

1 **JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT**

2 This Joint Stipulation of Class Action and PAGA Settlement (“Settlement,” “Agreement,” or
3 “Settlement Agreement”) is made and entered into by and between Plaintiff Rigoberto Tecaliz
4 (“Plaintiff” or “Class Representative”), individually, and on behalf of all others similarly situated and
5 on behalf of the State of California with respect to aggrieved employees, and Defendant National
6 Restaurant Inc. dba Black Bear Diner (“Defendant”) (together, Plaintiff and Defendant are referred to
7 as “Parties” and individually as “Party”).

8 This Settlement Agreement shall be binding on Plaintiff, Settlement Class Members (as
9 defined herein), the State of California as to the employment of PAGA Employees (as defined herein),
10 and Defendant, subject to the terms and conditions hereof and the approval of the Court.

11 **RECITALS**

12 1. On September 18, 2023, Plaintiff provided written notice to the Labor and Workforce
13 Development Agency (“LWDA”) by online submission, pursuant to California Labor Code Section
14 2699.3, of the specific provisions of the California Labor Code alleged to have been violated by
15 Defendant (“PAGA Letter”). On October 27, 2023, Plaintiff filed a Class Action Complaint for
16 Damages in the action entitled *Rigoberto Tecaliz v. National Restaurant Inc. dba Black Bear Diner*,
17 San Diego County Superior Court Case No. 37-2023-00046906-CU-OE-CTL (“Action”), thereby
18 commencing a putative class action against Defendant. On November 27, 2023, Plaintiff filed a First
19 Amended Class Action Complaint for Damages and Enforcement Action Under the Private Attorneys
20 General Act, California Labor Code §§ 2698 Et Seq. (“Operative Complaint”), adding a cause of action
21 under the Private Attorneys General Act of 2004 pursuant to California Labor Code Section 2698, *et*
22 *seq.* (“PAGA”). The Operative Complaint alleges ten (10) causes of action for violations of the
23 California Labor Code for failure to pay minimum wages, failure to pay overtime wages, failure to
24 provide compliant meal periods and premium payments in lieu thereof, failure to provide compliant
25 rest periods and premium payments in lieu thereof, failure to timely pay wages during employment,
26 failure to provide compliant wage statements, failure to timely pay wages upon termination, and failure
27 to reimburse necessary business expenses, for violations of California Business & Professions Code
28 Section 17200, *et seq.* based on the aforementioned California Labor Code violations, and for civil

1 penalties under PAGA based on the aforementioned California Labor Code violations.

2 2. Defendant denies all materials allegations set forth in the Action and has asserted
3 numerous affirmative defenses. Notwithstanding, in the interest of avoiding further litigation,
4 Defendant desires to fully and finally settle the Action and release claims, including the Released Class
5 Claims (as defined herein) and Released PAGA Claims (as defined herein).

6 3. Class Counsel diligently investigated the class and PAGA claims against Defendant,
7 including any and all applicable defenses and the applicable law. The investigation included, *inter*
8 *alia*, the exchange of information, data, and documents, and review of corporate policies and practices.
9 The Parties have engaged in sufficient informal discovery and investigation to assess the relative
10 merits of the claims and contentions of the Parties.

11 4. On September 26, 2024, the Parties participated in mediation with Hon. Carl J. West
12 (Ret.) (the “Mediator”), a respected mediator of complex wage and hour actions, and with the
13 assistance of the Mediator’s evaluations, the Parties reached the settlement that is memorialized herein.
14 The Parties’ settlement discussions were conducted at arms’ length, and the Settlement is the result of
15 an informed and detailed analysis of Defendant’s potential liability and exposure in relation to the
16 costs and risks associated with continued litigation. Based on Class Counsel’s investigation and
17 evaluation, Class Counsel believes that the settlement with Defendant for the consideration and on the
18 terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest
19 of the Class Members, State of California, and PAGA Employees in light of all known facts and
20 circumstances, including the risk of significant delay and uncertainty associated with litigation and
21 various defenses asserted by Defendant.

22 5. The Parties expressly acknowledge that this Settlement Agreement is entered into
23 solely for the purpose of compromising significantly disputed claims and that nothing herein is an
24 admission of liability or wrongdoing by Defendant. If for any reason this Settlement Agreement is
25 not approved, it will be of no force or effect, and the Parties shall be returned to their original respective
26 positions.

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DEFINITIONS

6. The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective.

a. “Attorneys’ Fees and Costs” means attorneys’ fees approved by the Court for Class Counsel’s litigation and resolution of the Action and all actual costs and expenses incurred and to be incurred by Class Counsel in connection with the Action, as set forth in Paragraph 9.

b. “Class” or “Class Member(s)” means all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the Class Period (or if any such person is incompetent, deceased, or unavailable due to military service, the person’s legal representative or successor in interest evidenced by reasonable verification).

c. “Class Counsel” means Jonathan M. Genish, Miriam L. Schimmel, Joana Fang, and Alexandra Rose of Blackstone Law, APC, who will seek to be appointed counsel for the Class.

d. “Class List” means a complete list of all Class Members that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator. The Class List will be formatted in a readable Microsoft Office Excel spreadsheet containing the following information for each Class Member: (1) full name; (2) last known mailing address; (3) Social Security number; (4) dates worked for Defendant during the Class Period; and (8) such other information as is necessary for the Settlement Administrator to calculate Workweeks and PAGA Pay Periods.

e. “Class Notice” means the Notice of Class Action Settlement, substantially in the form attached hereto as “**Exhibit A**.”

f. “Class Period” means the period from October 27, 2019 through November 25, 2024.

g. “Class Settlement” means the settlement and resolution of all Released Class Claims.

h. “Court” means the Superior Court of the State of California for the County of San Diego.

i. “Defendant’s Counsel” means Maurice J. Fitzgerald and Carla Vasques dos Santos-Moore of O’Hagan Meyer LLP.

1 j. “Dispute” means a letter submitted by a Class Member disputing the number of
2 Workweeks and/or PAGA Pay Periods to which they have been credited, which must: (a) contain the
3 case name and number of the Action; (b) contain the Class Member’s full name, signature, address,
4 telephone number, and the last four (4) digits of the Class Member’s Social Security number; (c)
5 clearly state that the Class Member disputes the number of Workweeks and/or PAGA Pay Periods
6 credited to the Class Member and what the Class Member contends is the correct number; and (d) be
7 returned by mail to the Settlement Administrator at the specified address, postmarked on or before the
8 Response Deadline.

9 k. “Effective Date” means the first business day following the last of the following
10 occurrences: (i) if no Settlement Class Member both objects and files either a timely motion to
11 intervene and/or a timely motion to vacate the Final Approval Order and Judgment, then twenty-one
12 (21) calendar days following the date the Court enters the Final Approval Order and Judgment; (ii) if
13 a Settlement Class Member both objects and either files a timely motion to intervene or a timely motion
14 to vacate the Final Approval Order and Judgment, then sixty-one (61) calendar days following the date
15 the Court enters the Final Approval Order and Judgment, assuming no appeal is filed; or (iii) if a
16 Settlement Class Member both objects and files a timely motion to intervene or files a motion to vacate
17 the Final Approval Order and Judgment and also files a timely appeal, then the date of final resolution
18 of that appeal (including any requests for rehearing and/or petitions for certiorari), resulting in final
19 and complete judicial approval of the Settlement in its entirety, with no further challenge to the
20 Settlement being possible.

21 l. “Employer Taxes” means the employer’s share of payroll taxes payable to any
22 and all government agencies in connection with the wages portion of Individual Settlement Shares,
23 which shall be paid by Defendant in addition to the Gross Settlement Amount.

24 m. “Enhancement Payment” means the amount to be paid to Plaintiff, in
25 recognition of his effort and work in prosecuting the Action on behalf of Class Members and PAGA
26 Employees, and general release of claims, as set forth in Paragraph 10.

27 n. “Final Approval” means the determination by the Court that the Settlement is
28 fair, reasonable, and adequate, and entry of the Final Approval Order and Judgment based thereon.

o. “Final Approval Hearing” means the hearing at which the Court will consider and determine whether the Settlement should be granted Final Approval.

p. “Final Approval Order and Judgment” means the order granting final approval of the Settlement and entering judgment thereon, in a form and content mutually agreed to by the Parties, and subject to approval by the Court.

q. “Gross Settlement Amount” means the amount of Six Hundred and Thirty-Nine Thousand Dollars (\$639,000.00) to be paid by Defendant in full satisfaction of the Action, Released Class Claims, and Released PAGA Claims, which includes all Attorneys’ Fees and Costs, Enhancement Payment, PAGA Amount, Settlement Administration Costs, and Net Settlement Amount to be paid to the Settlement Class Members. Defendant shall pay the Employer Taxes separately and in addition to the Gross Settlement Amount. The Gross Settlement Amount is non-reversionary; no portion of the Gross Settlement Payment will return to Defendant. The Gross Settlement Amount is subject to increase, as provided in Paragraph 13.

r. “Individual PAGA Payment” means the *pro rata* share of the PAGA Employee Amount that a PAGA Employee may be eligible to receive under the PAGA Settlement, to be calculated in accordance with Paragraph 15.

s. “Individual Settlement Payment” means the net payment of each Settlement Class Member’s Individual Settlement Share, after reduction for the employee’s share of taxes and withholdings with respect to the wages portion of the Individual Settlement Share, as provided in Paragraph 16.

t. “Individual Settlement Share” means the *pro rata* share of the Net Settlement Amount that a Class Member may be eligible to receive under the Class Settlement, to be calculated in accordance with Paragraph 14.

u. “LWDA Payment” means the amount of Twenty-Two Thousand and Five Hundred Dollars (\$22,500.00), i.e., 75% of the PAGA Amount, that the Parties have agreed to pay to the LWDA under the PAGA Settlement, as set forth in Paragraph 11.

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1 v. “Net Settlement Amount” means the portion of the Gross Settlement Amount
2 that is available for distribution to Settlement Class Members, which is the Gross Settlement Amount
3 less the Court-approved Attorneys’ Fees and Costs, Enhancement Payment, PAGA Amount, and
4 Settlement Administration Costs.

5 w. “Notice of Objection” means a Settlement Class Member’s written objection to
6 the Class Settlement, which must: (a) contain the case name and number of the Action; (b) contain the
7 objector’s full name, signature, address, telephone number, and the last four (4) digits of the objector’s
8 Social Security number; (c) contain a written statement of all grounds for the objection accompanied
9 by any legal support for such objection; (d) contain copies of any papers, briefs, or other documents
10 upon which the objection is based; and (e) be returned by mail to the Settlement Administrator at the
11 specified address, postmarked on or before the Response Deadline.

12 x. “PAGA Amount” means the allocation of Thirty Thousand Dollars
13 (\$30,000.00) from the Gross Settlement Amount for the PAGA Settlement. Seventy-five percent
14 (75%) of the PAGA Amount, or \$22,500.00, will be paid to the LWDA (i.e., the LWDA Payment)
15 and the remaining twenty-five percent (25%), or \$7,500.00, will be distributed to the PAGA
16 Employees (i.e., the PAGA Employee Amount).

17 y. “PAGA Employee(s)” means all current and former hourly-paid and/or non-
18 exempt employees who worked for Defendant in the State of California at any time during the PAGA
19 Period (or if any such person is incompetent, deceased, or unavailable due to military service, the
20 person’s legal representative or successor in interest evidenced by reasonable verification).

21 z. “PAGA Employee Amount” means the amount of Seven Thousand and Five
22 Hundred Dollars (\$7,500.00), i.e., 25% of the PAGA Amount, to be distributed to PAGA Employees
23 on a *pro rata* basis based on their PAGA Pay Periods.

24 aa. “PAGA Period” means the period from September 18, 2022 through November
25 25, 2024.

26 bb. “PAGA Settlement” means the settlement and resolution of all Released PAGA
27 Claims.

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1 cc. "PAGA Pay Periods means the number of pay periods each PAGA Employee
2 worked for Defendant as an hourly-paid and/or non-exempt employee in California during the PAGA
3 Period. PAGA Pay Periods will be calculated by the Settlement Administrator by counting each pay
4 period during the PAGA Period during which the PAGA Employee worked for Defendant as an
5 hourly-paid and/or non-exempt employee in California and worked at least one shift.

6 dd. "Preliminary Approval" means the date on which the Court enters the
7 Preliminary Approval Order.

8 ee. "Preliminary Approval Order" means the order granting preliminary approval
9 of the Settlement, in a form and content mutually agreed to by the Parties, and subject to approval by
10 the Court.

11 ff. "Released Class Claims" means any and all claims and causes of action which
12 were alleged in the Operative Complaint or which reasonably could have been alleged based on the
13 factual allegations and legal theories in the Operative Complaint, arising during the Class Period,
14 which specifically includes claims for Defendant's alleged failure to pay overtime and minimum
15 wages, provide compliant meal and rest periods and associated premium payments, timely pay wages
16 during employment and upon termination, provide accurate wage statements, and reimburse necessary
17 business-related expenses in violation of California Labor Code §§ 201, 202, 203, 204, 210, 226(a),
18 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802, the applicable Industrial Welfare
19 Commission Wage Order, and California Business and Professions Code sections 17200, *et seq.* By
20 virtue of this release, any claims under the FLSA that are predicated on the Released Class Claims are
21 subject to res judicata pursuant to applicable law including but not limited to *Rangel v. PLS Check*
22 *Cashers of California Inc.*

23 gg. "Released PAGA Claims" means any and all claims and causes of action for
24 civil penalties under the California Private Attorneys General Act of 2004 that were alleged in the
25 Operative Complaint or reasonably could have been alleged based on the facts and legal theories
26 contained in the Operative Complaint and PAGA Letter, arising during the PAGA Period, for civil
27 penalties under the Private Attorneys General Act of 2004, California Labor Code sections 2698 *et*
28 *seq.*, which specifically includes claims for Defendant's alleged failure to pay overtime and minimum

wages, provide compliant meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide complaint wage statements, maintain complete and accurate payroll records, and reimburse necessary business-related expenses in violation of California Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare Commission Wage Order.

- In light of the binding nature of a PAGA judgment on non-party employees pursuant to *Arias v. Sup. Ct. (Angelo Dairy)* (2009) 46 Cal.4th 969 and *Cardenas v. McLane Foodservice, Inc.* (2011) 796 F.Supp.2d 1246, individuals otherwise meeting the definition of a Settlement Class Member who exclude themselves from the Class Settlement shall nonetheless receive a payment for the amount of each such individual's estimated share of the PAGA Employees' portion of the PAGA Amount and shall have released the Released PAGA Claims.

hh. "Released Parties" means Defendant, and its past and present direct and/or indirect officers, directors, members, managers, exempt employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.

ii. "Request for Exclusion" means a letter submitted by a Class Member indicating a request to be excluded from the Class Settlement, which must: (a) contain the case name and number of the Action; (b) contain the Class Member's full name, signature, address, telephone number, and last four (4) digits of the Class Member's Social Security number; (c) clearly state that the Class Member does not wish to be included in the Class Settlement; and (d) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.

jj. "Response Deadline" means the deadline by which Class Members must submit a Request for Exclusion, Notice of Objection, and/or Dispute, which shall be the date that is forty-five (45) calendar days from the initial mailing of the Class Notice by the Settlement Administrator to Class Members, unless the 45th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next day on which the United States Postal service is open. The Response Deadline may also be extended by express agreement between Class Counsel and Defendant's Counsel. Under no circumstances, however, will the Settlement Administrator have the

1 authority to extend the Response Deadline. In the event that a Class Notice is re-mailed to a Class
2 Member, the Response Deadline for that Class Member shall be extended fifteen (15) calendar days
3 from the original Response Deadline.

4 kk. "Settlement Administrator" means ILYM Group, Inc., or any other third-party
5 class action settlement administrator agreed to by the Parties and approved by the Court for purposes
6 of administering the Settlement. The Parties and their counsel each represent that they do not have
7 any financial interest in the Settlement Administrator or otherwise have a relationship with the
8 Settlement Administrator that could create a conflict of interest.

9 ll. "Settlement Administration Costs" means the costs payable from the Gross
10 Settlement Amount to the Settlement Administrator for administering the Settlement, as set forth in
11 Paragraph 12.

12 mm. "Settlement Class" or "Settlement Class Member(s)" means all Class Members
13 who do not submit a timely and valid Request for Exclusion.

14 nn. "Workweeks" means the number of weeks each Class Member worked for
15 Defendant as an hourly-paid and/or non-exempt employee in California during the Class Period.
16 Workweeks will be calculated by the Settlement Administrator by counting each week during the
17 Class Period during which the Class Member worked for Defendant as an hourly-paid and/or non-
18 exempt employee in California and worked at least one shift.

19 **CLASS CERTIFICATION**

20 7. For the purposes of this Settlement only, the Parties stipulate to the certification of the
21 Class.

22 8. The Parties agree that certification for the purpose of settlement is not an admission
23 that certification is proper under Section 382 of the California Code of Civil Procedure. Should, for
24 whatever reason, the Court not grant Final Approval, the Parties' stipulation to class certification as
25 part of the Settlement shall become null and void ab initio and shall have no bearing on, and shall not
26 be admissible in connection with, the issue of whether or not certification would be inappropriate in a
27 non-settlement context.

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1 **TERMS OF THE AGREEMENT**

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

4 9. **Attorneys' Fees and Costs.** Defendant agrees not to oppose or impede any application
5 or motion by Class Counsel for attorneys' fees in the amount up to one-third (1/3) of the Gross
6 Settlement Amount (i.e., \$213,000.00 if the Gross Settlement Amount is \$639,000.00) and
7 reimbursement of actual costs and expenses associated with Class Counsel's litigation and settlement
8 of the Action, in an amount not to exceed Twenty Thousand Dollars (\$20,000.00), both of which will
9 be paid from the Gross Settlement Amount. These amounts will cover any and all work performed
10 and any and all costs incurred by Class Counsel in connection with the litigation of the Action,
11 including without limitation all work performed and costs incurred to date, and all work to be
12 performed and all costs to be incurred in connection with obtaining the Court's approval of this
13 Settlement Agreement, including any objections raised and any appeals necessitated by those
14 objections. Class Counsel shall be solely and legally responsible for correctly characterizing this
15 compensation for tax purposes and for paying any taxes on the amounts received. The Settlement
16 Administrator shall issue an IRS Form 1099 to Class Counsel for the Attorneys' Fees and Costs. Any
17 portion of the requested Attorneys' Fees and Costs that is not awarded by the Court to Class Counsel
18 shall be reallocated to the Net Settlement Amount for the benefit of the Settlement Class Members.

19 10. **Enhancement Payment.** Defendant agrees not to oppose or impede any application or
20 motion by Plaintiff for an Enhancement Payment in the amount up to Ten Thousand Dollars
21 (\$10,000.00). The Enhancement Payment, which will be paid from the Gross Settlement Amount,
22 subject to Court approval, will be in addition to his Individual Settlement Payment as a Settlement
23 Class Member and Individual PAGA Payment as a PAGA Employee. Plaintiff shall be solely and
24 legally responsible for correctly characterizing this compensation for tax purposes and for paying any
25 taxes on the amounts received. The Settlement Administrator shall issue an IRS Form 1099 to Plaintiff
26 for the Enhancement Payment. Any portion of the requested Enhancement Payment that is not
27 awarded by the Court to Plaintiff shall be reallocated to the Net Settlement Amount for the benefit of
28 the Settlement Class Members.

1 11. PAGA Amount. Subject to approval by the Court, the Parties agree that the amount of
2 Thirty Thousand Dollars (\$30,000.00) shall be allocated from the Gross Settlement Amount toward
3 penalties under the Private Attorneys General Act, California Labor Code Section 2698, *et seq.* (i.e.,
4 the PAGA Amount), of which seventy-five percent (75%), or \$22,500.00, will be paid to the LWDA
5 (i.e., the LWDA Payment) and twenty-five percent (25%), or \$7,500.00, will be distributed to PAGA
6 Employees (i.e., the PAGA Employee Amount) on a *pro rata* basis, based on the total number of
7 PAGA Pay Periods worked by each PAGA Employee during the PAGA Period (i.e., the Individual
8 PAGA Payments).

9 12. Settlement Administration Costs. The Settlement Administrator will be paid for the
10 reasonable costs of administration of the Settlement and distribution of payments under the Settlement,
11 which are currently not to exceed Eight Thousand and Five Hundred Dollars (\$8,500.00). These costs,
12 which will be paid from the Gross Settlement Amount, subject to Court approval, will include, *inter*
13 *alia*, translating the Class Notice to Spanish, printing, distributing, and tracking Class Notices and
14 other documents for the Settlement, calculating and distributing payments due under the Settlement,
15 issuing of 1099 and W-2 IRS Forms and all required tax reporting, filings, withholdings, and
16 remittances, providing necessary reports and declarations, and other duties and responsibilities set
17 forth herein to process the Settlement, and as requested by the Parties. To the extent the actual
18 Settlement Administrator's costs are greater than the estimated amount stated herein, such excess
19 amount will be deducted from the Gross Settlement Amount, subject to approval by the Court. Any
20 portion of the estimated, designated, and/or awarded Settlement Administration Costs which are not
21 in fact required to fulfill payment to the Settlement Administrator to undertake the required settlement
22 administration duties shall be reallocated to the Net Settlement Amount for the benefit of the
23 Settlement Class Members.

24 13. Escalator Clause. Defendant has represented that the Class Members worked 12,786
25 workweeks during the period October 27, 2019 to September 26, 2024. If it is determined by the
26 Settlement Administrator that the total number of Workweeks worked by the Class Members during
27 the Class Period actually exceeds 12,786 by more than 10% (i.e., if the Workweeks exceed 14,065),
28 then the Gross Settlement Amount will be increased on a *pro rata* basis equal to the percentage

1 increase in the number of Workweeks worked by the Class Members above 10% (i.e., if the number
2 of Workweeks increased by 11%, then the Gross Settlement Amount will increase by 1%).

3 14. Individual Settlement Share Calculations. Individual Settlement Shares will be
4 calculated and apportioned from the Net Settlement Amount based on the Class Members' number of
5 Workweeks, as follows:

6 a. After Preliminary Approval, the Settlement Administrator will divide the Net
7 Settlement Amount by the Workweeks of all Class Members to yield the "Estimated Workweek
8 Value," and multiply each Class Member's individual Workweeks by the Estimated Workweek Value
9 to yield each Class Member's estimated Individual Settlement Share that each Class Member may be
10 entitled to receive under the Class Settlement.

11 b. After Final Approval, the Settlement Administrator will divide the final Net
12 Settlement Amount by the Workweeks of all Settlement Class Members to yield the "Final Workweek
13 Value," and multiply each Settlement Class Member's individual Workweeks by the Final Workweek
14 Value to each Settlement Class Member's final Individual Settlement Share.

15 15. Individual PAGA Payment Calculations. Individual PAGA Payments will be
16 calculated and apportioned from the PAGA Employee Amount based on the PAGA Employees'
17 number of PAGA Pay Periods, as follows: The Settlement Administrator will divide the PAGA
18 Employee Amount, i.e., 25% of the PAGA Amount, by the PAGA Pay Periods of all PAGA
19 Employees to yield the "PAGA Pay Period Value," and multiply each PAGA Employee's individual
20 PAGA Pay Periods by the PAGA Pay Period Value to yield each PAGA Employee's Individual PAGA
21 Payment.

22 16. Tax Treatment of Individual Settlement Shares and Individual PAGA Payments. Each
23 Individual Settlement Share will be allocated as follows: twenty percent (20%) wages and eighty
24 percent (80%) penalties, interest, and non-wage damages. The portion allocated to wages will be
25 reported on an IRS Form W-2 and the portions allocated to penalties, interest, and non-wage damages
26 will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator. The Settlement
27 Administrator will withhold the employee's share of taxes and withholdings with respect to the wages
28 portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their

Individual Settlement Payments (i.e., payment of their Individual Settlement Share net of these taxes and withholdings). The Employer Taxes will be paid separately and in addition to the Gross Settlement Amount. Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator.

17. Administration of Taxes by the Settlement Administrator. The Settlement Administrator will be responsible for issuing to Plaintiff, Settlement Class Members, PAGA Employees, and Class Counsel any tax forms (i.e., IRS Forms W-2, IRS Forms 1099, etc.) as may be required by law for all amounts paid pursuant to this Settlement Agreement. The Settlement Administrator will also be responsible for calculating the Employer Taxes and forwarding all payroll taxes and other legally required withholdings to the appropriate government authorities.

18. Tax Liability. Plaintiff, Class Counsel, Defendant, and Defendant's Counsel do not intend anything contained in this Settlement Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Settlement Agreement be relied on as such. Plaintiff, Settlement Class Members, and PAGA Employees are not relying on any statement, representation, or calculation by Defendant, the Settlement Administrator, or Class Counsel in this regard. Plaintiff, Settlement Class Members, and PAGA Employees understand and agree that Plaintiff, Settlement Class Members, and PAGA Employees will be solely responsible for the payment of any taxes and penalties assessed on the payments described in this Settlement Agreement. Plaintiff, Settlement Class Members, and PAGA Employees should consult with their tax advisors concerning the tax consequences of any payment they receive under the Settlement.

19. Circular 230 Disclaimer. EACH PARTY TO THIS SETTLEMENT AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS SETTLEMENT AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS SETTLEMENT 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 WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE

1 MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART
2 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY
3 UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE
4 (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS SETTLEMENT AGREEMENT, (B)
5 HAS NOT ENTERED INTO THIS SETTLEMENT AGREEMENT BASED UPON THE
6 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY
7 OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR
8 DISCLOSURE BY ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY
9 TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
10 ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
11 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISOR'S TAX
12 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING)
13 UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR
14 TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION
15 CONTEMPLATED BY THIS SETTLEMENT AGREEMENT.

16 20. Settlement Awards Do Not Trigger Additional Benefits. All payments made under the
17 Settlement shall be deemed to be paid to the payee solely in the year in which such payments actually
18 are issued to the payee. It is expressly understood and agreed that payments made under this
19 Settlement shall not in any way entitle Plaintiff, Settlement Class Members, or any PAGA Employee
20 to additional compensation or benefits under any new or additional compensation or benefits, or any
21 bonus, contest, or other compensation or benefit plan or agreement in place during the Class Period,
22 nor will it entitle Plaintiff, Settlement Class Members, or any PAGA Employee to any increased
23 retirement, 401K benefits or matching benefits, or deferred compensation benefits (notwithstanding
24 any contrary language or agreement in any benefit or compensation plan document that might have
25 been in effect during the Class Period).

26 21. Duties of the Parties with Respect to Obtaining Preliminary Approval of the Settlement.
27 Upon execution of this Settlement Agreement, Plaintiff will obtain a hearing date from the Court for
28 Plaintiff's motion for preliminary approval of the Settlement, which Plaintiff and Class Counsel will

1 be responsible for drafting, and submit this Settlement Agreement to the Court in support of said
2 motion. Class Counsel will provide Defendant's Counsel a draft of the preliminary approval motion
3 before filing it with the Court. Defendant agrees not to oppose the motion for preliminary approval
4 of the Settlement consistent with this Settlement Agreement. By way of said motion, Plaintiff will
5 apply for the entry of the Preliminary Approval Order seeking the following:

- 6 a. Conditionally certifying the Class for settlement purposes only;
- 7 b. Granting Preliminary Approval of the Settlement;
- 8 c. Preliminarily appointing Plaintiff as the representative of the Class;
- 9 d. Preliminarily appointing Class Counsel as counsel for the Class;
- 10 e. Approving as to form and content, the mutually-agreed upon and proposed
11 Class Notice and directing its mailing by First Class U.S. Mail;
- 12 f. Approving the manner and method for Class Members to request exclusion
13 from or object to the Class Settlement as contained herein and within the Class Notice; and
- 14 g. Scheduling a Final Approval Hearing at which the Court will determine whether
15 Final Approval of the Settlement should be granted.

16 At the hearing on the motion for preliminary approval, the Parties anticipate that they will
17 jointly appear, support the granting of the motion for preliminary approval, and obtain an order
18 granting preliminary approval, granting approval of the Class Notice, and setting a date for the Final
19 Approval Hearing.

20 22. Notice of Settlement to the LWDA. Pursuant to California Labor Code § 2699(1)(2),
21 Class Counsel shall notify the LWDA of the Settlement.

22 23. Delivery of Class List. Within fourteen (14) calendar days of Preliminary Approval,
23 Defendant will provide the Class List to the Settlement Administrator.

24 24. Notice by First-Class U.S. Mail.

25 a. Within seven (7) calendar days after receiving the Class List from Defendant,
26 the Settlement Administrator will perform a search based on the National Change of Address Database
27 or any other similar services available, such as provided by Experian, for information to update and
28 correct for any known or identifiable address changes, and will mail a Class Notice in English and

Spanish (in the form attached as **Exhibit A** to this Settlement Agreement) to all Class Members via First-Class U.S. Mail, using the most current, known mailing addresses identified by the Settlement Administrator.

b. Any Class Notice returned to the Settlement Administrator as undeliverable on or before the Response Deadline will be sent promptly via First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on the Class Notice. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace or other search, using the name, address, and/or Social Security number of the Class Member, and perform a single re-mailing within five (5) calendar days.

c. Compliance with the procedures described herein above shall constitute due and sufficient notice to Class Members of the Settlement and shall satisfy the requirements of due process. Nothing else shall be required of or done by the Parties, Class Counsel, or Defendant's Counsel to provide notice of the Settlement.

25. Disputes Regarding Workweeks and/or PAGA Pay Periods. Class Members/PAGA Employees will have an opportunity to dispute the number of Workweeks and/or PAGA Pay Periods to which they have been credited, as reflected in their respective Class Notices, by submitting a timely and valid Dispute to the Settlement Administrator, by mail, postmarked on or before the Response Deadline. The date of the postmark on the return mailing envelope will be the exclusive means to determine whether a Dispute has been timely submitted. Absent evidence rebutting the accuracy of Defendant's records and data as they pertain to the number of Workweeks and/or PAGA Pay Periods to be credited to a disputing Class Member/PAGA Employee, Defendant's records will be presumed to be correct and determinative of the dispute. However, if a Class Member/PAGA Employee produces information and/or documents to the contrary, the Settlement Administrator will evaluate the materials submitted by the Class Member/PAGA Employee and the Settlement Administrator will resolve and determine the number of eligible Workweeks and/or PAGA Pay Periods that the disputing Class Member should be credited with under the Settlement. The Settlement Administrator's decision on such disputes will be final and non-appealable.

1 26. Requesting Exclusion from the Class Settlement. Any Class Member wishing to be
2 excluded from the Class Settlement must submit a timely and valid Request for Exclusion to the
3 Settlement Administrator, by mail, postmarked on or before the Response Deadline. The date of the
4 postmark on the return mailing envelope will be the exclusive means to determine whether a Request
5 for Exclusion has been timely submitted. The Settlement Administrator will certify jointly to Class
6 Counsel and Defendant's Counsel the number of timely and valid Requests for Exclusion that are
7 submitted, and also identify the individuals who have submitted a timely and valid Request for
8 Exclusion in a declaration that is to be filed with the Court in advance of the Final Approval Hearing.
9 At no time will any of the Parties or their counsel seek to solicit or otherwise encourage Class Members
10 to request exclusion from the Class Settlement. Any Class Member who submits a Request for
11 Exclusion is prohibited from making any objection to the Class Settlement. Any Class Member who
12 submits a timely and valid Request for Exclusion will not be bound by the Class Settlement and will
13 not be issued an Individual Settlement Payment. Any Class Member who does not affirmatively
14 request exclusion from the Class Settlement by submitting a timely and valid Request for Exclusion
15 will be bound by all of the terms of the Class Settlement, including and not limited to those pertaining
16 to the Released Class Claims, as well as any judgment that may be entered by the Court if it grants
17 Final Approval to the Settlement. Notwithstanding the above, all PAGA Employees will be bound to
18 the PAGA Settlement and will be issued their Individual PAGA Payment, irrespective of whether they
19 submit a Request for Exclusion.

20 27. Objecting to the Class Settlement. To object to the Class Settlement, Settlement Class
21 Members must submit a timely and complete Notice of Objection to the Settlement Administrator, by
22 mail, postmarked on or before the Response Deadline. The date of the postmark on the return mailing
23 envelope will be the exclusive means to determine whether a Notice of Objection has been timely
24 submitted. The Settlement Administrator will certify jointly to Class Counsel and Defendant's
25 Counsel the number of Notices of Objection that are submitted (specifying which ones were timely
26 and complete and which were not), and also attach them to a declaration that is to be filed with the
27 Court in advance of the Final Approval Hearing. At no time will any of the Parties or their counsel
28 seek to solicit or otherwise encourage Settlement Class Members to object to the Class Settlement or

1 appeal from the Final Approval Order and Judgment. Settlement Class Members, individually or
2 through counsel, may also present their objection orally at the Final Approval Hearing, regardless of
3 whether they have submitted a Notice of Objection.

4 28. Reports by the Settlement Administrator. The Settlement Administrator shall provide
5 weekly reports to counsel for the Parties providing: (a) the number of undeliverable and re-mailed
6 Class Notices; (ii) the number of Class Members who have submitted Disputes; (iii) the number of
7 Class Members who have submitted Requests for Exclusion; and (iv) the number of Settlement Class
8 Members who have submitted Notices of Objection. Additionally, the Settlement Administrator will
9 provide to counsel for the Parties any updated reports regarding the administration of the Settlement
10 Agreement as needed or requested, and immediately notify the Parties when it receives a request from
11 an individual or any other entity regarding inclusion in the Class and/or Settlement or regarding a
12 Dispute.

13 29. Defendant's Right to Rescind. If more than ten percent (10%) of the Class Members
14 submit timely and valid Requests for Exclusion, Defendant may elect to rescind the Settlement
15 Agreement. Defendant must exercise this right of rescission in writing that is provided to Class
16 Counsel within fourteen (14) calendar days of the Settlement Administrator notifying the Parties of
17 the number of Class Members who have submitted timely and valid Requests for Exclusion following
18 the Response Deadline. If Defendant exercises this option, Defendant shall pay any costs of settlement
19 administration owed to the Settlement Administrator incurred up to that date.

20 30. Certification of Completion. Upon completion of administration of the Settlement, the
21 Settlement Administrator will provide a written declaration under oath to certify such completion to
22 the Court and counsel for all Parties.

23 31. Duties of the Parties with Respect to Obtaining Final Approval of the Settlement. After
24 the Response Deadline, a Final Approval Hearing will be conducted to determine whether Final
25 Approval of the Settlement should be granted, along with the amounts properly payable for: (a)
26 Individual Settlement Shares; (b) Individual PAGA Payments; (c) LWDA Payment; (d) Attorneys'
27 Fees and Costs; (e) Enhancement Payment; and (f) Settlement Administration Costs. The Final
28 Approval Hearing will not be held earlier than thirty (30) calendar days after the Response Deadline.

1 Plaintiff and Class Counsel will be responsible for drafting the motion seeking Final Approval of the
2 Settlement. Class Counsel will provide Defendant's Counsel a draft of the final approval motion
3 before filing it with the Court. By way of said motion, Plaintiff will apply for the entry of the Final
4 Approval Order and Judgment, which will provide for, in substantial part, the following:

5 a. Approval of the Settlement as fair, reasonable, and adequate, and directing
6 consummation of its terms and provisions;

7 b. Certification of the Settlement Class;

8 c. Approval of the application for Attorneys' Fees and Costs to Class Counsel;

9 d. Approval of the application for Enhancement Payment to Plaintiff;

10 e. Directing Defendant to fund all amounts due under the Settlement Agreement
11 and ordered by the Court; and

12 f. Entering judgment in the Action, while maintaining continuing jurisdiction, in
13 conformity with California Rules of Court 3.769 and the Settlement Agreement.

14 If the Court ultimately does not grant Final Approval of the Settlement or grants Final Approval
15 conditioned on any material change (material change includes changes to the amount of the Gross
16 Settlement Amount, the Class Period, and/or PAGA Period) to the Settlement that is not agreed to by
17 one of the Parties, then any Party will have the right to void the Settlement (this Paragraph does not
18 apply if the Court initially denies Final Approval and/or requires the Parties to submit supplemental
19 briefing regarding the motion for final approval). The Parties agree to meet and confer in good faith
20 regarding any condition of Final Approval that requires a material change to the Settlement to come
21 to an agreement prior to voiding the Settlement. If the Settlement is voided in this manner, the Parties
22 will have no further obligations under the Settlement, including any obligation by Defendant to pay
23 any amounts that otherwise would have been payable under this Settlement, except that the voiding
24 Party will pay the Settlement Administrator's reasonable fees and expenses incurred as of the date that
25 the Party exercises the right to void the Settlement under this Paragraph. An award by the Court of a
26 lesser amount than that sought by Plaintiff and Class Counsel for the Enhancement Payment,
27 Attorneys' Fees and Costs, and/or the Settlement Administration Costs, will not constitute a material
28 change to the Settlement within the meaning of this Paragraph.

1 32. Funding of the Gross Settlement Amount. No later than the Effective Date, Defendant
2 will deposit the Gross Settlement Amount into a Qualified Settlement Fund (“QSF”) within the
3 meaning of Treasury Regulation Section 1.468B-1, *et seq.*, to be established by the Settlement
4 Administrator. Defendant shall provide all information necessary for the Settlement Administrator to
5 calculate necessary payroll taxes including its official name, 8-digit state unemployment insurance tax
6 ID number, and other information requested by the Settlement Administrator, no later than the
7 Effective Date. The occurrence of the Effective Date is a prerequisite to any obligation of Defendant
8 to pay any funds into the QSF.

9 33. Distribution of the Gross Settlement Amount. Within five (5) business days of the
10 funding of the Gross Settlement Amount, the Settlement Administrator will issue the Individual
11 Settlement Payments to Settlement Class Members, Individual PAGA Payments to PAGA Employees,
12 LWDA Payment to the LWDA, Enhancement Payment to Plaintiff, Attorneys’ Fees and Costs to Class
13 Counsel, and Settlement Administration Costs to itself. The Settlement Administrator shall also set
14 aside the Employer Taxes and all employee-side payroll taxes, contributions, and withholding, and
15 timely forward these to the appropriate government authorities.

16 34. Settlement Checks. The Settlement Administrator will be responsible for undertaking
17 appropriate deductions, required tax reporting, and issuing the Individual Settlement Payments by way
18 of check to the Settlement Class Members and the Individual PAGA Payments by way of check to the
19 PAGA Employees in accordance with this Settlement Agreement. When issuing payments, the
20 Settlement Administrator may combine the Individual Settlement Payment and Individual PAGA
21 Payment into one check if the intended recipient for both payments is one individual. Settlement Class
22 Members and PAGA Employees are not required to submit a claim to be issued an Individual
23 Settlement Payment and/or Individual PAGA Payment. Each Individual Settlement Payment and
24 Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180)
25 calendar days from the date the checks are issued, and thereafter, shall be canceled. Any funds
26 associated with such canceled checks shall be distributed by the Settlement Administrator to the State
27 of California’s Unclaimed Property Division in the name of the Settlement Class Member and/or
28 PAGA Employee. The Parties agree that this disposition results in no “unpaid residue” under
California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out to

1 Settlement Class Members, whether or not they cash their settlement checks. Therefore, Defendant
2 will not be required to pay any interest on such amounts. The Settlement Administrator shall undertake
3 amended and/or supplemental tax filings and reporting required under applicable local, state, and
4 federal tax laws that are necessitated due to the cancelation of any Individual Settlement Payment
5 and/or Individual PAGA Payment checks. Settlement Class Members whose Individual Settlement
6 Payment checks are canceled shall, nevertheless, be bound by the Class Settlement, and PAGA
7 Employees whose Individual PAGA Payment checks are canceled shall, nevertheless, be bound by the
8 PAGA Settlement.

9 35. Class Settlement Release. Upon the Effective Date and full funding of the Gross
10 Settlement Amount, Plaintiff and all Settlement Class Members will be deemed to have fully, finally,
11 and forever released, settled, compromised, relinquished, and discharged the Released Parties of all
12 Released Class Claims.

13 36. PAGA Settlement Release. Upon the Effective Date and full funding of the Gross
14 Settlement Amount, Plaintiff, the State of California with respect to all PAGA Employees, and all
15 PAGA Employees will be deemed to have fully, finally, and forever released, settled, compromised,
16 relinquished, and discharged the Released Parties of all Released PAGA Claims.

17 37. Plaintiff's General Release. Upon the Effective Date and full funding of the Gross
18 Settlement Amount, Plaintiff, individually and on his own behalf, will be deemed to have fully, finally,
19 and forever released, settled, compromised, relinquished, and discharged the Released Parties from
20 any and all claims of any kind or nature whatsoever, known or unknown, suspected or unsuspected,
21 asserted or unasserted, which Plaintiff, at any time of execution of this Settlement Agreement, had or
22 claimed to have or may have related to Plaintiff's employment with Defendant. It is agreed that this
23 is a general release and is to be broadly construed as a release of all claims related to Plaintiff's
24 employment with Defendant, provided that, notwithstanding the foregoing, this Paragraph expressly
25 does not include a release of any claims that cannot be released hereunder by law, including claims
26 for unemployment insurance, disability, social security, and workers' compensation (except for claims
27 pursuant to Labor Code Sections 132a and 4553). Plaintiff understands and expressly agrees that this
28 Settlement Agreement extends to claims that he has against Defendant, of whatever nature and kind,

known or unknown, suspected or unsuspected, vested or contingent, past, present, or future, arising from or attributable to an incident or event, occurring in whole or in part, on or before the execution of this Settlement Agreement. Any and all rights granted under any state or federal law or regulation limiting the effect of this Settlement Agreement, including the provisions of Section 1542 of the California Civil Code, ARE HEREBY EXPRESSLY WAIVED. Section 1542 of the California Civil Code reads 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.

38. Final Approval Order and Judgment. The Parties shall provide the Settlement Administrator with a copy of the Final Approval Order and Judgment once it is entered by the Court, and the Settlement Administrator shall post the Final Approval Order and Judgment on its website for sixty (60) calendar days. No individualized notice of the Final Approval Order and Judgment to the Class will be required.

39. Continued Jurisdiction. After entry of the judgment pursuant to the Settlement, the Court will have continuing jurisdiction pursuant to Rule 3.769 of the California Rules of Court and Section 664.6 of the California Code of Civil Procedure, for purposes of addressing: (a) the interpretation and enforcement of the terms of the Settlement, (b) settlement administration matters, and (c) such post-judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement.

40. Effects of Termination or Rescission of Settlement. Termination or rescission of the Settlement Agreement shall have the following effects:

a. The Settlement Agreement shall be void and shall have no force or effect, and no Party shall be bound by any of its terms;

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1 b. In the event the Settlement Agreement is terminated, Defendant shall have no
2 obligation to make any payments to any Party, Class Member, or attorney, except that the terminating
3 Party shall pay the Settlement Administrator for services rendered up to the date the Settlement
4 Administrator is notified that the Settlement has been terminated;

5 c. The Preliminary Approval Order, Final Approval Order and Judgment,
6 including any order certifying the Class, shall be vacated;

7 d. The Settlement Agreement and all negotiations, statements, and proceedings
8 relating thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be
9 restored to their respective positions in the Action prior to the execution of the Settlement Agreement;

10 e. Neither this Settlement Agreement, nor any ancillary documents, actions,
11 statements, or filings in furtherance of the Settlement (including all matters associated with the
12 mediation) shall be admissible or offered into evidence in the Action or any other action for any
13 purpose whatsoever; and

14 f. Any documents generated to bring the Settlement into effect, will be null and
15 void, and any order or judgment entered by the Court in furtherance of this Settlement Agreement will
16 likewise be treated as void from the beginning.

17 41. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
18 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
19 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause
20 of action or right herein released and discharged.

21 42. Exhibits Incorporated by Reference. The terms of this Settlement include the terms set
22 forth in any attached exhibits, which are incorporated by this reference as though fully set forth herein.
23 Any exhibits to this Settlement Agreement are an integral part of the Settlement.

24 43. Entire Agreement. This Settlement Agreement and any attached exhibits constitute the
25 entirety of the Parties' agreement relating to the settlement and transaction completed thereby, and all
26 prior or contemporaneous agreements, understandings, representations, and statements, whether oral
27 or written and whether by a Party or such Party's legal counsel, are merged herein. No other prior or
28 contemporaneous written or oral agreements may be deemed binding on the Parties. The Parties
expressly recognize California Civil Code § 1625 and California Code of Civil Procedure § 1856(a),

1 which provide that a written agreement is to be construed according to its terms and may not be varied
2 or contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written
3 representations or terms will modify, vary, or contradict the terms of this Settlement Agreement.

4 44. Interim Stay of Proceedings. The Parties agree to hold in abeyance all proceedings in
5 the Action (including with respect to California Code of Civil Procedure § 583.310), except such
6 proceedings necessary to implement and complete this Settlement Agreement, pending the Final
7 Approval Hearing to be conducted by the Court.

8 45. Amendment or Modification. Prior to the filing of the motion for preliminary approval
9 of the Settlement, the Parties may not amend or modify any provision of this Settlement Agreement
10 except by written agreement signed by counsel for all Parties. After the filing of the motion for
11 preliminary approval of the Settlement, the Parties may not amend or modify any provision of this
12 Settlement Agreement except by written agreement signed by counsel for all the Parties and subject
13 to Court approval. A waiver or amendment of any provision of this Settlement Agreement will not
14 constitute a waiver of any other provision.

15 46. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
16 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
17 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant
18 to this Settlement Agreement to effectuate its terms and to execute any other documents required to
19 effectuate the terms of this Settlement Agreement. The Parties warrant that they understand and have
20 full authority to enter into this Settlement Agreement, and further intend that this Settlement
21 Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible
22 and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation
23 confidentiality provisions that otherwise might apply under state or federal law.

24 47. Signatories. It is agreed that because the members of the Class are so numerous, it is
25 impossible or impractical to have each Settlement Class Member or PAGA Employee execute this
26 Settlement Agreement. The Class Notice will advise all Class Members of the binding nature of the
27 Class Settlement as to the Settlement Class Members and the binding nature of the PAGA Settlement
28 as to the PAGA Employees, and the releases provided for by this Settlement Agreement shall have
the same force and effect as if this Settlement Agreement were executed by each Settlement Class
Member and PAGA Employee.

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

3 49. California Law Governs. All terms of this Settlement Agreement and attached exhibits
4 hereto will be governed by and interpreted according to the laws of the State of California.

5 50. Execution and Counterparts. This Settlement Agreement is subject only to the
6 execution of all Parties. However, this Settlement Agreement may be executed in one or more
7 counterparts. All executed counterparts and each of them, including facsimile, electronic, and scanned
8 copies of the signature page, will be deemed to be one and the same instrument.

9 51. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this
10 Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at
11 this Settlement after arm's length negotiations and in the context of adversarial litigation, taking into
12 account all relevant factors, present and potential. The Parties further acknowledge that they are each
13 represented by competent counsel and that they have had an opportunity to consult with their counsel
14 regarding the fairness and reasonableness of this Settlement Agreement. In addition, if necessary to
15 obtain approval of the Settlement, the Mediator may execute a declaration supporting the Settlement
16 and the reasonableness of the Settlement and the Court may, in its discretion, contact the Mediator to
17 discuss the Settlement and whether or not the Settlement is objectively fair and reasonable.

18 52. Invalidity of Any Provision. Before declaring any provision of this Settlement
19 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
20 possible consistent with applicable precedents so as to define all provisions of this Settlement
21 Agreement valid and enforceable.

22 53. Plaintiff's Cooperation. Plaintiff agrees to sign this Settlement Agreement and, by
23 signing this Settlement Agreement, is hereby bound by the terms herein and agrees to fully cooperate
24 to implement the Settlement.

25 54. Non-Admission of Liability. The Parties enter into this Settlement Agreement to
26 resolve the dispute that has arisen between them and to avoid the burden, expense, and risk of
27 continued litigation. In entering into this Settlement Agreement, Defendant does not admit, and
28 specifically denies, it has violated any federal, state, or local law; violated any regulations or guidelines

1 promulgated pursuant to any statute or any other applicable laws, regulations, or legal requirements;
2 breached any contract; violated or breached any duty; engaged in any misrepresentation or deception;
3 or engaged in any other unlawful conduct with respect to its employees. Neither this Settlement
4 Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be
5 construed as an admission or concession by Defendant of any such violations or failures to comply
6 with any applicable law. Except as necessary in a proceeding to enforce the terms of this Settlement
7 Agreement, this Settlement Agreement and its terms and provisions shall not be offered or received
8 as evidence in any action or proceeding to establish any liability or admission on the part of Defendant
9 or to establish the existence of any condition constituting a violation of, or a non-compliance with,
10 federal, state, local or other applicable law.

11 55. Captions. The captions and paragraph numbers in this Settlement Agreement are
12 inserted for the reader's convenience, and in no way define, limit, construe, or describe the scope or
13 intent of the provisions of this Settlement Agreement.

14 56. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
15 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be
16 construed more strictly against one Party than another merely by virtue of the fact that it may have
17 been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length
18 negotiations between the Parties, all Parties have contributed equally to the preparation of this
19 Settlement Agreement.

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

24 58. All Terms Subject to Final Court Approval. All amounts and procedures described in
25 this Settlement Agreement herein will be subject to final Court approval.

26 59. Notices. All notices, demands, and other communications to be provided concerning
27 the Settlement Agreement shall be in writing and deemed to have been duly given as of the third
28 business day after mailing by First Class U.S. Mail, or the day sent by email or messenger, addressed

as follows:

To Plaintiff and Class Counsel:

Jonathan M. Genish

jgenish@blackstonepc.com

Miriam L. Schimmel

mschimmel@blackstonepc.com

Joana Fang

jfang@blackstonepc.com

Alexandra Rose

arose@blackstonepc.com

BLACKSTONE LAW, APC

8383 Wilshire Boulevard, Suite 745

Beverly Hills, California 90211

Tel: (310) 622-4278 / Fax: (855) 786-6356

To Defendant:

Maurice J. Fitzgerald

mfitzgerald@ohaganmeyer.com

Carla Vasques dos Santos-Moore

cmoores@ohaganmeyer.com

O'HAGAN MEYER LLP

One Embarcadero Center, Suite 2100

San Francisco, California 94111

Tel: (415) 599-6900 / Fax: (415) 528-7190

60. Cooperation and Execution of Necessary Documents. All Parties and their counsel will cooperate with each other in good faith and use their best efforts to implement the Settlement, including and not limited to, executing all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement Agreement, the Parties may seek the assistance of the Mediator and then the Court to resolve such disagreement.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Action and PAGA Settlement between Plaintiff and Defendant:

IT IS SO AGREED.

PLAINTIFF RIGOBERTO TECALIZ

Dated: 03/25/2025



Rigoberto Tecaliz

**DEFENDANT NATIONAL RESTAURANT
INC. DBA BLACK BEAR DINER**

Dated: _____

Full Name: _____

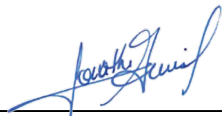
Title: _____

On behalf of National Restaurant Inc. dba
Black Bear Diner

APPROVED AS TO FORM ONLY:

BLACKSTONE LAW, APC

Dated: March 25, 2025



Jonathan M. Genish
Attorney for Plaintiff Rigoberto Tecaliz
and Proposed Class Counsel

O’HAGAN MEYER LLP

Dated: _____

Maurice J. Fitzgerald
Attorney for Defendant National Restaurant Inc.
dba Black Bear Diner

**DEFENDANT NATIONAL RESTAURANT
INC. DBA BLACK BEAR DINER**

Dated: March 25, 2025


Full Name: Karan Gogri

Title: President
On behalf of National Restaurant Inc. dba
Black Bear Diner

APPROVED AS TO FORM ONLY:

BLACKSTONE LAW, APC

Dated: _____

Jonathan M. Genish
Attorney for Plaintiff Rigoberto Tecaliz
and Proposed Class Counsel

O’HAGAN MEYER LLP

Dated: March 25, 2025



Maurice J. Fitzgerald
Attorney for Defendant National Restaurant Inc.
dba Black Bear Diner

EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT

Rigoberto Tecaliz v. National Restaurant Inc. dba Black Bear Diner

Superior Court of California for the County of San Diego, Case No. 37-2023-00046906-CU-OE-CTL

PLEASE READ THIS CLASS NOTICE CAREFULLY.

You have received this Class Notice because Defendant's records indicate that you may be eligible to take part in the class action settlement reached in the above-referenced case.

You do not need to take any action to receive a settlement payment.

This Class Notice is designed to advise you of your rights and options with respect to the settlement, and how you can request to be excluded from the Class Settlement, object to the Class Settlement, and/or dispute the number of Workweeks and/or PAGA Pay Periods that you are credited with, if you so choose.

YOU ARE NOTIFIED THAT: A class and representative action settlement has been reached between Plaintiff Rigoberto Tecaliz ("Plaintiff") and Defendant National Restaurant Inc. dba Black Bear Diner ("Defendant") (Plaintiff and Defendant are collectively referred to as the "Parties") in the case entitled *Rigoberto Tecaliz v. National Restaurant Inc. dba Black Bear Diner*, San Diego County Superior Court, Case No. 37-2023-00046906-CU-OE-CTL ("Action"), which may affect your legal rights. On [date of Preliminary Approval], the Court granted preliminary approval of the settlement and scheduled a hearing on [hearing date] at [hearing time] ("Final Approval Hearing") to determine whether or not the Court should grant final approval of the settlement.

I. IMPORTANT DEFINITIONS

"Class" or "Class Member(s)" means all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the Class Period (or if any such person is incompetent, deceased, or unavailable due to military service, the person's legal representative or successor in interest evidenced by reasonable verification).

"Class Period" means the period from October 27, 2019 through November 25, 2024.

"Class Settlement" means the settlement and resolution of all Released Class Claims.

"PAGA Employee(s)" means all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the PAGA Period (or if any such person is incompetent, deceased, or unavailable due to military service, the person's legal representative or successor in interest evidenced by reasonable verification).

"PAGA Period" means the period from September 18, 2022 through November 25, 2024.

"PAGA Settlement" means the settlement and resolution of all Released PAGA Claims.

II. BACKGROUND OF THE ACTION

On September 18, 2023, Plaintiff provided written notice to the California Labor and Workforce Development Agency ("LWDA") of the specific provisions of the California Labor Code that Plaintiff contends were violated ("PAGA Letter"). On October 27, 2023, Plaintiff commenced a putative class action lawsuit by filing a Class Action Complaint for Damages in the Action. On November 27, 2023, Plaintiff filed a First Amended Class Action Complaint for Damages and Enforcement Action Under the Private Attorneys General Act, California Labor Code §§ 2698 Et Seq. ("Operative Complaint"), adding a cause of action under the Private Attorneys General Act of 2004 pursuant to California Labor Code Section 2698, *et seq.* ("PAGA").

Plaintiff contends that Defendant failed to properly pay minimum and overtime wages, provide compliant meal and rest breaks and associated premiums, timely pay wages during and upon termination of employment and associated waiting-time penalties, provide accurate wage statements, and reimburse business expenses, and thereby engaged in unfair business practices in violation of the California Business and Professions Code section 17200, *et seq.*, and conduct that gives rise to

penalties under PAGA. Plaintiff seeks, among other things, recovery of unpaid wages and meal and rest period premiums, unreimbursed business expenses, restitution, penalties, interest, and attorneys' fees and costs.

Defendant denies all of the allegations in the Action or that it violated any law.

The Parties participated in mediation with a respected class action mediator, and as a result, the Parties reached a settlement. The Parties have since entered into a Joint Stipulation of Class Action and PAGA Settlement ("Settlement" or "Settlement Agreement").

On [Date of Preliminary Approval], the Court entered an order preliminarily approving the Settlement. The Court has appointed ILYM Group, Inc. as the administrator of the Settlement ("Settlement Administrator"), Plaintiff Rigoberto Tecaliz as representative of the Class ("Class Representative"), and the following Plaintiff's attorneys as counsel for the Class ("Class Counsel"):

Jonathan M. Genish
Miriam L. Schimmel
Joana Fang
Alexandra Rose
Blackstone Law, APC
8383 Wilshire Boulevard, Suite 745
Beverly Hills, California 90211
Tel: (310) 622-4278 / Fax: (855) 786-6356

If you are a Class Member, you need not take any action to receive an Individual Settlement Payment, but you have the opportunity to request exclusion from the Class Settlement (in which case you will not receive an Individual Settlement Payment), object to the Class Settlement, and/or dispute the Workweeks and/or PAGA Pay Periods credited to you, if you so choose, as explained more fully in Sections III and IV below. If you are a PAGA Employee, you do not need to take any action to receive an Individual PAGA Payment; you will not have the opportunity to object or seek exclusion from the PAGA Settlement and all PAGA Employees will be bound to the PAGA Settlement if the Court grants final approval of the Settlement.

The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by Defendant that the claims in the Action have merit or that Defendant has any liability to Plaintiff, Class Members, or PAGA Employees. Plaintiff and Defendant, and their respective counsel, have concluded and agree that, in light of the risks and uncertainties to each side of continued litigation, the Settlement is fair, reasonable, and adequate, and is in the best interests of the Class Members, the State of California, and PAGA Employees.

III. SUMMARY OF THE PROPOSED SETTLEMENT

A. Settlement Formula

The total gross settlement amount is Six Hundred and Thirty-Nine Thousand Dollars (\$639,000.00) (the "Gross Settlement Amount"). The portion of the Gross Settlement Amount that is available for payment to Class Members is referred to as the "Net Settlement Amount." The Net Settlement Amount will be the Gross Settlement Amount less the following payments which are subject to approval by the Court: (1) attorneys' fees, in an amount not to exceed 1/3 of the Gross Settlement Amount (i.e., \$213,000.00 if the Gross Settlement Amount is \$639,000.00), and reimbursement of litigation costs and expenses, in an amount not to exceed Twenty Thousand Dollars (\$20,000.00) to Class Counsel; (2) Enhancement Payment in an amount not to exceed Ten Thousand Dollars (\$10,000.00) to Plaintiff for his services in the Action; (3) the amount of Thirty Thousand Dollars (\$30,000.00) allocated toward civil penalties under the Private Attorneys General Act ("PAGA Amount"), of which the LWDA will be paid 75% (\$22,500.00) ("LWDA Payment") and the remaining 25% (\$7,500.00) will be distributed to PAGA Employees ("PAGA Employee Amount"); and (4) Settlement Administration Costs in an amount not to exceed Eight Thousand and Five Hundred Dollars (\$8,500.00) to the Settlement Administrator.

Class Members are eligible to receive payment under the Class Settlement of their *pro rata* share of the Net Settlement Amount ("Individual Settlement Share") based on the number of weeks each Class Member worked for Defendant as an hourly-paid and/or non-exempt employee in California during the Class Period ("Workweeks"). The Settlement

Administrator has divided the Net Settlement Amount by the Workweeks of all Class Members to yield the “Estimated Workweek Value,” and multiplied each Class Member’s individual Workweeks by the Estimated Workweek Value to yield an estimated Individual Settlement Share that each Class Member may be entitled to receive under the Class Settlement (which is listed in Section III.C below). Class Members who do not submit a timely and valid Request for Exclusion (“Settlement Class Members”) will be issued their final Individual Settlement Payment.

Each Individual Settlement Share will be allocated as twenty percent (20%) as wages, which will be reported on an IRS Form W-2, and eighty percent (80%) as penalties, interest, and non-wage damages, which will be reported on an IRS Form 1099 (if applicable). Each Individual Settlement Share will be subject to reduction for the employee’s share of payroll taxes and withholdings with respect to the wages portion of the Individual Settlement Shares resulting in a net payment to the Settlement Class Member (“Individual Settlement Payment”). The employer’s share of taxes and contributions in connection with the wages portion of Individual Settlement Shares (“Employer Taxes”) will be paid by Defendant separately and in addition to the Gross Settlement Amount.

PAGA Employees are eligible to receive payment under the PAGA Settlement of their *pro rata* share of the PAGA Employee Amount (“Individual PAGA Payment”) based on the number of pay periods each PAGA Employee worked for Defendant as an hourly-paid and/or non-exempt employee in California during the PAGA Period (“PAGA Pay Periods”). The Settlement Administrator had divided the PAGA Employee Amount, i.e., 25% of the PAGA Amount, by the PAGA Pay Periods of all PAGA Employees to yield the “PAGA Pay Period Value,” and multiplied each PAGA Employee’s individual PAGA Pay Periods by the PAGA Pay Period Value to yield each PAGA Employee’s Individual PAGA Payment.

Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties, will not be subject to taxes or withholdings, and will be reported on IRS Form 1099 (if applicable).

If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to Settlement Class Members and Individual PAGA Payments will be mailed to PAGA Employees at the address that is on file with the Settlement Administrator. **If the address to which this Class Notice was mailed is not correct, or if you move after you receive this Class Notice, you must provide your correct mailing address to the Settlement Administrator as soon as possible to ensure you receive any payment that you may be entitled to under the Settlement.**

B. Your Workweeks and PAGA Pay Periods (if applicable) Based on Defendant’s Records

According to Defendant’s records:

- **From October 27, 2019 through November 25, 2024 (i.e., the Class Period), you are credited as having worked [REDACTED] Workweeks.**
- **From September 18, 2022 through November 25, 2024 (i.e., the PAGA Period), you are credited as having worked [REDACTED] PAGA Pay Periods.**

If you wish to dispute the Workweeks and/or PAGA Pay Periods credited to you, you must submit your dispute in writing to the Settlement Administrator (“Dispute”). The Dispute must: (a) contain the case name and number of the Action (*Rigoberto Tecaliz v. National Restaurant Inc. dba Black Bear Diner*, Case No. 37-2023-00046906-CU-OE-CTL); (b) contain your full name, signature, address, telephone number, and the last four (4) digits of your Social Security number; (c) clearly state that you dispute the number of Workweeks and/or PAGA Pay Periods credited to you and what you contend is the correct number; and (d) be returned by mail to the Settlement Administrator at the specified address listed in Section IV.B below, postmarked **on or before [Response Deadline]**.

C. Your Estimated Individual Settlement Share and Individual PAGA Payment (if applicable)

As explained above, your estimated Individual Settlement Share and Individual PAGA Payment (if applicable) is based on the number of Workweeks and PAGA Pay Periods (if applicable) credited to you.

Under the terms of the Settlement, your Individual Settlement Share is estimated to be \$ [REDACTED]. The Individual Settlement Share is subject to reduction for the employee’s share of taxes and withholdings with respect to the wages portion of the Individual Settlement Share and will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.

Under the terms of the Settlement, your Individual PAGA Payment is estimated to be \$ [REDACTED] and

will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.

The settlement approval process may take multiple months. Your Individual Settlement Share and Individual PAGA Payment (if applicable) reflected in this Class Notice is only an estimate. Your actual Individual Settlement Payment and Individual PAGA Payment (if applicable) may be higher or lower.

D. Release of Claims

Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiff and all Settlement Class Members will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Class Claims.

Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiff, the State of California with respect to all PAGA Employees, and all PAGA Employees will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released PAGA Claims.

“Released Class Claims” means any and all claims and causes of action which were alleged in the Operative Complaint or which reasonably could have been alleged based on the factual allegations and legal theories in the Operative Complaint, arising during the Class Period, which specifically includes claims for Defendant’s alleged failure to pay overtime and minimum wages, provide compliant meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide accurate wage statements, and reimburse necessary business-related expenses in violation of California Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802, the applicable Industrial Welfare Commission Wage Order, and California Business and Professions Code sections 17200, *et seq.* By virtue of this release, any claims under the FLSA that are predicated on the Released Class Claims are subject to res judicata pursuant to applicable law including but not limited to *Rangel v. PLS Check Cashers of California Inc.*

“Released PAGA Claims” means any and all claims and causes of action for civil penalties under the California Private Attorneys General Act of 2004 that were alleged in the Operative Complaint or reasonably could have been alleged based on the facts and legal theories contained in the Operative Complaint and PAGA Letter, arising during the PAGA Period, for civil penalties under the Private Attorneys General Act of 2004, California Labor Code sections 2698 *et seq.*, which specifically includes claims for Defendant’s alleged failure to pay overtime and minimum wages, provide compliant meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide complaint wage statements, maintain complete and accurate payroll records, and reimburse necessary business-related expenses in violation of California Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare Commission Wage Order.

- In light of the binding nature of a PAGA judgment on non-party employees pursuant to *Arias v. Sup. Ct.* (Angelo Dairy) (2009) 46 Cal.4th 969 and *Cardenas v. McLane Foodservice, Inc.* (2011) 796 F.Supp.2d 1246, individuals otherwise meeting the definition of a Settlement Class Member who exclude themselves from the Class Settlement shall nonetheless receive a payment for the amount of each such individual’s estimated share of the PAGA Employees’ portion of the PAGA Amount and shall have released the Released PAGA Claims.

“Released Parties” means Defendant, and its past and present direct and/or indirect officers, directors, members, managers, exempt employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.

E. Attorneys’ Fees and Costs to Class Counsel

Class Counsel will seek attorneys’ fees in an amount not to exceed one-third (1/3) of the Gross Settlement Amount (i.e., \$213,000.00 if the Gross Settlement Amount is \$639,000.00) and reimbursement of litigation costs and expenses in an amount not to exceed Twenty Thousand Dollars (\$20,000.00) (collectively, “Attorneys’ Fees and Costs”), subject to approval by the Court. The Attorneys’ Fees and Costs granted by the Court will be paid from the Gross Settlement Amount. Class Counsel has been prosecuting the Action on behalf of Plaintiff, Class Members, and PAGA Employees on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses.

F. Enhancement Payment to Plaintiff

Plaintiff will seek the amount of Ten Thousand Dollars (\$10,000.00) (“Enhancement Payment”), in recognition of his services in connection with the Action. The Enhancement Payment will be paid from the Gross Settlement Amount, subject to approval by the Court, and if awarded, it will be paid to Plaintiff in addition to his Individual Settlement Payment and Individual PAGA Payment that he is entitled to under the Settlement.

G. Settlement Administration Costs to Settlement Administrator

Payment to the Settlement Administrator is estimated not to exceed Eight Thousand and Five Hundred Dollars (\$8,500.00) (“Settlement Administration Costs”) for the costs of the notice and settlement administration process, including and not limited to, the expense of notifying the Class Members of the Settlement, processing Requests for Exclusion, Notices of Objection, and Disputes, calculating Individual Settlement Shares, Individual Settlement Payments, and Individual PAGA Payments, and distributing payments and tax forms under the Settlement, and shall be paid from the Gross Settlement Amount, subject to approval by the Court.

IV. WHAT ARE YOUR RIGHTS AND OPTIONS AS A CLASS MEMBER?

A. Participate in the Settlement

If you want to participate in the Class Settlement and receive money from the Class Settlement, you do not have to do anything. You will automatically be included in the Class Settlement and issued your Individual Settlement Payment unless you decide to exclude yourself from the Class Settlement.

Unless you elect to exclude yourself from the Class Settlement and if the Court grants final approval of the Settlement, you will be bound by the terms of the Class Settlement and any judgment that may be entered by the Court based thereon, and you will release the Released Class Claims against the Released Parties as described in Section III.D above.

If you are a PAGA Employee and the Court grants final approval of the Settlement, you will automatically be included in the PAGA Settlement and issued your Individual PAGA Payment. This means you will be bound by the terms of the PAGA Settlement and any judgment that may be entered by the Court based thereon, and you will release the Released PAGA Claims against the Released Parties as described in Section III.D above.

As a Class Member and PAGA Employee (if applicable), you will not be separately responsible for the payment of attorney’s fees or litigation costs and expenses, unless you retain your own counsel, in which event you will be responsible for your own attorney’s fees and expenses.

B. Request Exclusion from the Class Settlement

Class Members may request to be excluded from the Class Settlement by submitting a letter (“Request for Exclusion”) to the Settlement Administrator, at the following address:

[Settlement Administrator]
[Mailing Address]

A Request for Exclusion must: (a) contain the case name and number of the Action (*Rigoberto Tecaliz v. National Restaurant Inc. dba Black Bear Diner*, Case No. 37-2023-00046906-CU-OE-CTL); (b) contain your full name, signature, address, telephone number, and last four (4) digits of your Social Security number; (c) clearly state that you do not wish to be included in the Class Settlement; and (d) be returned by mail to the Settlement Administrator at the specified address above, postmarked **on or before** [Response Deadline].

If the Court grants final approval of the Settlement, any Class Member who submits a timely and valid Request for Exclusion will not be issued an Individual Settlement Payment, will not be bound by the Class Settlement (and the release of Released Class Claims described in Section III.D above), and will not have any right to object to, appeal, or comment on the Class Settlement. Class Members who do not submit a timely and valid Request for Exclusion will be deemed Settlement Class Members and will be bound by all terms of the Class Settlement, including those pertaining to the release of claims described in Section III.D above, as well as any judgment that may be entered by the Court based thereon. PAGA Employees will be bound to the PAGA Settlement (and the release of Released PAGA Claims described in Section III.D above) and will still be issued an Individual PAGA Payment, irrespective of whether they submit a Request for Exclusion.

C. Object to the Class Settlement

You can object to the Class Settlement as long as you have not submitted a Request for Exclusion by submitting a written objection (“Notice of Objection”) to the Settlement Administrator.

The Notice of Objection must: (a) contain the case name and number of the Action *Rigoberto Tecaliz v. National Restaurant Inc. dba Black Bear Diner*, Case No. 37-2023-00046906-CU-OE-CTL); (b) contain your full name, signature, address, telephone number, and the last four (4) digits of your Social Security number; (c) contain a written statement of all grounds for the objection accompanied by any legal support for such objection; (d) contain copies of any papers, briefs, or other documents upon which the objection is based; and (e) be returned by mail to the Settlement Administrator at the specified address listed in Section IV.B above, postmarked **on or before [Response Deadline]**.

You may also appear at the Final Approval Hearing and present your objection orally, regardless of whether you have submitted a Notice of Objection.

V. FINAL APPROVAL HEARING

The Court will hold a Final Approval Hearing in Department C-60 of the San Diego County Superior Court, located at Hall of Justice, 330 W Broadway, San Diego, California 92101, on **[date]**, at **[time]**, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court also will be asked to approve and grant the Attorneys’ Fees and Costs to Class Counsel, Enhancement Payment to Plaintiff, and Settlement Administration Costs to the Settlement Administrator.

The Final Approval Hearing may be continued without further notice to the Class Members and PAGA Employees. It is not necessary for you to appear at the Final Approval Hearing, although you may appear if you wish to.

You can attend the Final Approval Hearing (or hire a lawyer to attend) either personally or virtually via Microsoft Teams (<https://www.sdcourt.ca.gov/sdcourt/civil2/civilvirtualhearings>). Check the Court’s website for the most current information.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement Agreement, you should review the detailed Settlement Agreement and other papers, which are on file with the Court.

You may view the Settlement Agreement and other documents filed in the Action for a fee by going to the San Diego County Superior Court’s Register of Actions online webpage at <https://odyroa.sdcourt.ca.gov/> and entering case number ‘37-2023-00046906-CU-OE-CTL’.

You may also visit the Settlement Administrator’s website at **[redacted]** for more information and documents relating to the Settlement.

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT.

IF YOU HAVE ANY QUESTIONS, YOU MAY CALL THE SETTLEMENT ADMINISTRATOR AT THE FOLLOWING TOLL-FREE NUMBER: **[INSERT], OR YOU MAY ALSO CONTACT CLASS COUNSEL.**