the Settlement or appeal from the Order and Final Judgment. Class Members who submit a written request for exclusion may not object to the Settlement. Class Members may not object to the PAGA Payment.

M. Funding and Allocation of the Gross Settlement Amount. Defendants are required to pay the Gross Settlement Amount on or before the Funding Date, plus any employer’s share of payroll taxes as mandated by law within the time specified herein.

1. Individual Class Payments. Individual Class Payments shall be paid from the Net Settlement Amount and shall be paid pursuant to the formula set forth herein. Using the Class Data, the Settlement Administrator shall add up the total number of Workweeks for all Class Members. The respective Workweeks for each Class Member will be divided by the total Workweeks for all Class Members, resulting in the Payment Ratio for each Class Member. Each Class Member’s Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Class Member’s estimated Individual

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Class Payments. Each Individual Class Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Individual Class Payments for Class Members who submit valid and timely requests for exclusion will be redistributed to Settlement Class Members who do not submit valid and timely requests for exclusion on a pro rata basis based on their respective Payment Ratios.

2. Calculation of Individual Payments to the Aggrieved Employees. Using the Class Data, the Settlement Administrator shall add up the total number of PAGA pay periods for all Aggrieved Employees during the PAGA Period. The respective PAGA Pay Periods for each Aggrieved Employee will be divided by the total PAGA Pay Periods for all Aggrieved Employees, resulting in the "PAGA Payment Ratio" for each Aggrieved Employee. Each Aggrieved Employee's PAGA Payment Ratio will then be multiplied by the Aggrieved Employee Payment to calculate each Aggrieved Employee's estimated share of the PAGA Payment.

3. Allocation of Individual Class Payments. For tax purposes, Individual Class Payments shall be allocated and treated as follows: 20% as wages ("Wage Portion"); 80% as penalties and interest ("Non-Wage Portion"). The Wage Portion is subject to wage withholdings and shall be reported on IRS Form W-2. The Non-Wage Portion shall not be subject to wage withholdings and shall be reported on IRS Form 1099.

4. Allocation of Aggrieved Employee Payments. For tax purposes, Aggrieved Employee Payments shall be allocated and treated as 100% penalties and shall be reported on IRS Form 1099.

5. No Credit Toward Benefit Plans. The Individual Class Payments and Aggrieved Employee Payment made to Settlement Class Members and/or Aggrieved Employees under this Settlement Agreement, as well as any other payments made pursuant to this Settlement Agreement, will not be utilized to



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calculate any additional benefits under any benefit plans to which any Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans.

6. All monies received by Settlement Class Members under the Settlement which are attributable to wages shall constitute income to such Settlement Class Members solely in the year in which such monies actually are received by the Settlement Class Members. It is the intent of the Parties that Individual Class Payments and Aggrieved Employee Payment provided for in this Settlement Agreement are the sole payments to be made by Defendants to Settlement Class Members and/or Aggrieved Employees in connection with this Settlement Agreement, with the exception of Plaintiff, and that the Settlement Class Members and/or Aggrieved Employees are not entitled to any new or additional compensation or benefits as a result of having received the Individual Class Payments and/or their shares of the PAGA Payment.

7. Mailing. Individual Class Payments and Aggrieved Employee Payments shall be mailed by regular First-Class U.S. Mail to Settlement Class Members' and/or Aggrieved Employees last known mailing address no later than fifteen (15) calendar days after the Funding Date.

8. Expiration. Any checks issued to Settlement Class Members and Aggrieved Employees shall remain valid and negotiable for one hundred and eighty (180) days from the date of their issuance. If a Settlement Class Member and/or Aggrieved Employee does not cash his or her settlement check within ninety (90) days, the Settlement Administrator will send a letter to such persons, advising that the check will expire after the one hundred eightieth (180<sup>th</sup>) day, and invite that Settlement Class Member and/or Aggrieved Employee to

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request reissuance in the event the check was destroyed, lost or misplaced. In the event an Individual Class Payment and/or Aggrieved Employee's Aggrieved Employee Payment check has not been cashed within one hundred and eighty (180) days, the check will be voided and the Settlement Class Member and/or Aggrieved Employee will remain bound by the Settlement. The funds from any such uncashed checks shall be transmitted to the California State Controller's Office for Unclaimed Property in the name of each Class Member who failed to cash their Individual Class Payment. The Parties agreed that under this procedure, there is no residue as the entire Gross Settlement Amount will be distributed.

9. Class Representative Service Award. In addition to the Individual Class Payment and his Aggrieved Employee Payment to be paid to Plaintiff, Plaintiff will apply to the Court for an award of not more than \$10,000, as the Class Representative Service Award. Defendants will not oppose a Class Representative Service Award of not more than \$10,000 for Plaintiff. The Settlement Administrator shall pay the Class Representative Service Award, either in the amount stated herein if approved by the Court or some other amount as approved by the Court, to Plaintiff from the Gross Settlement Amount no later than fifteen (15) calendar days after the Funding Date. Any portion of the requested Class Representative Service Award that is not awarded to the Class Representative shall be part of the Net Settlement Amount and shall be distributed to Settlement Class Members as provided in this Agreement. The Settlement Administrator shall issue an IRS Form 1099 — MISC to Plaintiff for his Class Representative Service Award. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on his Class Representative Service Award and shall hold harmless the Released Parties from any claim or liability for taxes, penalties, or interest arising as a result of the Class Representative Service Award. The Class Representative

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Service Award shall be in addition to Plaintiff’s Individual Class Payment as a Settlement Class Member. Approval of this Settlement shall not be conditioned on Court approval of the requested amount of the Class Representative Service Award. If the Court reduces or does not approve the requested Class Representative Service Award, Plaintiff shall not have the right to revoke the Settlement, and it will remain binding.

10. Class Counsel Award. Defendants understand a motion by Class Counsel for attorneys’ fees not to exceed one-third of the Gross Settlement Amount currently estimated to be Two Hundred Forty-One Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$241,666.67) plus costs and expenses supported by declaration not to exceed Thirty Thousand Dollars and Zero Cents (\$30,000.00), from the Gross Settlement Amount will be filed. Defendants agree not to oppose the request for the Class Counsel Award. Any portion of the requested Class Counsel Award that is not awarded to Class Counsel shall be part of the Net Settlement Amount and shall be distributed to Settlement Class Members as provided in this Agreement. The Settlement Administrator shall allocate and pay the Class Counsel Award to Class Counsel from the Gross Settlement Amount no later than fifteen (15) calendar days after the Funding Date. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the payment made pursuant to this paragraph. The Settlement Administrator shall issue an IRS Form 1099 — MISC to Class Counsel for the payments made pursuant to this paragraph. In the event that the Court reduces or does not approve the requested Class Counsel Award, Plaintiff and Class Counsel shall not have the right to revoke the Settlement, or to appeal such order, and the Settlement will remain binding.

11. PAGA Payment. Thirty Thousand Dollars and Zero Cents (\$30,000.00) shall be allocated from the Gross Settlement Amount for settlement of claims for

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civil penalties under the Private Attorneys General Act of 2004 (“PAGA Payment”). The Settlement Administrator shall distribute the LWDA Payment to the California Labor and Workforce Development Agency no later than twenty-five (25) calendar days after the Funding Date. The Aggrieved Employee Payment will be distributed to the Aggrieved Employees as described in this Agreement. For purposes of distributing the Aggrieved Employee Payments, each Aggrieved Employee shall receive their pro-rata share of the Aggrieved Employee Payment using the PAGA Payment Ratio as defined above.

12. Settlement Administration Expenses. The Settlement Administrator shall be paid for the costs of administration of the Settlement from the Gross Settlement Amount. The estimate of the Settlement Administration Expenses is \$14,000. The Settlement Administrator shall be paid the Settlement Administration Expenses no later than fifteen (15) calendar days after the Funding Date.

N. Final Approval Motion. Class Counsel and Plaintiff shall use best efforts to file with the Court a Motion for Order Granting Final Approval and Entering Judgment, within twenty-eight (28) days following the expiration of the Response Deadline, which motion shall request final approval of the Settlement and a determination of the amounts payable for the Class Representative Service Award, the Class Counsel Award, the PAGA Payment, and the Settlement Administration Expenses. Plaintiff will provide Defendants with a draft of the Motion at least three (3) business days prior to the filing of the Motion to give Defendants an opportunity to propose changes or additions to the Motion.

1. Declaration by Settlement Administrator. No later than fifteen (15) days after the Response Deadline, the Settlement Administrator shall submit a declaration in support of Plaintiff’s motion for final approval of this Settlement detailing the number of Notice Packets mailed and re-mailed to

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Class Members, the number of undeliverable Notice Packets, the number of timely requests for exclusion and the full names of the Class Members requesting exclusion (if any), the number of objections received, the amount of the average Individual Class Payment, lowest Individual Class Payment, and highest Individual Class Payment, the amount of the average Aggrieved Employee Payment, lowest Aggrieved Employee Payment, and highest Aggrieved Employee Payment, the Settlement Administration Expenses, and any other information as the Parties mutually agree or the Court orders the Settlement Administrator to provide.

2. Final Approval Order and Judgment. Class Counsel shall present an Order Granting Final Approval of Class Action Settlement to the Court for its approval, and Judgment thereon, at the time Class Counsel files the Motion for Final Approval.

N. Review of Motions for Preliminary and Final Approval. Class Counsel will provide an opportunity for Counsel for Defendants to review the Motions for Preliminary and Final Approval, including the Order Granting Final Approval of Class Action Settlement, and Judgment before filing with the Court. The Parties and their counsel will cooperate with each other and use their best efforts to affect the Court’s approval of the Motions for Preliminary and Final Approval of the Settlement, and entry of Judgment.

O. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts to implement the Settlement.

P. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval/Settlement Fairness Hearing to be conducted by the Court.

Q. Amendment or Modification. This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest.

- 1 R. Entire Agreement. This Agreement and any attached Exhibit constitute the entire  
2 Agreement among these Parties, and no oral or written representations, warranties or  
3 inducements have been made to any Party concerning this Agreement or its Exhibit  
4 other than the representations, warranties and covenants contained and memorialized  
5 in this Agreement and its Exhibits.
- 6 S. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and  
7 represent they are expressly authorized by the Parties whom they represent to negotiate  
8 this Agreement and to take all appropriate Action required or permitted to be taken by  
9 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other  
10 documents required to effectuate the terms of this Agreement. The persons signing  
11 this Agreement on behalf of Defendants represent and warrant that he/she is authorized  
12 to sign this Agreement on behalf of Defendants. Plaintiff represents and warrants that  
13 he is authorized to sign this Agreement and that he has not assigned any claim, or part  
14 of a claim, covered by this Settlement to a third-party.
- 15 T. No Public Comment: The Parties and their counsel agree that they will not issue any  
16 press releases, initiate any contact with the press, respond to any press inquiry, or have  
17 any communication with the press about the fact, amount or terms of the Settlement  
18 Agreement. Class Counsel further agrees not to use the Settlement Agreement or any  
19 of its terms for any marketing or promotional purposes. Nothing herein will restrict  
20 Class Counsel from including publicly available information regarding this settlement  
21 in future judicial submissions regarding Class Counsel’s qualifications and experience.  
22 Further, Class Counsel will not include, reference or use the Settlement Agreement for  
23 any marketing or promotional purposes, either before or after the Motion for  
24 Preliminary Approval is filed.
- 25 U. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure  
26 to the benefit of, the successors or assigns of the Parties, as previously defined.
- 27 V. California Law Governs. All terms of this Agreement and the Exhibit and any disputes  
28 shall be governed by and interpreted according to the laws of the State of California.

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- W. Counterparts. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Agreement shall exchange among themselves copies or originals of the signed counterparts.
- X. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement is a fair, adequate and reasonable settlement of this Action and have arrived at this Settlement after extensive arms-length negotiations, considering all relevant factors, present and potential.
- Y. Continuing Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction over this case under CCP section 664.6 to ensure the continuing implementation of the provisions of this settlement and that the time within which to bring this action to trial under CCP section 583.310 shall be executed from the date of the signing of this Agreement by all Parties until the entry of the final approval order and judgment or if not entered the date this Agreement shall no longer be of any force or effect.
- Z. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.
- AA. No Unalleged Claims. Plaintiff and Class Counsel represent that they do not currently intend to pursue any claims against the Released Parties, including, but not limited to, any and all claims relating to or arising from Plaintiff's employment with Defendants, regardless of whether Class Counsel is currently aware of any facts or legal theories upon which any claims or causes of action could be brought against Released Parties, including those facts or legal theories alleged in the operative complaint in this Action. The Parties further acknowledge, understand and agree that this representation is essential to the Agreement and that this Agreement would not have been entered into were it not for this representation.

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BB. Stipulation to Class Certification. The Parties agree to stipulate to class certification for purposes of this settlement only.

CC. No Admissions by the Parties. Plaintiff has claimed and continues to claim that the Released Claims have merit and give rise to liability on the part of Defendants. Defendants claim that the Released Claims have no merit and do not give rise to liability. This Agreement is a compromise of disputed claims. Nothing contained in this Agreement and no documents referred to and no action taken to carry out this Agreement may be construed or used as an admission by or against the Defendants or Plaintiff or Class Counsel as to the merits or lack thereof of the claims asserted. Other than as may be specifically set forth herein, each Party shall be responsible for and shall bear its/his own attorney's fees and costs.

DD. Attorneys' Fees. If Defendants fail to fund the Gross Settlement Amount in accordance with this Agreement, Plaintiff and the Settlement Class shall be entitled to reasonable attorneys' fees and costs incurred in any action seeking to enforce the terms of this Agreement.

IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

DATED: 08/28/2024

RAMON  
Jose Ramon (Aug 28, 2024 17:45 PDT)  
JOSE RAMON DE LA CRUZ

IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANTS:

DATED: 9/5/2024

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[Signature]  
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GALPAO GAUCHO TWO LLC

Laura Harker  
Managing Member



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GALPAO GAUCHO THREE LLC

Laura Harker

Managing Member

DATED: 9/5/2024

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GALPAO GAUCHO FOUR LLC

Laura Harker

Managing Member


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GALPAO GAUCHO FIVE LLC

Laura Harker

Managing Member

DATED: 9/5/2024

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GALPAO GAUCHO EIGHT LLC

Laura Harker

Managing Member

DATED: 9/5/2024

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GALPAO GAUCHO NINE LLC

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Laura Harker

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Managing Member


1 IT IS SO AGREED AS TO FORM BY COUNSEL:

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3 DATED: August 29, 2024

JCL LAW FIRM, APC

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By: 

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Jean-Claude Lapuyade

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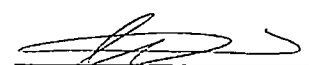
Attorneys for Plaintiff and the Settlement Class Members

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8 DATED: August 29, 2024

ZAKAY LAW GROUP, APLC

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By: 

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Shani Zakay

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Attorneys for Plaintiff and the Settlement Class Members

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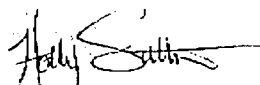
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14 DATED: August 29, 2024

FARELLA BRAUN + MARTEL LLP

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By: 

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Holly L. Sutton

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Attorney for Defendants

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# EXHIBIT A

**NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT  
AND FINAL HEARING DATE**

*(De La Cruz v. Galpao Gaucho Two LLC, et. al.,  
Contra Costa County Superior Court Case No. C23-01770)*

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE  
READ THIS NOTICE CAREFULLY.**

<b>SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>Do Nothing and Receive a Payment</b>	<p>To receive a cash payment from the Settlement, you do <b>not</b> have to do anything.</p> <p><b>Your estimated Individual Class Payment is: \$&lt;&lt; ___ &gt;&gt;. Your estimated Aggrieved Employee Payment is &lt;&lt; _____ &gt;&gt;. See the explanation below.</b></p> <p>After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below. In exchange for the settlement payment, you will release claims against the Defendants as detailed below.</p>
<b>Exclude Yourself</b>	<p>If you wish to exclude yourself from the Settlement, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive <b>no money from the Settlement.</b></p> <p>Instructions are set forth below.</p>
<b>Object</b>	<p>You may write to the Court about why you believe the Settlement should not be approved.</p> <p>Directions are provided below.</p>

**1. Why did I get this Notice?**

A proposed class action settlement (the “Settlement”) of this lawsuit pending in the Superior Court for the State of California, County of Contra Costa (the “Court”) has been reached between Plaintiff Jose Ramon De La Cruz (“Plaintiff”) and Defendants Galpao Gaucho Two LLC, Galpao Gaucho Three LLC, Galpao Gaucho Four LLC, Galpao Gaucho Five LLC, Galpao Gaucho Eight LLC, and Galpao Gaucho Nine LLC (“Defendants”). The Court has granted preliminary approval of the Settlement. **You may be entitled to receive money from this Settlement.**

**You have received this Class Notice because you have been identified as a member of the Class, which is defined as:**

All persons who are or previously were employed by Defendants in California and classified as non-exempt employees during the period between July 20, 2019 to July 1, 2024 (“Class Period”).

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

**2. What is this class action lawsuit about?**

On July 20, 2023, Plaintiff filed a Complaint against Defendants in the Superior Court of the State of California, County of Contra Costa (the “Action”). Plaintiff asserted the following claims alleging that Defendants: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code §17200 et seq.; (2) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197 & 1197.1; (3) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510, Et Seq; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the applicable IWC Wage Order; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the applicable IWC Wage Order; (6) Failure to Provide Accurate Itemized Statements in Violation of Cal. Lab. Code § 226; (7) Failure To Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203; (8) Failure To Reimburse Employees For Required Expenses in Violation of Cal. Lab. Code § 2802; and (9) Failure to Provide Gratuities in Violation of Cal. Lab. Code § 351.

On MONTH XX, 2024, Plaintiff filed a First Amended Complaint alleging an additional cause of action for violations of the Private Attorneys General Act, California Labor Code sections 2698, et seq. (“PAGA”). PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who does so as the proxy or agent of the state’s labor law enforcement agency. The purpose of the PAGA is not to recover damages or restitution, but to create a means of “deputizing” citizens as private attorney general to enforce the Labor Code.

Defendants deny and dispute all claims asserted in the Action. Specifically, Defendants contended (and continue to contend) that the Action could not properly be maintained as a class action; that Defendant properly paid members of the class all wages that were due; that Defendants provided members of the class with all legally required meal breaks and rest breaks; that Defendants paid any members of the class all wages due them at the time of their terminations; that Defendants reimbursed members of the class for required business expenses; that Defendants paid all gratuities owed; and that Defendants did not violate California Business and Professions Code section 17200.

The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representative, and the law firms of JCL Law Firm, APC and Zakay Law Group, APLC to serve as Class Counsel.

**3. What are the terms of the Settlement?**

Gross Settlement Amount. Defendants have agreed to pay an “all in” amount of Seven Hundred Twenty-Five Thousand Dollars and Zero Cents (\$725,000.00) (the “Gross Settlement Amount”) to fund the Settlement. The Gross Settlement Amount includes the payment of all Individual Class Payments to Settlement Class Members, Class Counsel Award, Settlement Administration Expenses, PAGA Payment, and the Class Representative Service Award to the Plaintiff.

After the Judgment becomes Final, Defendants will pay the Gross Settlement Amount by depositing the money with the Settlement Administrator. “Final” means the date the Judgment is no longer subject to appeal, or if an appeal is filed, the date the appeal process is completed, and the Judgment is affirmed.

Amounts to be Paid from the Gross Settlement Amount. The Settlement provides for certain payments to be made from the Gross Settlement Amount, which will be subject to final Court approval, and which will be deducted from the Gross Settlement Amount before settlement payments are made to Class Members, as follows:

- Settlement Administration Expenses. Payment to the Settlement Administrator, estimated not to exceed \$14,000.00 for expenses, including expenses of sending this Notice, processing opt-outs, and distributing settlement payments.

- Class Counsel Award. Payment to Class Counsel attorneys' not to exceed one-third of the Gross Settlement Amount (currently \$241,666.67) plus costs and expenses not to exceed \$30,000 for all costs and expenses incurred as documented in Class Counsel's billing records, both subject to Court approval. Class Counsel have been prosecuting the Action on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.
- Class Representative Service Award. Class Representative Service Award of up to Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff, or such lesser amount as may be approved by the Court, to compensate him for services on behalf of the Class in initiating and prosecuting the Action, and for the risks he undertook.
- PAGA Payment. A payment of Thirty Thousand Dollars and Zero Cents (\$30,000.00) relating to Plaintiff's claim under the Private Attorneys General Act ("PAGA"), \$19,500 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA Payment") and the remaining \$10,500 will be distributed to the Aggrieved Employees ("Aggrieved Employee Payment").
- Calculation of Individual Class Payments. After all the above payments of the court-approved Class Counsel Award, the Class Representative Service Award, the PAGA Payment, and the Settlement Administration Expenses are deducted from the Gross Settlement Amount, the remaining portion, called the "Net Settlement Amount," shall be distributed to class members who do **not** request exclusion ("Settlement Class Members"). The Individual Class Payment for each Settlement Class Member will be calculated by dividing the Net Settlement Amount by the total number of workweeks for all Settlement Class Members that occurred during the Class Period and multiplying the result by each individual Settlement Class Member's workweeks that occurred during the Class Period. A "workweek" is defined as a normal seven-day week of work during the Class Period in which, according to Defendants' records, a member of the class worked at least one day during any such workweek.
- Calculation of Aggrieved Employee Payments to Aggrieved Employees. The Aggrieved Employee Payment portion of the PAGA Payment shall be distributed to Aggrieved Employees irrespective of whether they exclude themselves or opt-out. The Aggrieved Employee Payment will be divided by the total number of pay periods worked by all Aggrieved Employees during the PAGA Period, and then taking that number and multiplying it by the number of pay periods worked by each respective Aggrieved Employee during the PAGA Period. "Aggrieved Employees" means all non-exempt employees who are or previously were employed by any of the Defendants and performed work in California during the PAGA Period. The PAGA Period means the period between July 1, 2023 to July 1, 2024.

**If the Settlement is approved by the Court, you will automatically be mailed a check for your Individual Class Payment to the same address as this Class Notice. You do not have to do anything to receive a payment.** If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to ensure you receive your payment.

You may find the Settlement Agreement entitled "Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims" filed on MONTH XX, 2024, with the Contra Costa County Superior Court, 725 Court Street, Martinez, CA 94553 in Department 12. You may also find the Settlement Agreement online by visiting the Contra Costa County Superior Court website <https://www.cc-courts.org/>. The Settlement Agreement can be found at Exhibit 1 of the Declaration of Sydney Castillo-Johnson filed on MONTH XX, 2024.

Tax Matters. Twenty percent (20%) of each Individual Class Payment is allocated to wages. Taxes are withheld from this amount, and each Settlement Class Member will be issued an Internal Revenue Service Form W-2 for such payment. Eighty percent (80%) of each Individual Class Payment is allocated to interest, penalties and other non-wage payments, and no taxes will be withheld from this portion, and each Settlement Class Member will be

issued an Internal Revenue Service Form 1099 for such payment. In addition, no taxes will be withheld from Aggrieved Employee Payments paid to Aggrieved Employees, and each Aggrieved Employee will be issued an Internal Revenue Service Form 1099 for such payment. Neither Class Counsel nor Defendants' counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

**4. What Do I Release Under the Settlement?**

Released Claims. Upon entry of final judgment and funding in full of the Gross Settlement Amount by Defendants, Plaintiff and the Settlement Class Members shall release all Released Class Claims that occurred during the Class Period as to the Released Parties. Released Class Claims means all class claims alleged, or reasonably could have been alleged based on the facts alleged, in the operative complaint in the Action which occurred during the Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period.

The Released Parties are defined as Defendants and any of their past, present and future direct or indirect parents, subsidiaries, predecessors, successors, affiliates, and all entities that could be held to be joint employers, as well as each of its or their past, present and future officers, directors, employees, partners, members, shareholders and agents, attorneys, insurers, reinsurers, and any individual or entity which could be jointly liable with Defendants.

The Released PAGA Claims shall be released as follows: Upon entry of final judgment and upon funding in full of the Gross Settlement Amount by Defendants, all Aggrieved Employees shall release all Released PAGA Claims, irrespective of whether they opted-out of the Class Settlement and will be bound by this PAGA Release (the "PAGA Release"). "Released PAGA Claims" means all PAGA claims alleged in the operative complaint in the Action and Plaintiff's PAGA notice to the LWDA which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside of the PAGA Period.

This means that, if you do not timely and formally exclude yourself from the Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants about the legal issues resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

**5. How much will my payment be?**

Defendants' records reflect that you have << \_\_\_\_ >> Workweeks worked during the Class Period (Beginning July 20, 2019 to July 1, 2024).

Based on this information, your estimated Individual Class Payment is << \_\_\_\_\_ >>.

Defendants' records reflect that you have << \_\_\_\_ >> pay periods worked during the PAGA Period (July 1, 2023 to July 1, 2024).

Based on this information, your estimated Aggrieved Employee Payment is << \_\_\_\_\_ >>.

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Notice no later than \_\_\_\_\_ [forty-five (45) days after the Notice or re-mailed Notice].



**6. How can I get a payment?**

**To get money from the Settlement, you do not have to do anything.** A check for your settlement payment will be mailed automatically to the same address as this Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: Apex Class Action LLC at 1-800-355-0700. You can also contact the Settlement Administrator at the administrator's website at <https://apexclassaction.com/> or at the administrator's address 18 Technology Drive, Suite 164, Irvine, CA 92618.

The Court will hold a hearing on \_\_\_\_\_ to decide whether to finally approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed within a few months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient. After entry of the Judgment, the Settlement Administrator will provide notice of the final judgment to the Class Members by posting a copy of the Judgment on the administrator's website at <https://apexclassaction.com/>.

**7. What if I don't want to be a part of the Settlement?**

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will receive NO money from the Settlement, and you will not be bound by its terms, except as provided as follows.** Irrespective of whether you exclude yourself from the Settlement or "opt out," you will be bound by the Released PAGA Claims, you will be deemed to have released the Released PAGA Claims, and you will receive a share of the Aggrieved Employee Payment.

To opt out, you must submit to the Settlement Administrator, by First Class Mail, a written, signed and dated request for exclusion postmarked no later than \_\_\_\_\_. The address for the Settlement Administrator is 18 Technology Drive, Suite 164, Irvine, CA 92618. The request for exclusion must state in substance: "I wish to opt out of the settlement of the class action lawsuit entitled *De La Cruz v. Galpao Gaucho Two LLC, et. al., Contra Costa County Superior Court, Case No. C23-01770*. I understand that by requesting to be excluded from the Settlement, I will receive no money from the Settlement described in this Notice." The request for exclusion must contain your name, address, signature and the last four digits of your Social Security Number for verification purposes. The request for exclusion must be signed by you. No other person may opt out for a member of the Class.

Written requests for exclusion that are postmarked after \_\_\_\_\_, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

**8. How do I tell the Court that I would like to challenge the Settlement?**

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason, may object to the proposed Settlement. Objections may be in writing and state the Class Member's name, current address, telephone number, and describe why you believe the Settlement is unfair. All written objections or other correspondence must also state the name and number of the case, which is *De La Cruz v. Galpao Gaucho Two LLC, et. al., Contra Costa County Superior Court, Case No. C23-01770*. You may also object without submitting a written objection by appearing at the final approval hearing scheduled as described in Section 9 below.

To object to the Settlement, you cannot opt out. If the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided in this Class Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

**Written objections must be delivered or mailed to the Settlement Administrator no later than**

\_\_\_\_\_. The address for the Settlement Administrator is Apex Class Action LLC, 18 Technology Drive, Suite 164, Irvine, CA 92618.

The addresses for the Parties' counsel are as follows:

**Class Counsel:**

Jean-Claude Lapuyade, Esq.  
JCL Law Firm, APC  
5440 Morehouse Drive, Suite 3600  
San Diego, CA 92121  
Tel.: (619) 599-8292  
Fax: (619) 599-2891  
Email: [jlapuyade@jcl-lawfirm.com](mailto:jlapuyade@jcl-lawfirm.com)

**Class Counsel:**

Shani O. Zakay, Esq.  
Zakay Law Group, APLC  
5440 Morehouse Drive, Suite 3600  
San Diego, CA 92121  
Tel: (619) 599-8292  
Fax: (619) 599-8291  
Email: [shani@zakaylaw.com](mailto:shani@zakaylaw.com)

**Counsel for Defendants:**

Holly Sutton, Esq.  
Farella Braun + Martell LLP  
One Bush Street, Suite 900  
San Francisco, CA 94104  
Tel: 415-954-4400  
Fax: 415-954-4480  
[hsutton@fbm.com](mailto:hsutton@fbm.com)

**9. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Approval Hearing at 00:00 AM/PM on \_\_\_\_\_, at the Contra Costa County Superior Court, 725 Court Street, Martinez, CA 94553 in Department 12 before Judge Charles S. Treat. The Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, reasonable, and adequate. At the Final Approval Hearing, the Court will determine whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. The Court will listen to people who have made a timely written request to speak at the hearing or who appear at the hearing to object. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

**10. How do I get more information about the Settlement?**

You may call the Settlement Administrator at 1-800-355-0700 or write to *De La Cruz v. Galpao Gaucho Two LLC, et. al., Contra Costa County Superior Court, Case No. C23-01770*, Settlement Administrator, c/o \_\_\_\_\_.

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You may receive a copy of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims ("Settlement Agreement") filed on MONTH XX, 2024, the Final Judgment or other Settlement documents by writing to JCL Law Firm, APC, 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121.

**PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.**

**IMPORTANT:**

- You must inform the Settlement Administrator of any change of address to ensure receipt of your Individual Class Payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall pay all funds from such uncashed checks shall be transmitted to the California State Controller's Office for Unclaimed Property in the name of each Class Member who failed to cash their Individual Class Payment. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

# **EXHIBIT 2**

**JCL LAW FIRM, APC**

Jean-Claude Lapuyade (State Bar #248676)  
Sydney Castillo-Johnson (State Bar #343881)  
John L. Nitti (State Bar #330752)  
5440 Morehouse Drive, Suite 3600  
San Diego, CA 92121  
Telephone: (619) 599-8292  
[jlapuyade@jcl-lawfirm.com](mailto:jlapuyade@jcl-lawfirm.com)  
[scastillo@jcl-lawfirm.com](mailto:scastillo@jcl-lawfirm.com)  
[jnitti@jcl-lawfirm.com](mailto:jnitti@jcl-lawfirm.com)

**ZAKAY LAW GROUP, APLC**

Shani O. Zakay (State Bar #277924)  
Nicole Noursamadi (State Bar #357246)  
5440 Morehouse Drive, Suite 3600  
San Diego, CA 92121  
Telephone: (619) 255-9047  
[shani@zakaylaw.com](mailto:shani@zakaylaw.com)  
[nicole@zakaylaw.com](mailto:nicole@zakaylaw.com)

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF CONTRA COSTA**

JOSE RAMON DE LA CRUZ, an individual,  
on behalf of himself, and on behalf of all  
persons similarly situated,

Plaintiff,

v.

GALPAO GAUCHO TWO, LLC, a Texas  
limited liability company; GALPAO GAUCHO  
THREE, LLC, a California limited liability  
company; GALPAO GAUCHO FOUR LLC, a  
California limited liability company; GALPAO  
GAUCHO FIVE LLC, a California limited  
liability company; GALPAO GAUCHO EIGHT  
LLC, a California limited liability company;  
GALPAO GAUCHO NINE LLC, a California  
limited liability company; and DOES 1-50,  
Inclusive,

Defendants.

Case No: C23-01770

**AMENDMENT NO. 1 TO STIPULATION  
FOR CLASS AND PAGA ACTION  
SETTLEMENT AND RELEASE OF  
CLAIMS**

Judge: Hon. Charles S. Treat  
Dept. 12

1 Plaintiff Jose Ramon De La Cruz (hereinafter collectively "Plaintiff"), an individual, on  
2 behalf of himself, and on behalf of all persons similarly situated, and in his representative capacity  
3 on behalf of the State of California and the Aggrieved Employees, and Defendants Galpao Gaucho  
4 Two, LLC, Galpao Gaucho Three, LLC, Galpao Gaucho Four LLC, Galpao Gaucho Five LLC,  
5 Galpao Gaucho Eight LLC, and Galpao Gaucho Nine LLC (hereinafter "Defendants," and  
6 collectively with Plaintiff, the "Parties"), pursuant to Paragraph III(Q) of the Stipulation of  
7 Settlement of Class Action and PAGA Claims and Release of Claims ("Original Agreement")  
8 entered into on or around September 5, 2024, hereby agree to amend the Original Agreement, as  
9 stated herein. The amendments stated herein are incorporated by this reference:

10 **A. Paragraph I(F) of the Original Agreement is hereby amended to state as follows:**

11 "Class Counsel Award" means the award of fees and expenses that the Court  
12 authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff and the  
13 Class in the Action, consisting of attorneys' fees currently not to exceed one-third of the Gross  
14 Settlement Amount currently estimated to be \$329,391.66 out of \$988,175.00, plus costs and  
15 expenses in the amount up to \$30,000.00. Class Counsel's award for attorneys' fees will be  
16 divided equally between Class Counsel (50% to JCL Law Firm, APC; and 50% to Zakay Law  
17 Group, APLC.)

18 **B. Paragraph I(P) to the Original Agreement is hereby amended to state as follows:**

19 "Gross Settlement Amount" means Nine Hundred Eight-Eight Thousand, One  
20 Hundred Seventy-Five Dollars and Zero Cents (\$988,175.00) that Defendants must pay into the  
21 QSF in connection with this Settlement, inclusive of the sum of the Individual Class Payments,  
22 the Class Representative Service Award, the Class Counsel Award, PAGA Payment and the  
23 Settlement Administration Expenses and *exclusive* of the employer's share of payroll tax, if any,  
24 triggered by any payment under this Settlement.

25 **C. Paragraph III(A)(1) to the Original Agreement is hereby amended to state as follows:**

26 Settlement Consideration. In full and complete settlement of the Action, and in  
27 exchange for the releases set forth below, Defendants will pay the sum of the Individual Class  
28 Payment, the Class Representative Service Award, the Class Counsel Award, PAGA Payment,

1 and the Settlement Administration Expenses, as specified in this Agreement, equal to the Gross  
2 Settlement Amount of Nine Hundred Eight-Eight Thousand, One Hundred Seventy-Five Dollars  
3 and Zero Cents (\$988,175.00). The Parties agree that this is a non-reversionary Settlement and  
4 that no portion of the Gross Settlement Amount shall revert to Defendants. Other than the  
5 Defendants' share of employer payroll taxes and as provided for in Section III(A)(2) below, if  
6 any, Defendants shall not be required to pay more than the Gross Settlement Amount, except as  
7 provided hereinbelow.

8 **D. Paragraph III(M)(10) to the Original Agreement is hereby amended to state as**  
9 **follows:**

10 Class Counsel Award. Defendants understand a motion by Class Counsel for  
11 attorneys' fees not to exceed one-third of the Gross Settlement Amount currently estimated to be  
12 Three Hundred Twenty-Nine Thousand, Three Hundred Ninety-One Dollars and Sixty-Six Cents  
13 (\$329,391.66) plus costs and expenses supported by declaration not to exceed Thirty Thousand  
14 Dollars and Zero Cents (\$30,000.00), from the Gross Settlement Amount will be filed.  
15 Defendants agree not to oppose the request for the Class Counsel Award. Any portion of the  
16 requested Class Counsel Award that is not awarded to Class Counsel shall be part of the Net  
17 Settlement Amount and shall be distributed to Settlement Class Members as provided in this  
18 Agreement. The Settlement Administrator shall allocate and pay the Class Counsel Award to  
19 Class Counsel from the Gross Settlement Amount no later than fifteen (15) calendar days after  
20 the Funding Date. Class Counsel shall be solely and legally responsible to pay all applicable taxes  
21 on the payment made pursuant to this paragraph. The Settlement Administrator shall issue an  
22 IRS Form 1099 — MISC to Class Counsel for the payments made pursuant to this paragraph. In  
23 the event that the Court reduces or does not approve the requested Class Counsel Award, Plaintiff  
24 and Class Counsel shall not have the right to revoke the Settlement, or to appeal such order, and  
25 the Settlement will remain binding.

26 ///

27 ///

28 ///

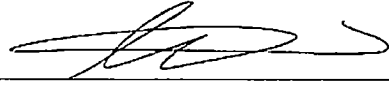
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**E. The Class Notice**

The Class Notice attached hereto as Exhibit A has also been updated to reflect the updated monetary terms.

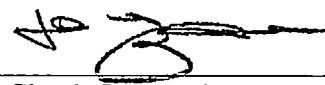
**IT IS SO AGREED.**

Dated: January 16, 2025



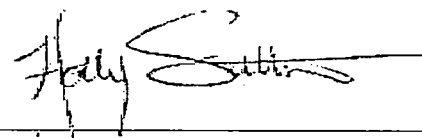
Shani O. Zakay  
Zakay Law Group, APLC  
Attorney for Plaintiff

Dated: January 16, 2025



Jean-Claude Lapuyade  
JCL Law Firm, APC  
Attorney for Plaintiff

Dated: January 15, 2025



Holly Sutton  
Farella Braun + Martell LLP  
Attorney for Defendant

# **EXHIBIT A**



**NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT  
AND FINAL HEARING DATE**

*(De La Cruz v. Galpao Gaucho Two LLC, et. al.,  
Contra Costa County Superior Court Case No. C23-01770)*

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE  
READ THIS NOTICE CAREFULLY.**

<b>SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>Do Nothing and Receive a Payment</b>	To receive a cash payment from the Settlement, you do <b>not</b> have to do anything. <b>Your estimated Individual Class Payment is: \$&lt;&lt; ___ &gt;&gt;. Your estimated Aggrieved Employee Payment is &lt;&lt; _____ &gt;&gt;. See the explanation below.</b> After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below. In exchange for the settlement payment, you will release claims against the Defendants as detailed below.
<b>Exclude Yourself</b>	If you wish to exclude yourself from the Settlement, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive <b>no money from the Settlement.</b> Instructions are set forth below.
<b>Object</b>	You may write to the Court about why you believe the Settlement should not be approved. Directions are provided below.

**1. Why did I get this Notice?**

A proposed class action settlement (the "Settlement") of this lawsuit pending in the Superior Court for the State of California, County of Contra Costa (the "Court") has been reached between Plaintiff Jose Ramon De La Cruz ("Plaintiff") and Defendants Galpao Gaucho Two LLC, Galpao Gaucho Three LLC, Galpao Gaucho Four LLC, Galpao Gaucho Five LLC, Galpao Gaucho Eight LLC, and Galpao Gaucho Nine LLC ("Defendants"). The Court has granted preliminary approval of the Settlement. **You may be entitled to receive money from this Settlement.**

**You have received this Class Notice because you have been identified as a member of the Class, which is defined as:**

All persons who are or previously were employed by Defendants in California and classified as non-exempt employees during the period between July 20, 2019 to July 1, 2024 ("Class Period").

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

**2. What is this class action lawsuit about?**

On July 20, 2023, Plaintiff filed a Complaint against Defendants in the Superior Court of the State of California, County of Contra Costa (the "Action"). Plaintiff asserted the following claims alleging that Defendants: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code §17200 et seq.; (2) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197 & 1197.1; (3) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510, Et Seq; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the applicable IWC Wage Order; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the applicable IWC Wage Order; (6) Failure to Provide Accurate Itemized Statements in Violation of Cal. Lab. Code § 226; (7) Failure To Provide Wages When Due in Violation of Cal.

Lab. Code §§ 201, 202 and 203; (8) Failure To Reimburse Employees For Required Expenses in Violation of Cal. Lab. Code § 2802; and (9) Failure to Provide Gratuities in Violation of Cal. Lab. Code § 351.

On MONTH XX, 2024, Plaintiff filed a First Amended Complaint alleging an additional cause of action for violations of the Private Attorneys General Act, California Labor Code sections 2698, et seq. (“PAGA”). PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who does so as the proxy or agent of the state’s labor law enforcement agency. The purpose of the PAGA is not to recover damages or restitution, but to create a means of “deputizing” citizens as private attorney general to enforce the Labor Code.

Defendants deny and dispute all claims asserted in the Action. Specifically, Defendants contended (and continue to contend) that the Action could not properly be maintained as a class action; that Defendant properly paid members of the class all wages that were due; that Defendants provided members of the class with all legally required meal breaks and rest breaks; that Defendants paid any members of the class all wages due them at the time of their terminations; that Defendants reimbursed members of the class for required business expenses; that Defendants paid all gratuities owed; and that Defendants did not violate California Business and Professions Code section 17200.

The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representative, and the law firms of JCL Law Firm, APC and Zakay Law Group, APLC to serve as Class Counsel.

### **3. What are the terms of the Settlement?**

Gross Settlement Amount. Defendants have agreed to pay an “all in” amount of Nine Hundred Eight-Eight Thousand, One Hundred Seventy-Five Dollars and Zero Cents (\$988,175.00) (the “Gross Settlement Amount”) to fund the Settlement. The Gross Settlement Amount includes the payment of all Individual Class Payments to Settlement Class Members, Class Counsel Award, Settlement Administration Expenses, PAGA Payment, and the Class Representative Service Award to the Plaintiff.

After the Judgment becomes Final, Defendants will pay the Gross Settlement Amount by depositing the money with the Settlement Administrator. “Final” means the date the Judgment is no longer subject to appeal, or if an appeal is filed, the date the appeal process is completed, and the Judgment is affirmed.

Amounts to be Paid from the Gross Settlement Amount. The Settlement provides for certain payments to be made from the Gross Settlement Amount, which will be subject to final Court approval, and which will be deducted from the Gross Settlement Amount before settlement payments are made to Class Members, as follows:

- Settlement Administration Expenses. Payment to the Settlement Administrator, estimated not to exceed \$14,000.00 for expenses, including expenses of sending this Notice, processing opt-outs, and distributing settlement payments.
- Class Counsel Award. Payment to Class Counsel attorneys’ not to exceed one-third of the Gross Settlement Amount (currently \$329,391.66) plus costs and expenses not to exceed \$30,000 for all costs and expenses incurred as documented in Class Counsel’s billing records, both subject to Court approval. Class Counsel have been prosecuting the Action on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.
- Class Representative Service Award. Class Representative Service Award of up to Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff, or such lesser amount as may be approved by the Court, to compensate him for services on behalf of the Class in initiating and prosecuting the Action, and for the risks he undertook.
- PAGA Payment. A payment of Thirty Thousand Dollars and Zero Cents (\$30,000.00) relating to Plaintiff’s claim under the Private Attorneys General Act (“PAGA”), \$19,500 of which will be paid to the State of California’s Labor and Workforce Development Agency (“LWDA Payment”) and the remaining \$10,500 will be distributed to the Aggrieved Employees (“Aggrieved Employee Payment”).
- Calculation of Individual Class Payments. After all the above payments of the court-approved Class Counsel Award, the Class Representative Service Award, the PAGA Payment, and the Settlement

Administration Expenses are deducted from the Gross Settlement Amount, the remaining portion, called the “Net Settlement Amount,” shall be distributed to class members who do **not** request exclusion (“Settlement Class Members”). The Individual Class Payment for each Settlement Class Member will be calculated by dividing the Net Settlement Amount by the total number of workweeks for all Settlement Class Members that occurred during the Class Period and multiplying the result by each individual Settlement Class Member’s workweeks that occurred during the Class Period. A “workweek” is defined as a normal seven-day week of work during the Class Period in which, according to Defendants’ records, a member of the class worked at least one day during any such workweek.

- Calculation of Aggrieved Employee Payments to Aggrieved Employees. The Aggrieved Employee Payment portion of the PAGA Payment shall be distributed to Aggrieved Employees irrespective of whether they exclude themselves or opt-out. The Aggrieved Employee Payment will be divided by the total number of pay periods worked by all Aggrieved Employees during the PAGA Period, and then taking that number and multiplying it by the number of pay periods worked by each respective Aggrieved Employee during the PAGA Period. “Aggrieved Employees” means all non-exempt employees who are or previously were employed by any of the Defendants and performed work in California during the PAGA Period. The PAGA Period means the period between July 1, 2023 to July 1, 2024.

**If the Settlement is approved by the Court, you will automatically be mailed a check for your Individual Class Payment to the same address as this Class Notice. You do not have to do anything to receive a payment.** If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to ensure you receive your payment.

You may find the Settlement Agreement entitled “Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims” filed on MONTH XX, 2024, with the Contra Costa County Superior Court, 725 Court Street, Martinez, CA 94553 in Department 12. You may also find the Settlement Agreement online by visiting the Contra Costa County Superior Court website <https://www.cc-courts.org/>. The Settlement Agreement can be found at Exhibit 1 of the Declaration of Sydney Castillo-Johnson filed on MONTH XX, 2024.

Tax Matters. Twenty percent (20%) of each Individual Class Payment is allocated to wages. Taxes are withheld from this amount, and each Settlement Class Member will be issued an Internal Revenue Service Form W-2 for such payment. Eighty percent (80%) of each Individual Class Payment is allocated to interest, penalties and other non-wage payments, and no taxes will be withheld from this portion, and each Settlement Class Member will be issued an Internal Revenue Service Form 1099 for such payment. In addition, no taxes will be withheld from Aggrieved Employee Payments paid to Aggrieved Employees, and each Aggrieved Employee will be issued an Internal Revenue Service Form 1099 for such payment. Neither Class Counsel nor Defendants’ counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

#### **4. What Do I Release Under the Settlement?**

Released Claims. Upon entry of final judgment and funding in full of the Gross Settlement Amount by Defendants, Plaintiff and the Settlement Class Members shall release all Released Class Claims that occurred during the Class Period as to the Released Parties. Released Class Claims means all class claims alleged, or reasonably could have been alleged based on the facts alleged, in the operative complaint in the Action which occurred during the Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers’ compensation, and class claims outside of the Class Period.

The Released Parties are defined as Defendants and any of their past, present and future direct or indirect parents, subsidiaries, predecessors, successors, affiliates, and all entities that could be held to be joint employers, as well as each of its or their past, present and future officers, directors, employees, partners, members, shareholders and agents, attorneys, insurers, reinsurers, and any individual or entity which could be jointly liable with Defendants.

The Released PAGA Claims shall be released as follows: Upon entry of final judgment and upon funding in full of the Gross Settlement Amount by Defendants, all Aggrieved Employees shall release all Released PAGA Claims, irrespective of whether they opted-out of the Class Settlement and will be bound by this PAGA Release

(the "PAGA Release"). "Released PAGA Claims" means all PAGA claims alleged in the operative complaint in the Action and Plaintiff's PAGA notice to the LWDA which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside of the PAGA Period.

This means that, if you do not timely and formally exclude yourself from the Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants about the legal issues resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

**5. How much will my payment be?**

Defendants' records reflect that you have << \_\_\_\_ >> Workweeks worked during the Class Period (Beginning July 20, 2019 to July 1, 2024).

Based on this information, your estimated Individual Class Payment is << \_\_\_\_\_ >>.

Defendants' records reflect that you have << \_\_\_\_ >> pay periods worked during the PAGA Period (July 1, 2023 to July 1, 2024).

Based on this information, your estimated Aggrieved Employee Payment is << \_\_\_\_\_ >>.

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Notice no later than \_\_\_\_\_ [forty-five (45) days after the Notice or re-mailed Notice].

**6. How can I get a payment?**

**To get money from the Settlement, you do not have to do anything.** A check for your settlement payment will be mailed automatically to the same address as this Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: Apex Class Action LLC at 1-800-355-0700. You can also contact the Settlement Administrator at the administrator's website at <https://apexclassaction.com/> or at the administrator's address 18 Technology Drive, Suite 164, Irvine, CA 92618.

The Court will hold a hearing on \_\_\_\_\_ to decide whether to finally approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed within a few months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient. After entry of the Judgment, the Settlement Administrator will provide notice of the final judgment to the Class Members by posting a copy of the Judgment on the administrator's website at <https://apexclassaction.com/>.

**7. What if I don't want to be a part of the Settlement?**

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will receive NO money from the Settlement, and you will not be bound by its terms, except as provided as follows.** Irrespective of whether you exclude yourself from the Settlement or "opt out," you will be bound by the Released PAGA Claims, you will be deemed to have released the Released PAGA Claims, and you will receive a share of the Aggrieved Employee Payment.

To opt out, you must submit to the Settlement Administrator, by First Class Mail, a written, signed and dated request for exclusion postmarked no later than \_\_\_\_\_. The address for the Settlement Administrator is 18 Technology Drive, Suite 164, Irvine, CA 92618. The request for exclusion must state in substance: "I wish to opt out of the settlement of the class action lawsuit entitled *De La Cruz v. Galpao Gaucho Two LLC, et. al., Contra Costa County Superior Court, Case No. C23-01770*. I understand that by requesting to be excluded from the Settlement, I will receive no money from the Settlement described in this Notice." The request for exclusion must contain your name, address, signature and the last four digits of your Social Security Number for verification purposes. The request for exclusion must be signed by you. No other person may opt out for a member of the Class.

Written requests for exclusion that are postmarked after \_\_\_\_\_, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

**8. How do I tell the Court that I would like to challenge the Settlement?**

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason, may object to the proposed Settlement. Objections may be in writing and state the Class Member's name, current address, telephone number, and describe why you believe the Settlement is unfair. All written objections or other correspondence must also state the name and number of the case, which is *De La Cruz v. Galpao Gaucho Two LLC, et. al., Contra Costa County Superior Court, Case No. C23-01770*. You may also object without submitting a written objection by appearing at the final approval hearing scheduled as described in Section 9 below.

To object to the Settlement, you cannot opt out. If the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided in this Class Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

**Written objections must be delivered or mailed to the Settlement Administrator no later than \_\_\_\_\_.** The address for the Settlement Administrator is Apex Class Action LLC, 18 Technology Drive, Suite 164, Irvine, CA 92618.

The addresses for the Parties' counsel are as follows:

**Class Counsel:**

Jean-Claude Lapuyade, Esq.  
JCL Law Firm, APC  
5440 Morehouse Drive, Suite 3600  
San Diego, CA 92121  
Tel.: (619) 599-8292  
Email: [jlapuyade@jcl-lawfirm.com](mailto:jlapuyade@jcl-lawfirm.com)

**Class Counsel:**

Shani O. Zakay, Esq.  
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**Counsel for Defendants:**

Holly Sutton, Esq.  
Farella Braun + Martell LLP  
One Bush Street, Suite 900  
San Francisco, CA 94104  
Tel: 415-954-4400  
Fax: 415-954-4480  
[hsutton@fbm.com](mailto:hsutton@fbm.com)

**9. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Approval Hearing at 00:00 AM/PM on \_\_\_\_\_, at the Contra Costa County Superior Court, 725 Court Street, Martinez, CA 94553 in Department 12 before Judge Charles S. Treat. The Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, reasonable, and adequate. At the Final Approval Hearing, the Court will determine whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. The Court will listen to people who have made a timely written request to speak at the hearing or who appear at the hearing to object. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

**10. How do I get more information about the Settlement?**

You may call the Settlement Administrator at 1-800-355-0700 or write to *De La Cruz v. Galpao Gaucho Two LLC, et. al., Contra Costa County Superior Court, Case No. C23-01770*, Settlement Administrator, c/o \_\_\_\_\_.

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You may receive a copy of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims ("Settlement Agreement") filed on MONTH XX, 2024, the Final Judgment or other Settlement documents by writing to JCL Law Firm, APC, 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121.

**PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE**

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your Individual Class Payment.

Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall pay all funds from such uncashed checks shall be transmitted to the California State Controller's Office for Unclaimed Property in the name of each Class Member who failed to cash their Individual Class Payment. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.