

Kane Moon (SBN 249834)
 Enzo Nabiev (SBN 332118)
 Sandy Pham (SBN 352753)
MOON LAW GROUP, PC
 725 S. Figueroa St., 31st Floor
 Los Angeles, California 90017
 Telephone: (213) 232-3128
 Facsimile: (213) 232-3125
 E-mail: kmoon@moonlawgroup.com
 E-mail: enabiev@moonlawgroup.com
 E-mail: spham@moonlawgroup.com

Attorneys for Plaintiff Janete Jones and the putative class

Donald P. Sullivan (State Bar No. 191080)
 Isabella L. Shin (State Bar No. 294937)
JACKSON LEWIS P.C.
 50 California Street, 9th Floor
 San Francisco, California 94111-4615
 Telephone: (415) 394-9400
 Facsimile: (415) 394-9401
 E-mail: Donald.Sullivan@jacksonlewis.com
 E-mail: Isabella.Shin@jacksonlewis.com

Attorneys for Defendant Noah's New York Bagels Company

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

JANETE JONES, individually, and on behalf
 of all others similarly situated,

Plaintiff,

vs.

NOAH'S NEW YORK BAGELS
 COMPANY, a Minnesota corporation; and
 DOES 1 through 10, inclusive,

Defendants

Case No.: 22CV409087

CLASS ACTION

**STIPULATION OF CLASS ACTION AND
 PAGA SETTLEMENT**

Class Action Complaint filed: December 27,
 2022
 PAGA Complaint filed: April 3, 2023
 Consolidated First Amended Complaint filed:
 July 17, 2024

Trial date: Not set

STIPULATION OF CLASS ACTION SETTLEMENT

This Stipulation of Class Action and PAGA Settlement (“Stipulation of Settlement” or “Settlement” or “Agreement”) is made and entered into by and between Plaintiff JANETE JONES, individually, and on behalf of all others similarly situated, (“Plaintiff” or “Class Representative”), and Defendant NOAH’S NEW YORK BAGELS COMPANY (“Defendant”). Plaintiff and Defendant are sometimes referred to individually as a “Party” or collectively referred to herein as “the Parties.” THE PARTIES STIPULATE AND AGREE as follows:

DEFINITIONS

This Settlement Agreement is intended by Plaintiff and Defendant to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined below), upon and subject to the terms and conditions hereof, as follows:

1. For purposes of this Settlement, “Action” refers to the above-captioned action entitled *Jones v. Noah’s New York Bagels Company*., Santa Clara Superior Court, Case No.: 22CV409087.
2. For purposes of this Settlement, “Class Counsel” means MOON LAW GROUP, PC.
3. For purposes of this Settlement, the “Class” or “Class Members” consist of: All current and former non-exempt employees of Defendant who worked in California during the Class Period.
4. For purposes of this Settlement, the “Class Period” is from December 27, 2018, to August 12, 2024. For purposes of this Settlement, “Complaint” refers to the operative Consolidated First Amended Complaint filed in the Action.
5. For purposes of this Settlement, “Covered Workweeks” means the number of weeks a Class Member worked at Defendant’s locations in California during the Class Period. The Covered Workweeks will be derived from the Class Members’ start date in the Settlement Class Period through their termination date or the end of the Settlement Class Period for current employees in which at least one qualifying shift was worked. The data in Defendant’s records will be used to perform this calculation.
6. For purposes of the Settlement, “Defendant’s Counsel” means JACKSON LEWIS P.C.
7. For purposes of this Settlement, “PAGA” means the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*).
8. For purposes of this Settlement, “PAGA Allocation” means the portion of the Gross

Settlement Amount that the Parties have agreed to allocate to resolution of the Released PAGA Claims. The Parties have agreed that the PAGA Allocation will be \$100,000.00 from the Gross Settlement Amount. Pursuant to PAGA, Seventy-Five Percent (75%), or \$75,000.00, of the PAGA Allocation will be paid to the Labor and Workforce Development Agency (“LWDA”) (“PAGA Penalty Payment”), and Twenty-Five Percent (25%), or \$25,000.00, of the PAGA Allocation will be paid to the PAGA Employees (“PAGA Settlement Payment”). The pay periods worked during the PAGA Period for each Aggrieved Employee will be derived from their start date in the PAGA Period through their termination date or the end of the PAGA Period for current employees in which at least one qualifying shift was worked.

9. For purposes of this Settlement, “PAGA Employee” means all Class Members that worked during the PAGA Period. It is stipulated by the Parties that, for purposes of this Settlement, all PAGA Employees are “Aggrieved Employees” as defined pursuant to PAGA.

10. For purposes of this Settlement, “PAGA Pay Periods” means the number of pay periods each PAGA Employee worked during the PAGA Period.

11. For purposes of this Settlement, “PAGA Period” means the period from December 25, 2021, through August 12, 2024.

12. For purposes of this Settlement, “PAGA Representative” means Plaintiff.

13. For purposes of this Settlement, “Response Deadline” means the date forty-five (45) days after the Settlement Administrator initially mails the Notice to Settlement Class Members (“Notice”) and the last date on which Class Members may submit a request for exclusion or written objection to the Settlement. In the case of a re-mailed Notice, the Response Deadline will be the later of forty-five (45) calendar days after the initial mailing or fourteen (14) calendar days from re-mailing. The Response Deadline may be extended only as expressly described herein.

14. For purposes of this Settlement, “Released Class Claims” means all claims for wages, statutory and civil penalties, damages and liquidated damages, interest, fees and costs that were alleged or could have been alleged arising out of the allegations in the operative Consolidated First Amended Complaint and PAGA notice, which arose at any time during the Settlement Class Period and PAGA Period, including, but not limited to: (1) claims for failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods or pay a premium in lieu thereof; (4) failure to

authorize and permit rest periods or pay a premium in lieu thereof; (5) failure to reimburse employees for business expenses; (6) failure to timely pay final wages at the time of termination/end of employment; (7) failure to provide accurate itemized wage statements; (8) unfair business practices; (9) claims for penalties under the Private Attorney General Act for violation of California Labor Code sections 201-204, 210, 218.5, 218.6, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1174.5, 1194, 1195, 1197, 1197.1, 1198, 2698 et seq., 2699 et seq., 2802, or any applicable Wage Order.

15. For purposes of this Settlement, “Released PAGA Claims” means all claims for civil penalties and any other available relief pursuant to PAGA, to the extent asserted in Plaintiff’s administrative exhaustion letter submitted to the LWDA in this Action on December 25, 2022, and arising during the PAGA Period, including specifically, claims for PAGA penalties arising out of or based on alleged: failure to pay minimum wages, failure to pay overtime wages, failure to pay for off-the-clock work, failure to provide compliant meal periods, failure to provide compliant rest periods, failure to provide timely wages, failure to pay vacation wages, failure to provide suitable seating, failure to provide timely wages upon separation, failure to provide accurate itemized wage statements, failure to reimburse for business expenses, and/or failure to maintain accurate payroll records. This release includes all claims for civil penalties arising under the California Labor Code, including but not limited to Labor Code sections 200, 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 227.3, 432, 510, 512, 558, 1102.5, 1174, 1174(3), 1174.5, 1194, 1197, 1197.1, 1197.5, 1198, 1198.5, 1199, 2802 and the applicable Wage Orders of the Industrial Welfare Commission.

16. For purposes of this Settlement, “Released Parties” means Defendant Noah’s New York Bagels Company, and any of its past, present and future direct or indirect parents, including but not limited to Einstein Noah Restaurant Group, Inc., subsidiaries, predecessors, successors and affiliates, as well as each of 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 Defendant.

17. For purposes of this Settlement, the “Settlement Class” or “Settlement Class Members” are those Class Members who do not submit timely and compliant exclusion requests to the Settlement Administrator. The Parties estimate that the Class included approximately 4,369 Class Members who

worked 207,054 workweeks as of February 27, 2024.

18. For purposes of this Settlement, “Settlement Payments” means all payments to Settlement Class Members (“Settlement Class Payments”) and the payments to PAGA Employees (“PAGA Settlement Payments”).

STIPULATED BACKGROUND

On December 27, 2022, Plaintiff filed a putative Class Action alleging the following labeled causes of action: (1) Failure to Pay Minimum Wage Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, 1197, and the Industrial Welfare Commission Wage Orders]; (2) Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194, 1198, and the Industrial Welfare Commission Wage Orders]; (3) Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512, and the Industrial Welfare Commission Wage Orders]; (4) Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7, and the Industrial Welfare Commission Wage Orders]; (5) Failure to Indemnify Necessary Business Expenses [Cal. Lab. Code § 2802]; (6) Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203]; (7) Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226, and the Industrial Welfare Commission Wage Orders]; and (8) Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, *et seq.*]. Plaintiff sought to represent all persons who worked for Defendant in California as an hourly-paid, non-exempt employee at any time during the period beginning four years before the filing of the initial complaint and ending when Notice to the Class is sent. Defendant subsequently removed the Class Action to the U.S. District Court, Northern District of California.

19. On December 25, 2022, Plaintiff gave written notice to the LWDA.

20. On April 3, 2023, Plaintiff filed a separate complaint alleging violations under the PAGA, styled *Jones v. Noah’s New York Bagels Company*, Santa Clara Superior Court Case No.: 23CV413369.

21. On July 17, 2024, Plaintiff filed her Consolidated First Amended Complaint which includes both class and PAGA allegations. The Consolidated First Amended Complaint is the operative Complaint in the Action.

22. Solely for purposes of settling the Action, the Parties and their respective counsel stipulate

1 and agree that the requisites for establishing class certification with respect to the Class Members have
2 been met and are met.

3 23. Should, for whatever reason, the Settlement not become effective, the fact that the Parties
4 were willing to stipulate to class certification as part of the Settlement shall have no bearing on, and shall
5 not be admissible in connection with, the issue of whether the Class Members and/or the Class Claims
6 should be certified in a non-Settlement context in this Action or in any other lawsuit. Defendant expressly
7 reserves its right to oppose claims or class certification in this or any other action should this Settlement
8 not become effective.

9 24. Defendant denies any liability or wrongdoing of any kind whatsoever associated with the
10 claims alleged or which could have been alleged in the Complaint, and Defendant further denies that, for
11 any purpose other than settling this lawsuit, that the Action is appropriate for class or representative
12 treatment. With respect to Plaintiff's claims, Defendant contends, among other things, that Plaintiff and the
13 Class Members have been paid all wages, including minimum wages and overtime, have been provided
14 meal periods or they have been made available as required, have been provided rest periods or they have
15 been authorized and permitted as required, have been reimbursed for all necessary business expenses, have
16 been paid timely and proper wages upon separation of employment and during employment, and have
17 been provided with accurate and complete itemized wage statements. Defendant contends, among other
18 things, that it has complied with all provisions of the California Labor Code and the applicable Wage
19 Orders of the Industrial Welfare Commission. In entering into this Agreement, Defendant does not
20 admit, and specifically denies, it has violated any state, federal, or local law; violated any
21 regulations or guidelines promulgated pursuant to any statute or any other applicable laws,
22 regulations or legal requirements; breached any contract; violated or breached any duty; engaged in
23 any misrepresentation or deception; or engaged in any other unlawful conduct with respect to its
24 employees. Furthermore, with respect to all claims, Defendant contends that it has complied with the
25 California Business and Professions Code.

26 25. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge
27 all disputes and claims arising from or related to the Complaint and Plaintiff's written notice to the
28 LWDA.

26. Class Counsel has conducted a thorough investigation into the facts of this Action, including an extensive review of relevant documents, and has diligently pursued an investigation of the claims of the Class against Defendant. Based on its own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement with Defendant for the consideration and on the terms set forth in this Stipulation of Settlement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts and circumstances, including the risk of significant delay, the risk the Class will not be certified by the Court, defenses asserted by Defendant, and numerous potential appellate issues. Defendant and Defendant's Counsel also agree that the Settlement is fair, adequate and reasonable and in the best interest of the Class.

27. The Parties agree to cooperate and take all steps necessary and appropriate to obtain preliminary and final approval of this Settlement.

28. The Parties agree to stay all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Court.

PRIMARY TERMS OF SETTLEMENT

29. NOW THEREFORE, in consideration of the mutual covenants, promises and agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

(a) It is agreed by and among Plaintiff (on behalf of herself and the Class) and Defendant that this Action and any claims, damages, or causes of action arising out of the disputes which are the subject of this Action, be settled and compromised as between the Class and Defendant, subject to the terms and conditions set forth in this Settlement and the approval of the Court.

(b) Effective Date: The terms of settlement embodied in this Settlement shall become effective when all of the following events have occurred: (i) this Stipulation of Settlement has been executed by all Parties and their respective counsel; (ii) the Court has given preliminary approval to the Settlement; (iii) the Notice has been given to the Class, providing them with an opportunity to dispute information contained in the Notice, to opt out of the Settlement, or to object to the Settlement;

(iv) the Court has held a final approval hearing and entered a final order and judgment certifying the Class and approving this Settlement; and (v) the later of the following events: (a) the day final approval is granted and judgment is entered if there are no objections to the settlement; (b) sixty-five (65) days following notice of entry of the Court's final order approving the Settlement if there are any objections by any Class Member; (c) or if any appeal, writ or other appellate proceeding opposing this Settlement has been filed within sixty-five (65) days following notice of entry of the Court's final order approving the Settlement, then twenty (20) days after the date any appeal, writ or other appellate proceeding opposing the Settlement has been resolved finally and conclusively with no right to pursue further remedies or relief. In this regard, it is the intention of the Parties that the Settlement shall not become effective until the Court's order approving the Settlement is completely final and judgment is entered, and there is no further recourse by an appellant or objector who seeks to contest the Settlement.

(c) Gross Settlement Amount: Defendant's maximum total payment under the Settlement, including all: (1) payments to the Settlement Class and PAGA Employees (2) class counsels' fees; (3) class counsels' costs; (4) settlement expenses (including all administration fees and costs); (5) incentive/service payments to the Plaintiff; and (6) the payment to the LWDA, is \$4,400,000.00 ("Gross Settlement Amount"), subject to the Escalator Clause and except that, to the extent that any portions of the Settlement Class Payments constitute wages, Defendant will be separately responsible for any employer-side payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions.

(d) Escalator Clause: Defendant estimates that, as of February 27, 2024, the Class Members worked 207,054 workweeks, and the Parties agree that in the event the 207,054 estimate turns out to be understated by more than ten percent (10%), Defendant shall increase the Gross Settlement Amount by the percentage that the actual number of workweeks exceeds a 10% increase from the original estimate.

(the “Escalator Clause”). For example, if the class size is 11% larger, the Gross Settlement Amount shall be increased by 1%. In the alternative, Defendant may elect to end the Class Period to an earlier date such that the Escalator is not triggered.

(e) The Gross Settlement Amount will not be reduced for any reason.

(f) Non-reversionary Settlement: No portion of the Gross Settlement Amount will revert to Defendant.

(g) No Claims Required: Class Members will not be required to submit a claim to receive their Settlement payment.

(h) Net Settlement Amount: The Net Settlement Amount shall be calculated by deducting from the Gross Settlement Amount (\$4,400,000.00) the following sums, subject to approval by the Court: (1) attorney’s fees (not to exceed 33 1/3% of the Gross Settlement Amount, or \$1,466,666.66); (2) reasonable litigation costs (not to exceed \$25,000.00); (3) the Service Payment (not to exceed \$7,500.00 to the named Plaintiff); (4) the PAGA Allocation to the LWDA (\$75,000.00); and (5) costs of settlement administration (estimated not to exceed \$30,000.00). The remainder is to be paid to Participating Class Members as Individual Class Payments. Settlement Class Payments will be calculated by the Settlement Administrator and paid out of the Net Settlement Amount as set forth below.

(i) Payroll Taxes and Required Withholdings: To the extent that any portions of the Settlement Class Payments constitute wages, Defendant will be separately responsible for any employer-side payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions. The Settlement Administrator will calculate and submit the Defendant’s employer share of payroll taxes after advising Defendant of the total amount owed, in aggregate, as employer-side payroll taxes and receiving a lump sum payment from Defendant in that amount when the Gross Settlement Amount is delivered to the Settlement Administrator.

(j) 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 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.

(k) Settlement Class Payments (Excludes PAGA Payments): Settlement Class

Payments will be paid out of the Net Settlement Amount. Each Settlement Class Member will be paid a pro-rata share of the Net Settlement Amount as calculated by the Settlement Administrator. The pro-rata share will be determined by comparing the individual Settlement Class Member's Covered Workweeks employed during the Class Period in California to the total Covered Workweeks of all the Settlement Class Members during the Class Period as follows: [Workweeks worked by a Settlement Class Member] ÷ [Sum of all Covered Workweeks worked by all Settlement Class Members] × [Net Settlement Amount] = individual Settlement Payment for a Settlement Class Member. Settlement Class Payments in the appropriate amounts will be distributed by the Settlement Administrator by mail to the Settlement Class Members. Uncashed, unclaimed or abandoned checks, shall be transmitted by the Settlement Administrator to the California Controller's Office, as set forth below.

- (l) PAGA Payments: PAGA Settlement Payments will be paid out of the PAGA Allocation deducted from the Gross Settlement Amount after the PAGA Penalty Amount (75 percent of the PAGA Allocation) is paid to the LWDA. Each PAGA Employee will be paid a pro-rata share of the PAGA Settlement Payment, as calculated by the Settlement Administrator. Class Members who are PAGA Employees will not be permitted to object or exclude themselves from this portion of the Settlement. All PAGA Employees shall release their PAGA claims in their entirety and may not opt out or object to the PAGA release. Each PAGA Employee's pro-rata share will be determined by comparing the individual PAGA Employees' PAGA Pay Periods during the PAGA Period to the total PAGA Pay Periods of all the PAGA Employees during the PAGA Period as follows: [PAGA Pay Periods worked by a PAGA Employee] ÷ [Sum of all PAGA Pay Periods worked by all PAGA Employees] × [PAGA Settlement Payment] = individual PAGA Employee's portion of the PAGA Settlement Payment. PAGA Settlement Payments to PAGA Employees in the appropriate amounts will be distributed by

the Settlement Administrator by mail to the PAGA Employees at the same time Settlement Class Payments issue to the Settlement Class. Uncashed, unclaimed or abandoned checks, shall be transmitted by the Settlement Administrator to the California Controller's Office, as set forth below. The Settlement Administrator will send the PAGA Penalty Payment to the LWDA at the same time the Settlement Administrator sends Settlement Payments to the Settlement Class and PAGA Settlement Payments to the PAGA Employees.

(m) Allocation of Settlement Payments: The Parties have agreed that Settlement Class Payments will be allocated as follows: 90% to other income, and 10% to wages. The PAGA Settlement Payments will be entirely allocated to other income. Appropriate federal, state and local withholding taxes will be taken out of the wage allocations, and each Settlement Class Member will receive an IRS Form W-2 with respect to this portion of the Settlement Class Payment. The Settlement Class Member's share of payroll taxes and other required withholdings will be remitted by the Settlement Administrator to the appropriate taxing authorities as set forth above, along with Defendant's employer portion of FICA and FUTA contributions, based on the payment of claims to the Settlement Class Members. IRS Forms 1099 will be issued by the Settlement Administrator to each Settlement Class Member and/or PAGA Employee reflecting the payments for other income. Settlement Class Members and PAGA Employees are responsible to pay appropriate taxes due on the Settlement Class Payments and PAGA Settlement Payments they receive. To the extent required by law, IRS Forms 1099 and W-2 will be issued to each Settlement Class Member and PAGA Employee with respect to such payments.

(n) Settlement Payments Do Not Give Rise to Additional Benefits: All Settlement Payments to individual Settlement Class Members and PAGA Employees shall be deemed to be paid to such Settlement Class Member or PAGA Employee solely in the year in which such payments actually are received by the Settlement Class Member or PAGA Employee. It is expressly understood and agreed that the receipt

1 of such Settlement Payments will not entitle any Settlement Class Member or
2 PAGA Employee to additional wages, compensation or benefits under any
3 company bonus, contest or other compensation or benefit plan or agreement in
4 place during the period covered by the Settlement up to and including the date the
5 Settlement becomes effective, nor will it entitle any Settlement Class Member or
6 PAGA Employee to any increased retirement, 401(k) benefits or matching benefits
7 or deferred compensation benefits. It is the intent of all Parties that the Settlement
8 Payments provided for in this Settlement are the sole payments to be made by
9 Defendant to the Settlement Class Members and PAGA Employees, and that the
10 Settlement Class Members and PAGA Employees are not entitled to any new or
11 additional compensation or benefits as a result of having received the Settlement
12 Payments (notwithstanding any contrary language or agreement in any benefit or
13 compensation plan document that might have been in effect during the period
14 covered by this Settlement).

15 (o) Attorneys' Fees and Costs: Subject to approval by the Court, Defendant will not
16 object to Class Counsel's application for attorney's fees not to exceed 33 1/3% of
17 the Gross Settlement Amount (\$1,466,666.66) and reimbursement of litigation
18 costs and expenses not to exceed \$25,000.00. All fees and/or costs awarded will be
19 paid out of the Gross Settlement Amount. Any fees or costs not awarded by the
20 Court shall become part of the Net Settlement Amount. The Settlement is not
21 contingent on Class Counsel receiving the requested amount of fees out of the
22 Settlement Amount.

23 (p) Service Payment: Subject to Court approval, and in exchange for a general release,
24 Defendant will not object to Class Counsel's application for an additional payment
25 of up to \$7,500.00 to Plaintiff for service as a Class Representative ("Service
26 Payment"). It is understood that the Service Payment is in addition to the individual
27 Settlement Payment to which Plaintiff is entitled along with the other Settlement
28 Class Members. If the Court reduces the amount of the service award during the

settlement approval process, only the amount approved by the Court will be paid to Plaintiff. Any amount of the incentive awards not approved by the Court shall become part of the Net Settlement Amount. The Settlement is not contingent on Plaintiff's receipt of any incentive award out of the Settlement Amount.

(q) The Settlement Administrator will issue an IRS Form 1099 for the Service Payment to the Plaintiff. The Plaintiff will be individually responsible for correctly characterizing this compensation on personal income tax returns for tax purposes and for paying any taxes on the amounts received. Should the Court approve a Service Payment in an amount less than that set forth above, the difference between the lesser amount(s) approved by the Court and the Service Payment amount(s) set forth above shall be added to the Net Settlement Amount. Plaintiff agrees not to opt out or object to the Service Payment as the Class Representative.

(r) Settlement Administrator: The Settlement Administrator will be ILYM Group, Inc. or such Settlement Administrator as may be mutually agreeable to the Parties and approved by the Court. Settlement Administration Costs are estimated not to exceed \$30,000.00. The cost of administration shall be paid out of the Settlement Amount. To the extent the actual costs of administration of this Settlement are less than \$30,000.00, the remainder shall become part of the Net Settlement Amount. The costs of the Settlement Administrator for work done shall be paid regardless of the outcome of this Settlement. If the Settlement does not become final and effective, the cost of the Settlement Administrator will be shared equally by Plaintiff and Defendant.

(s) Funding of Settlement Account: Defendant will fund the Gross Settlement Amount within 60 days of the Effective Date.

(t) Mailing of Settlement Payments: The Settlement Administrator shall cause the Settlement Payments to be mailed to the Class Members within fourteen (14) calendar days of the receipt of funding.

(u) Notice of Settlement: Each Class Member will be mailed a notice setting forth the

1 material terms of the proposed Settlement, along with instructions about how to
2 object or request exclusion from the proposed class action Settlement (“Notice”).
3 For each Class Member, there will be pre-printed information on the mailed
4 Notice, based on Defendant’s records, stating the Class Member’s Covered
5 Workweeks during the Class Period, PAGA Pay Periods during the PAGA Period,
6 and the estimated total Settlement Payment under the Settlement, including the
7 Settlement Class Payment and the PAGA Settlement Payment. As discussed
8 below, the PAGA Settlement Payment will be distributed irrespective of any
9 exclusion request. The pre-printed information based on Defendant’s records shall
10 be presumed to be correct. A Class Member may dispute the pre-printed
11 information on the Notice as to his or her Covered Workweeks during the Class
12 Period or PAGA Pay Periods during the PAGA Period. Class Members must
13 submit any dispute regarding the information on the Notice as to his or her
14 Covered Workweeks or PAGA Pay Periods within the Response Deadline. All pay
15 period and workweek disputes will be resolved and decided by the Settlement
16 Administrator, and the Settlement Administrator’s decision on all such disputes
17 will be final and non-appealable. Unless a disputing Class Member submits
18 documentary evidence in support of his or her dispute, the records of the Defendant
19 will be determinative.

20 (v) Settlement Notice Language: The Notice will be issued in English and Spanish. If
21 there is any ambiguity between the English and Spanish translation, the English
22 version will be controlling.

23 (w) Class Members Cannot Exclude Themselves from the Released PAGA Claims:
24 Class Members submitting a Request for Exclusion will nevertheless receive their
25 pro-rata share of the PAGA Settlement Payment. If the Court approves the
26 settlement of the PAGA Claims, all Class Members are bound by the Court’s
27 resolution of that Claim. Plaintiff shall timely serve a notice of settlement on the
28 LWDA at or before the time Plaintiff files the motion for preliminary approval.

(x) Resolution of Workweek Disputes: If a Class Member disputes the accuracy of Defendant's records used to calculate Covered Workweeks or PAGA Pay Periods, the Settlement Administrator will review Defendant's records and any information or documentation submitted by the Class Member and issue a non-appealable decision regarding the dispute. The Class Member must submit information or documents supporting his or her position to the Settlement Administrator prior to the expiration of the Response Deadline. Information or documents submitted after the expiration of the Response Deadline will not be considered by the Settlement Administrator, unless otherwise agreed to by the Parties.

(y) Right of Class Member to Request Exclusion from the Settlement: Any Class Member may request to be excluded from the Settlement Class by mailing a "Request for Exclusion" from the Settlement within the Response Deadline, stating, as follows or in substantially similar terms:

"I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *JONES V. NOAH'S NEW YORK BAGELS COMPANY*. CLASS ACTION LAWSUIT, SANTA CLARA COUNTY SUPERIOR COURT CASE NO. 22CV409087. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OTHER THAN MY SHARE OF THE PAGA PAYMENT."

Any Request for Exclusion must include the name, address, telephone number, last four digits of the Class Member's Social Security Number, and the signature of the Class Member requesting exclusion. Any such request must be made in accordance with the terms of the Notice, and the Notice will advise Class Members of these requirements. Any Class Member who timely requests exclusion in compliance with these requirements (i) shall not have any rights under this Settlement other than a right to receive a pro-rata share of the PAGA Settlement Payment if the Class Member is also PAGA Employee; (ii) shall not be entitled to receive any Settlement Payments under this Settlement other than as stated herein; and (iii) shall not be bound by this Settlement or the Court's Order and Final Judgment

1 other than as it applies to the PAGA Claim.

2 (z) Right of Settlement Class Member to Object to The Settlement: Any Settlement
3 Class Member may object to the Settlement. To object, the Settlement Class
4 Member may: (1) appear at the Final Approval Hearing, remotely or in person, to
5 explain any objection, (2) have an attorney object for the Settlement Class
6 Member, or (3) submit a simple written brief or statement of objection to the
7 Settlement Administrator. If any Settlement Class Member chooses to submit a
8 written objection, the written objection should contain sufficient information to
9 confirm the identity of the objector and the basis of the objection, including (1) the
10 full name of the Settlement Class Member; (2) the signature of the Settlement
11 Class Member; (3) the grounds for the objection; and (4) be postmarked within the
12 Response Deadline to permit adequate time for processing and review by the
13 Parties of the written statement or objection. Class Counsel shall ensure that any
14 written objections are transmitted to the Court for the Court's review (either by
15 Class Counsel or as an attachment to a declaration from the Settlement
16 Administrator). Regardless of the form, an objection alone will not satisfy the
17 requirement that a Settlement Class Member must either make a timely complaint
18 in intervention before final judgment or by filing a motion to set aside and vacate
19 the class judgment under Code of Civil Procedure §663, to have standing to appeal
20 entry of judgment approving this Settlement, as is required under the California
21 Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260
22 (2018). A Settlement Class Member who does not object prior to or at the Final
23 Approval Hearing, will be deemed to have waived any objections and will be
24 foreclosed from making any objections (whether at the Final Approval Hearing, by
25 appeal, or otherwise) to the Settlement. If the objecting Settlement Class Member
26 does not formally intervene in the action or move to set aside any judgment and/or
27 the Court rejects the Settlement Class Member's objection, the Settlement Class
28 Member will still be bound by the terms of this Agreement and the Settlement.

1 Class Counsel and Defendant's Counsel may, at least five (5) calendar days (or
2 some other number of days as the Court shall specify) before the final approval
3 hearing, file responses to any written objections submitted to the Court. Class
4 counsel will not represent any Class Members with respect to any objections to the
5 Settlement.

6 **THE SETTLEMENT ADMINISTRATOR'S PRIMARY DUTIES**

7 30. Subject to the Court's approval, and subject to reconsideration by the Parties after a
8 competitive bidding process, the Parties have agreed to appoint ILYM Group, Inc. to perform the
9 customary duties of Settlement Administrator. The Settlement Administrator will mail the Notice, both in
10 English and Spanish, to the Class Members pursuant to the terms of this Agreement.

11 31. The Settlement Administrator will independently review the Covered Workweeks and
12 PAGA Pay Periods attributed to each Class Member and PAGA Employee and will calculate the
13 estimated amounts due to each Class Member and the actual amounts due to each Settlement Class
14 Member and PAGA Employee in accordance with this Settlement. The Settlement Administrator shall
15 report, in summary or narrative form, the substance of its findings. The Settlement Administrator shall be
16 granted reasonable access to Defendant's records in order to perform its duties. The Settlement
17 Administrator will provide Defendant's counsel and Class Counsel a weekly report which certifies: (i) the
18 number of Class Members who have submitted valid Requests for Exclusion; (ii) the number of any
19 deficient Requests for Exclusion and (iii) whether a Class Member has submitted a challenge to
20 information contained in their Notice Packet. Additionally, the Settlement Administrator will provide to
21 counsel for both Parties any updated reports or declarations regarding the administration of the Settlement
22 Agreement as needed or requested.

23 32. In accordance with the terms of this Settlement, and upon receipt of the Gross Settlement
24 Amount from Defendant, the Settlement Administrator will issue and send out the Settlement Payment
25 checks to the Settlement Class Members and the PAGA Settlement Payments to the PAGA Employees.
26 Tax treatment of the Class Settlement Payments and PAGA Settlement Payments will be as set forth
27 herein, and in accordance with state and federal tax laws. The Settlement Administrator will also issue a
28 payment to Class Counsel and itself for Court-approved services performed in connection with the

1 settlement.

2 33. All disputes relating to the Settlement Administrator's performance of its duties shall be
3 referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of
4 this Settlement until all payments and obligations contemplated by this Settlement have been fully
5 satisfied.

6 **ATTORNEY'S FEES AND COSTS**

7 34. In consideration for resolving this matter and in exchange for the release of all claims by
8 the Settlement Class Members, including Plaintiff, and subject to approval by the Court, Defendant will
9 not object to Class Counsel's application for attorney's fees not to exceed 33 1/3% of the Gross Settlement
10 Amount (\$1,466,666.66 of \$4,400,000.00) and litigation costs not to exceed \$25,000.00. The amounts set
11 forth above will cover all work performed and all fees and costs incurred to date, and all work to be
12 performed and all fees and costs to be incurred in connection with the approval by the Court of this
13 Settlement and administration of the Settlement. Should Class Counsel request a lesser amount and/or the
14 Court approve a lesser amount(s) of attorney's fees and/or attorneys' costs, the difference between the
15 lesser amount(s) and the maximum amount set forth above shall be added to the Net Settlement Amount.
16 The Parties agree that there is no prevailing party, and the Class and Class Counsel shall not be entitled to
17 any fees or costs other than those awarded out of and deducted from the Gross Settlement Amount. As
18 with the Class Settlement Payments to the Settlement Class, the attorney's fees and costs approved by the
19 Court shall be distributed by the Settlement Administrator to Class Counsel within seven (7) calendar days
20 of the receipt of settlement funds by the Settlement Administrator. In the event that the Court awards less
21 than 25% of the Gross Settlement Amount for attorney's fees, Class Counsel shall retain the right to appeal
22 that portion of any Final Approval Order and Judgment.

23 **THE NOTICE PROCESS**

24 35. A Notice in approximately the form attached hereto as Exhibit "A," and as approved by the
25 Court, shall be sent by the Settlement Administrator to the Class Members by first class mail. The Notice
26 shall be translated into Spanish so that Spanish and English language versions of the Notice are included in
27 the mailing.

28 (a) Within fourteen (14) calendar days from the date of preliminary approval of this

Settlement by the Court, Defendant shall provide to the Settlement Administrator a class database containing the following information for each Class Member: (1) name; (2) last known address; (3) last four digits of his, her, or their social security number; and (4) dates of employment at Defendant's locations in California. This database shall be based on Defendant's payroll and other business records and shall be provided in a reasonable format to the Settlement Administrator. Defendant agrees to consult with the Settlement Administrator prior to the production date to ensure that the format will be acceptable to the Settlement Administrator. The Settlement Administrator will run a check of the Class Members' addresses against those on file with the U.S. Postal Service's National Change of Address List; this check will be performed only once per Class Member by the Settlement Administrator. Absent mutual written agreement of counsel for the Parties or Court order, the Settlement Administrator will keep this database confidential and secure and use it only for the purposes described herein and will return this database to Defendant upon final approval of the settlement or destroy electronic records containing the database after the Settlement is final and all payments are distributed as required under this Agreement.

(b) Within seven (7) calendar days after the Class database is provided to the Settlement Administrator, the Settlement Administrator will mail the Notices to the Class Members by First Class United States mail.

(c) Notices returned to the Settlement Administrator as non-deliverable on or before the initial Response Deadline shall be resent to the forwarding address, if any, on the returned envelope. A returned Notice will be forwarded by the Settlement Administrator any time that a forwarding address is provided with the returned mail. If there is no forwarding address, the Settlement Administrator will do a computer search for a new address using the last four digits of the Class Member's social security number or other information. In any instance where a Notice is re-mailed, that Class Member will have until the extended Response Deadline as

described above to submit objections or request exclusion. A letter prepared by the Settlement Administrator will be included in the re-mailed Notice in that instance, stating the extended Response Deadline. Upon completion of these steps by the Settlement Administrator, Defendant and the Settlement Administrator shall be deemed to have satisfied their obligations to provide the Notice to the affected Class Member. The affected Class Member shall remain a member of the Settlement Class and shall be bound by all the terms of the Settlement and the Court's Order and Final Judgment.

(d) Class Counsel shall provide to the Court, at least five (5) calendar days prior to the final approval hearing, or such other date as set by the Court, a declaration by the Settlement Administrator of due diligence and confirming mailing of the Notices.

DISPOSITION OF SETTLEMENT PAYMENTS AND UNCASHED CHECKS

36. As set forth above, each Settlement Class Member will have until the expiration of the applicable Response Deadline to submit to the Settlement Administrator any challenge or dispute to the Settlement Class Member's Covered Workweek information on the Notice. No disputes will be honored if they are submitted after the Response Deadline unless the Parties mutually agree to accept the untimely dispute. Each Settlement Class Member is responsible to maintain a copy of any documents sent to the Settlement Administrator and a record of proof of mailing.

37. The Settlement Administrator shall cause the Settlement Payments to be mailed to the Settlement Class Members and PAGA Employees as provided herein. Settlement Class Payments and PAGA Settlement Payments may be combined into one check. Settlement Payment checks shall remain valid and negotiable for 180 calendar days from the date of their issuance. Settlement Payment checks will automatically be cancelled by the Settlement Administrator if they are not cashed by the Settlement Class Member within that time, and the Settlement Class Member's relevant claims will remain released by the Settlement. Settlement Payment checks which have expired will not be reissued.

38. Funds from uncashed or abandoned Settlement Class Payment checks or PAGA Settlement Checks, based on a 180-day void date, shall be transmitted by the Settlement Administrator to the California State Controller's Office for Unclaimed Property in the name of each Settlement Class

Member and/or PAGA Employee who failed to cash their Settlement Payment check prior to the void date.

39. Upon completion of its calculation of Settlement Class Payments and PAGA Settlement Payments, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a report listing the amounts of all payments to be made to Class Members (to be identified anonymously by employee number or other identifier). A Declaration attesting to completion of all payment obligations will be provided to Class Counsel and Defendant's Counsel and filed with the Court by Class Counsel.

RELEASE BY THE PLAINTIFF AND BY THE CLASS AND PAGA EMPLOYEES

40. Release by Class and PAGA Employees. Upon the final approval by the Court of this Settlement and Defendant's payment of all sums due pursuant to this Settlement, and except as to such rights or claims as may be created by this Settlement, the Class Representative, the Class and each Class Member who has not submitted a valid and timely request for exclusion as to claims other than the PAGA claim, and each PAGA Employee, regardless of whether they have requested exclusion from the Settlement of Class claims, will release claims as follows:

(a) **Date Release Becomes Active.** The Released Class Claims and Released PAGA Claims will be released upon the later of (1) the Settlement's Effective Date, or (2) the satisfaction of Defendant's obligation to provide to the Settlement Administrator a sum in the amount required to satisfy all required payments and distributions pursuant to this Settlement and the Order and Judgment of final approval. Class Members will not release the Released Class Claims or Released PAGA Claims until both the Effective Date of the Settlement has occurred, **and** Defendant has funded the Gross Settlement Amount.

(b) **Class Claims Released by Settlement Class Members.** Each and every Class Member, on behalf of himself or herself and his or her heirs and assigns, unless he or she has submitted a timely and valid Request for Exclusion (which will not effectuate an opt-out from the release of Released PAGA Claims), hereby releases Released Parties from the following claims for the entire Class Period:

1) All claims for wages, statutory and civil penalties, damages and

liquidated damages, interest, fees and costs that were alleged or could have been alleged arising out of the allegations in the operative Consolidated First Amended Complaint and PAGA notice, which arose at any time during the Settlement Class Period and PAGA Period, including, but not limited to: (1) claims for failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods or pay a premium in lieu thereof; (4) failure to authorize and permit rest periods or pay a premium in lieu thereof; (5) failure to reimburse employees for business expenses; (6) failure to timely pay final wages at the time of termination/end of employment; (7) failure to provide accurate itemized wage statements; (8) unfair business practices; (9) claims for penalties under the Private Attorney General Act for violation of California Labor Code sections 201-204, 210, 218.5, 218.6, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1174.5, 1194, 1195, 1197, 1197.1, 1198, 2698 et seq., 2699 et seq., 2802, or any applicable Wage Order;

(c) **Claims Released by the Class, Including PAGA Employees.** All Class Members, including all PAGA Employees, release the Released Parties of the Released PAGA Claims, regardless of whether they have requested exclusion from the Settlement as to Class claims.

(d) **PAGA Release.** Upon Court approval of the Settlement, Defendant and the Released Parties shall be entitled to a release from the State of California and the LWDA, as well as from the Aggrieved Employees, of all claims for Civil Penalties pursuant to Labor Code section 2698 et seq. (PAGA), that were pled or reasonably could have been pled based on the factual allegations in operative Complaint in the Action and the LWDA letter, including specifically, the Released PAGA Claims.

1) **Date PAGA Release becomes Active.** The Parties agree that upon the Effective Date, the State of California, including the LWDA, the

1 Aggrieved Employees, and Plaintiff shall be deemed to have, and by
2 operation of the court's Approval Order and Judgment shall have, released
3 the Defendant and any Released Parties, as further defined in this long form
4 settlement agreement, from any claim for civil penalties arising out of the
5 Released PAGA Claims or specifically enumerated herein.

- 6 (e) The Settlement Class and PAGA Employees, including Plaintiff, acknowledge and
7 agree that: (1) Class Claims for overtime compensation, minimum wages, meal and
8 rest break premiums, vacation wages, wages for all hours worked, statutory and
9 civil penalties, and/or any other payments and/or penalties in the Action are
10 disputed; and (2) the payments set forth herein constitute full payment of any
11 amounts allegedly due. The Class and PAGA Employees, including Plaintiff, thus
12 shall be deemed to have acknowledged and agreed that California Labor Code
13 Section 206.5 is not applicable to the Parties hereto. That section provides in
14 pertinent part as follows: An employer shall not require the execution of any
15 release of a claim or right on account of wages due, or to become due, or made as
16 an advance on wages to be earned, unless payment of those wages has been made.

17 41. Release by Plaintiff. Upon the final approval by the Court of this Settlement and
18 Defendant's payment of all sums due pursuant to this Settlement, and except as to such rights or claims as
19 may be created by this Settlement, the Plaintiff, will release claims as follows:

- 20 (a) Plaintiff hereby fully and finally releases and discharges the Released Parties
21 (defined above) from any and all of the released claims (defined above) and from
22 any and all other claims, charges, complaints, liens, demands, agreements,
23 contracts, covenants, actions, suits, causes of action, penalties, wages, obligations,
24 debts, expenses, damages, attorneys' fees, costs, judgments, orders, and liabilities
25 of whatever kind or nature in law, equity, or otherwise, known or unknown,
26 suspected or unsuspected, that Plaintiff had, now has, or may hereafter claim to
27 have against the Released Parties arising out of, or relating in any way to Plaintiff's
28 hiring by, employment with, separation of employment from, or any other

transactions, occurrences, acts or omissions or any loss, damage or injury whatsoever, known or unknown, suspected or unsuspected, resulting from any act or omission by or on the part of any Released Party (the “Class Representative’s Released Claims”), arising or accruing from the beginning of time up through the Final Approval Order Date (“Class Representative’s Released Period”). The Class Representative’s Released Claims include, but are not limited to, claims arising from or dependent on the California Labor Code; the Wage Orders of the California Industrial Welfare Commission; California Business and Professions Code section 17200 et seq.; the California Fair Employment and Housing Act, Cal. Gov’t Code § 12900 et seq.; the California Healthy Workplaces, Healthy Families Act, Cal. Labor Code § 245 et seq., the California common law of contract and tort; Title VII of the Civil Rights Act of 1964; the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.; the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.; the Fair Labor Standards Act, 29 U.S.C. § 201 et seq., the Portal to Portal Act, 29 U.S.C. § 251 et seq., and the Families First Coronavirus Response Act.

(b) Plaintiff also acknowledges that she has read Section 1542 of the Civil Code of the State of California, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

42. Plaintiff further warrants that she understands that Section 1542 gives her the right not to release existing claims of which she is not now aware unless she voluntarily chooses to waive this right. Having been so apprised, Plaintiff shall nevertheless voluntarily waive the rights described in Section 1542 and elects to assume all risks and to release the claims set forth herein, that now exist in her favor, whether known or unknown.

///

EMPLOYMENT BY DEFENDANT

43. Employment of Plaintiff by Defendant is not consideration for, or a condition of, this Settlement.

DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

44. The Parties shall submit this Stipulation of Class Action Settlement to the Court in support of Plaintiff's unopposed motion for preliminary approval for determination by the Court as to its fairness, adequacy, and reasonableness. Upon execution of this Stipulation of Class Action and PAGA Settlement, the Parties shall apply to the Court for the entry of an order:

- (a) Scheduling a preliminary approval hearing and later final approval and fairness hearing on the question of whether the proposed Settlement, including payment of attorney's fees and costs, administrator's fees, and the Class Representative's service payment, should be finally approved as fair, reasonable, and adequate as to the members of the Class;
- (b) Conditionally certifying a Class for settlement purposes only;
- (c) Approving as to form and content the proposed Notice;
- (d) Directing the mailing of the Notice by the Settlement Administrator;
- (e) Preliminarily approving the Settlement subject only to the objections of Class Members and final review by the Court;
- (f) Conditionally appointing Plaintiff and Class Counsel as representatives of the proposed Class Members; and,
- (g) Appointing ILYM Group, Inc. as the Settlement Administrator.

DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL

45. In conjunction with the hearing of a motion for final approval by the Court of the Settlement provided for in this Stipulation of Settlement, Class Counsel will submit to the Court a proposed final order and judgment containing provisions sufficient to accomplish the following:

- (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;
- (b) Approving Class Counsel's application for an award of attorney's fees and costs;

- (c) Approving the Service Payment to the Class Representative;
- (d) Adjudging the Settlement Administrator has fulfilled its initial notice and reporting duties under the Settlement.
- (e) Adjudging Plaintiff and Class Counsel may adequately represent the Final Settlement Class for the purpose of entering into and implementing the Agreement;
- (f) Entering a final judgment in the action;
- (g) Adjudging that notwithstanding the submission of a timely request for exclusion, Class Members are still bound by the settlement and release of the Released PAGA Claims or remedies under the Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), as requests to be excluded from the Settlement do not apply to the Released PAGA Claims, and further affirming that the State's claims for civil penalties pursuant to PAGA are also extinguished;

NULLIFICATION AND TERMINATION

46. This Settlement will be null and void if any of the following occur: (a) the Court should for any reason fail to certify a Class for settlement purposes; (b) the Court should for any reason fail to preliminarily or finally approve of this Settlement in the form agreed to by the Parties, other than adjustments made to the attorney's fees and costs or granting of Service Payments; (c) the Court should for any reason fail to enter the final judgment; (d) the final judgment is reversed, modified, or declared or rendered void; or (e) the Settlement does not become final for any other reason.

47. Defendant has the right to cancel the Settlement if (a) more than ten percent (10%) of the Settlement Class Members submit timely and valid requests for exclusion from the Settlement; (b) the Settlement is construed in such a fashion that Defendant is required to pay more than the Settlement Amount; (c) the Court does not certify the Settlement Class or does not certify a class releasing the claims set forth in the Memorandum of Understanding and/or this Settlement Agreement, or otherwise makes an order inconsistent with any of the terms of this Memorandum of Understanding and/or this Settlement Agreement; or (d) Plaintiff or her counsel materially breach any term of the Memorandum of Understanding and/or this Settlement Agreement. Option (a) to cancel the Settlement must be exercised by Defendant by providing written notice to Class Counsel within

ten (10) business days of counsel for Defendant receiving notification from the Settlement Administrator that more than ten percent (10%) of the Class Members have submitted timely and valid requests for exclusions from the Settlement. If Defendant exercises the option to terminate the Settlement under option (a), then, Defendant shall be responsible for paying all settlement administration costs incurred to that date.

48. In the event this Settlement is nullified or terminated as provided above: (i) this Settlement shall be considered null and void, (ii) neither this Settlement nor any of the related negotiations or proceedings shall have any force or effect and no Party shall be bound by any of its terms, and (iii) all Parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court.

PARTIES' AUTHORITY

49. The signatories hereto hereby represent that they are fully authorized to enter into this Settlement and bind the Parties hereto to the terms and conditions thereof.

MUTUAL FULL COOPERATION

50. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement including, but not limited to, execution of such documents and taking such other action as reasonably may be necessary to implement the terms of this Settlement. The Parties to this Settlement shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set forth herein. As soon as practicable after execution of this Settlement, Class Counsel shall, with the assistance and cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the Court's preliminary and final approval of this Settlement.

NO PRIOR ASSIGNMENTS

51. The Parties and their respective counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein, and that they are not on notice of any liens as to the Gross Settlement Amount or any right to attorneys' fees or costs.

NO ADMISSION OF LIABILITY

52. Nothing contained herein, nor the consummation of this Settlement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant. Defendant denies all the claims and contentions alleged by the Plaintiff in this case. Defendant does not admit, and specifically denies, that it has violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to its current or former employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, will be construed as an admission or concession by Defendant of any such violations or failures to comply with any applicable law. Defendant has entered into this Settlement solely with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses. Except as necessary in a proceeding to enforce the terms of this Settlement Agreement, this Settlement Agreement and its terms and provisions will not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendant or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local or other applicable law.

ENFORCEMENT ACTIONS

53. In the event that one or more of the Parties to this Settlement institutes any legal action or other proceeding against any other party or parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful party or parties shall be entitled to recover from the unsuccessful party or parties reasonable attorney's fees and costs, including expert witness fees incurred in connection with any enforcement actions.

NOTICES

54. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

///

Class Counsel:

Counsel for Defendant:

Kane Moon
 Enzo Nabiev
 Sandy Pham
MOON LAW GROUP, PC
 1055 W. Seventh St., Suite 1880
 Los Angeles, California 90017
 Telephone: (213) 232-3128
 Facsimile: (213) 232-3125
kmoon@moonlawgroup.com
enabiev@moonlawgroup.com
spham@moonlawgroup.com

Donald P. Sullivan
 Isabella L. Shin
JACKSON LEWIS P.C.
 50 California Street, 9th Floor
 San Francisco, California 94111-4615
 Telephone: (415) 394-9400
 Facsimile: (415) 394-9401
Donald.Sullivan@jacksonlewis.com
Isabella.Shin@jacksonlewis.com

CONSTRUCTION

55. The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive arms-length negotiations between the Parties, including, but not limited to, an all-day mediation on February 27, 2024, with experienced neutral mediator Steve Serratore, Esq., and this Settlement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his, her or its counsel participated in the drafting of this Settlement.

CAPTIONS AND INTERPRETATIONS

56. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision hereof. Each term of this Settlement is contractual and not merely a recital.

MODIFICATION

57. This Settlement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

CONFIDENTIALITY

58. Confidentiality Agreement. The Parties and their counsel agree that none of them will issue any marketing materials, press release, social media post, internet or website announcement, or otherwise initiate any contact with the press, respond to any press inquiry or have any communication with the press regarding the Settlement or the terms of this Settlement. Class Counsel will not communicate with other wage-hour plaintiffs' counsel about this Settlement, nor utilize it in any way in their marketing or

advertising materials or website, prior to Preliminary Approval. Plaintiff will not discuss the Settlement with anyone other than her counsel, tax advisors or spouses, except as required or authorized by law. Additionally, Class Counsel agree that the fact that the Action was filed and/or settled will not be included in any filing or court submission in any other case or controversy unless required to do so by applicable law or done in submissions to courts or arbitrators in connection with establishing adequacy as class counsel or relevant experience in wage and hour lawsuits. The Parties further agree not to submit information about the settlement to Jury Verdicts.

INTEGRATION CLAUSE

59. This Settlement contains the entire agreement between the Parties relating to the Settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing. The Parties expressly recognize California Civil Code Section 1625 and California Code of Civil Procedure Section 1856(a), which provide that a written agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written representations or terms will modify, vary or contradict the terms of this Agreement.

AMENDMENT

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

WAIVER OF APPEALS

61. The Parties agree to waive appeals and to stipulate to class certification for purposes of implementing this Settlement only, with the exception that Class Counsel retains the right to appeal the amount awarded as attorney's fees in the event that the Court awards less than twenty-five percent of the Gross Settlement Amount as attorney's fees.

BINDING ON ASSIGNS

62. This Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

///

CLASS COUNSEL SIGNATORIES

63. It is agreed that because the members of the Class are so numerous, it is impossible or impractical to have each member of the Class execute this Settlement. The Notice will advise all Class Members of the binding nature of the Released Claims and Released PAGA Claims, and the release shall have the same force and effect as if this Settlement were executed by each member of the Class.

COUNTERPARTS

64. This Settlement may be executed in counterparts and by electronic or facsimile signatures, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement, which shall be binding upon and effective as to all Parties.

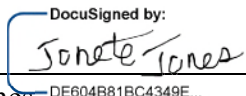
FINAL JUDGMENT

65. The Parties agree that, upon final approval of the Settlement, final judgment of this Action will be made and entered in its entirety at or following the final approval hearing. The final judgment may be included in the Order granting Final Approval of the Settlement.


IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Stipulation of Class Action Settlement between Plaintiff and Defendant as set forth below:

IT IS SO STIPULATED.

Plaintiff & Class Representative:
Dated: 10/14/2024

By: 
Janete Jones DE604B81BC4349E...

Plaintiff's Counsel:
Dated:


MOON LAW GROUP, PC
By: 
Kane Moon
Enzo Nabiev
Sandy Pham
Attorneys for Plaintiff

[SIGNATURES CONTINUED ON NEXT PAGE]

Defendant:

Dated: Oct 15, 2024

NOAH'S NEW YORK BAGELS COMPANY

By: 
Mike Davis (Oct 15, 2024 10:55 MDT)

Michael Davis
Chief Legal Officer

Defendant's Counsel:

Dated: October 15, 2024

JACKSON LEWIS, PC

By: 

Donald P. Sullivan
Isabella L. Shin
Attorneys for Defendant