

PRIVATE ATTORNEYS
GENERAL ACT SETTLEMENT
AGREEMENT

This Private Attorneys General Act Settlement Agreement (the “Agreement”) is made by and between (1) Plaintiff Isabella Klugh (“Klugh”), on behalf of herself and all alleged aggrieved employees, and (2) Defendant Hillstone Restaurant Group, Inc. (“Hillstone”) (collectively the “Parties”). Through this Agreement the Parties hereby resolve the lawsuit entitled Isabella Klugh, an Individual, on behalf of the State of California and All Aggrieved Employees as a Private Attorney General v. Hillstone Restaurant Group, Inc. (Case No. 20STCV12299 filed in the Los Angeles County Superior Court) (the “Action”).

1. DEFINED TERMS

1.1 The term “Aggrieved Employees” means all current and former non-exempt employees of Hillstone who were employed in the State of California at any time during the PAGA Settlement Period.

1.2 The term “Attorney’s Fees and Cost Award” means the amount authorized by the Court to be paid to Klugh’s Counsel for the services they have rendered and expenses they have incurred in prosecuting the Action.

1.3 The term “Court” as used herein means the Superior Court of Los Angeles County.

1.4 The term “Effective Date” will be the last to occur of the following: (a) the date that the Court’s order approving the Settlement is not subject to further judicial review; or (b) if an appeal, review, or writ is sought from the Court’s order granting approval of the Settlement, the day after such order is affirmed, and/or the appeal, review, writ, or order is no longer subject to further judicial review.

1.5 The term “Gross Settlement Fund” means an amount not to exceed Five Hundred and Twenty Eight Thousand Dollars (\$528,000.00) that will be used to fund the Qualified Settlement Fund. The Gross Settlement Fund includes all Individual Settlement Payments, the Attorney’s Fees and Cost Award, the Settlement Administration Costs, and payment to Labor and Workforce Development Agency (“LWDA”).

1.6 The term “Individual Settlement Payment” means the amount to be paid to an Aggrieved Employee pursuant to Section 6 of this Agreement.

1.7 The term “Net Settlement Proceeds” means the funds from the Qualified Settlement Fund available to be distributed to Aggrieved Employees under this Agreement after payment of the Attorney’s Fees and Cost Award, the Settlement Administration Costs, and the portion of the PAGA Payment made to the LWDA.

1.8 The term “PAGA Payment” means the net amount to be paid by the Settlement Administrator to the LWDA and Aggrieved Employees after deduction of Settlement

Administration Costs, and the Attorney's Fees and Costs Award from the Gross Settlement Fund, in full satisfaction of the Released Claims as defined below. This PAGA Payment is made pursuant to Labor Code §2699(i).

1.9 The term "Pay Periods" means the number of pay periods worked by the Aggrieved Employees during the PAGA Settlement Period as determined by the Settlement Administrator.

1.10 The term "Klugh's Counsel" means Nazo Koulloukian and Christine Harmandayan of Koul Law Firm.

1.11 "Qualified Settlement Fund" shall be the fund established and administered by the Settlement Administrator pursuant to Internal Revenue Code Section 1.468B-1 in connection with the Settlement.

1.12 The term "Settlement" means the settlement described in this Agreement.

1.13 The term "Settlement Administration Costs" means all Settlement Administrator fees and costs incurred in administering the Settlement.

1.14 The term "Settlement Administrator" means ILYM, the firm that the Parties mutually agree shall be responsible for the administration of the Settlement, pursuant to the terms of this Agreement.

1.15 The term "PAGA Settlement Period" means the following time period: January 17, 2019 to the date that the Court approves the Settlement.

2. SCOPE, PURPOSE, AND BENEFITS OF THE SETTLEMENT

2.1 As detailed below, this Agreement establishes a procedure to resolve all Aggrieved Employees' claims for penalties, attorneys fees, costs, and interest under PAGA alleged in the Action, including in the Amended Complaint, or that could have been alleged based on the facts alleged in the Action, including in the Amended Complaint. The Parties believe that continued litigation would be protracted, expensive, uncertain, and contrary to their best interests. In light of these realities, the Parties believe that this Settlement is the best way to resolve the disputes between them.

2.2 The Parties believe this Agreement constitutes a fair, adequate, and reasonable settlement of the Action and have arrived at this Agreement in arms-length negotiations, following mediation with a retired Federal Court judge, taking into account all relevant factors, present and potential, and will so represent to the Court. This Settlement was reached after extensive discovery and negotiations. In addition, the Parties have conducted significant investigation of the facts and law during the prosecution of this Action. The Parties have also investigated the applicable law as applied to the facts discovered regarding the alleged claims of Klugh and potential defenses thereto, and the civil penalties claimed by Klugh.

3. JURISDICTION

3.1 The Court has jurisdiction over the Parties and the subject matter of this dispute. The Action includes claims that, while Hillstone denies them in their entirety, would, if proven, authorize the Court to grant relief pursuant to the California laws cited therein. If the Settlement is approved, the Court will retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments entered in connection therewith.

4. NO ADMISSIONS

4.1 The Parties agree that this Agreement reflects their good faith compromise of the claims raised in the Action, based upon their assessment of the mutual risks and costs of further litigation and the assessments of their respective counsel. This Agreement does not constitute, is not intended to constitute, and will not be deemed to constitute, an admission of liability by Hillstone as to the merits, validity, or accuracy of any of the allegations or claims made against it in the Action.

4.2 Neither this Agreement, nor any action taken or made in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the negotiations leading to the Agreement, is intended by the Parties, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, the Agreement may be used in any proceeding that has as its purpose the interpretation, implementation, or enforcement of the Agreement or any orders or judgments of the Court entered into in connection therewith.

4.3 Evidence produced or created by the Parties in connection with the Settlement procedure do not constitute, are not intended to constitute, and will not be deemed to constitute, an admission by Hillstone of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.

4.4 In the event that this Settlement is not approved by the Court, is terminated, or otherwise fails to be enforceable, Hillstone will not be deemed to have waived, limited, or affected in any way any of its objections or defenses in the Action.

5. WAIVER, RELEASE, AND DISMISSAL

5.1 Release and Waiver of Claims by Aggrieved Employees. Upon the Effective Date, all Aggrieved Employees, including Klugh, and their successors, assigns, and/or agents,

shall be deemed to have fully and finally released and discharge Hillstone and each of its past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and its and their respective successors and predecessors in interest, subsidiaries, affiliates, and parent companies and attorneys (collectively the “Released Parties”), from the “Released Claims,” as defined herein. For purposes of this Agreement, the “Released Claims” are defined as all Aggrieved Employees’ claims for penalties, attorney’s fees, costs or interest under PAGA that were alleged, or which could have been alleged based on the factual allegations in the Action, including the amended Complaint, and/or PAGA letters in the Action, including all claims and potential claims for penalties recoverable under PAGA, including all claims for unpaid wages, including failure to pay minimum wages, straight time compensation and overtime compensation; the incorrect calculation of the regular rate of pay; failure to incorporate the attire allowance and/or bonuses into the regular rate of pay; failure to keep accurate time records; failure to provide and maintain accurate itemized wage statements; failure to keep accurate employee payroll records; failure to timely pay wages due during and/or at separation of employment; failure to identify all required items on wage statements; meal periods and/or meal period premiums; rest periods and/or rest period premiums; failure to provide personnel records and payroll records; failure to pay accrued vacation, failure to pay sick leave, and including without limitation any and all potential claims for penalties recoverable under PAGA predicated upon Labor Code §§ 201-203, 204, 210, 218, 218.5, 222, 223, 225.5, 226, 226.2, 226.3, 226.7, 227.3, 246, 247.5, 248.5, 256, 510, 512, 558, 558.1, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, and any duplicative or similar provisions arising under the Wage Orders of the California Industrial Welfare Commission and any other PAGA penalty claims whatsoever alleged in the Action, including in the amended Complaint and amended PAGA letter, whether known or unknown, from and including January 17, 2019 up to and including the date the Court approves the Settlement. Klugh agrees to amend her Complaint and PAGA letter as necessary to include all claims released by this Agreement within 10 days of Klugh’s execution of this Agreement.

6. COMPUTATION AND DISTRIBUTION OF PAYMENTS

6.1 Gross Settlement Fund. The Gross Settlement Fund amount of Five Hundred and Twenty Eight Thousand Dollars (\$528,000.00) is on an all-in, non-reversionary basis to settle the Action and to resolve all Released Claims, and related penalties, attorney’s fees, costs, administrative fees, and interest. In no event shall Hillstone be liable for more than Five Hundred and Twenty Eight Thousand Dollars (\$528,000.00) as a result of this Settlement, and any of the attorney’s fees, costs, administrative fees, penalties, and sums specified in this Agreement shall be paid from this amount, except as otherwise noted in this Agreement. This Gross Settlement Fund amount of Five Hundred and Twenty Eight Thousand Dollars (\$528,000.00) has been agreed to by the Parties. It is expressly understood that if the Court awards less than the total amounts requested by Klugh’s Counsel to be awarded for attorney’s fees and costs, the difference in any such amounts will be included in the PAGA Payment.

6.2 Deposit of the Gross Settlement Fund Amount into the Qualified Settlement Fund. Not later than fifteen (15) days after the Effective Date, Hillstone shall deposit the Gross Settlement Fund into the Qualified Settlement Fund. At no time will Hillstone have any obligation to make that deposit or otherwise fund the Settlement, in whole or in part, until fifteen

(15) days following the Effective Date. All payments that that are required to be made pursuant to the Agreement shall be made from the Qualified Settlement Fund.

6.3 Distribution Formula. The Settlement Administrator shall distribute the PAGA Payment to the LWDA and Aggrieved Employees as described in this Section 6.3 set forth herein:

6.3.1 Pursuant to PAGA, Seventy-Five Percent (75%) of the PAGA Payment will be paid to the LWDA, and the remaining Twenty-Five Percent (25%) will be allocated among to all Aggrieved Employees, as set forth herein.

6.3.2 To calculate the net amount of the Aggrieved Employees share of the PAGA Payment, the Settlement Administrator will deduct the following court-approved sums from the Gross Settlement Fund: (1) Attorney's Fees and Costs Award; and (2) the Settlement Administration Costs. The Settlement Administrator will then deduct Seventy-Five Percent (75%) of the Net Settlement Proceeds, which shall be sent to the LWDA, and Twenty-Five Percent (25%) will be allocated among the PAGA Representative Group proportionally based on the number of Pay Periods each member of that group worked during the PAGA Settlement Period.

6.3.3 No Aggrieved Employee shall be required to file a claim in order to receive such payment.

6.3.4 For tax purposes, all Individual Settlement Payments will constitute penalties and will be reported on an IRS Form-1099, which the Settlement Administrator will provide to Aggrieved Employees if necessary, as required by law. No person or entity shall have any claim against Hillstone, Hillstone's counsel, Klugh, any Aggrieved Employees, Klugh's Counsel, or the Settlement Administrator based upon distributions and payments made in accordance with this Agreement.

6.4 Distribution to the Aggrieved Employees. Individual Settlement Payments shall be paid out of the Net Settlement Proceeds pursuant to the Distribution Formula set forth in Section 6.4 of this Agreement, as set forth herein:

6.4.1 Not later than fifteen (15) days following the Effective Date, Hillstone shall send a list of all Aggrieved Employees to the Settlement Administrator containing the employee's (1) name; (2) last known home address and telephone number; (3) number of pay periods as an Aggrieved Employee during the PAGA Settlement Period; and (4) Social Security Number. This shall be known as the "Group List." Hillstone shall transmit the Group List in Excel or similar format or other method as agreed to by the Parties in good faith as technology requires to transmit the data. The Group List shall remain confidential and will not be disclosed to Klugh, Klugh's counsel, or anyone else other than the Settlement Administrator.

6.4.2 Not later than five (5) days following receipt of the Group List, the Settlement Administrator shall email the Parties confirming receipt of the Group List and stating the number of Aggrieved Employees and the number of Pay Periods included therein, but no other information from the Group List.

6.4.3 Not later than ten (10) days following receipt of the Group List, the Settlement Administrator shall cross-reference all the addresses provided in the Group List with the United States Postal Service NCOA database to obtain current address information.

6.4.4 Not later than ten (10) days following receipt of the Gross Settlement Fund from Hillstone, the Settlement Administrator shall make the following payments from those proceeds: (1) the Individual Settlement Payments; (2) the Attorney's Fees and Cost Award; (3) the portion of the PAGA Payment to the LWDA; and (4) payment to the Settlement Administrator for administration of the Settlement.

6.4.5 The Settlement Administrator shall mail via U.S. First Class mail each Individual Settlement Payment to each Aggrieved Employee's last known address with directions to the Postmaster to deliver the checks to any applicable forwarding address and to return all undeliverable checks to the Settlement Administrator. The date of the initial mailing of the check shall be conclusively determined according to the records of the Settlement Administrator.

6.4.6 A letter substantially in the form of Exhibit A hereto will be included in the mailing of each Aggrieved Employee's Individual Settlement Payment.

6.4.7 Individual Settlement Payments shall remain valid and negotiable for One Hundred And Eighty (180) days from the date of their issuance. If there are uncashed checks following this period, the uncashed funds shall escheat to the State of California Unclaimed Property Fund in the name of the Aggrieved Employee whose check went uncashed.

6.4.8 The Settlement Administrator's determination of eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this Agreement, shall be conclusive, final, and binding on all Aggrieved Employees, including Klugh.

6.5 Attorney's Fees and Costs.

6.5.1 Klugh's Counsel shall request, and Hillstone will not oppose, an award of attorney's fees of up to Thirty Three and One Third percent (33.33%) or One Hundred Seventy Five Thousand Nine Hundred and Eighty-Two Dollars and Zero Cents (\$175,982.00) and costs not to exceed twelve thousand Dollars and Zero Cents (\$12,000.00) of the Gross Settlement Fund. The Attorney's Fees and Cost Award shall be binding on the Parties and shall not otherwise affect the validity of the Settlement. The Settlement Administrator shall issue an IRS Form 1099 to Klugh's Counsel reflecting the awarded attorney's fees, costs and expenses. Should Klugh and/or Klugh's Counsel request a lesser amount for attorney's fees than stated above and/or the Court approve a lesser amount, the difference shall be added to the Net Settlement Proceeds. In consideration of the Attorney's Fees and Cost Award, Klugh's Counsel waives all claims to any further attorney's fees and expenses in connection with the litigation of the Action. Klugh, Klugh's Counsel, and Aggrieved Employees shall assume full responsibility and liability for the payment of taxes due on such awards.

6.5.2 The Attorney's Fees and Cost Award shall constitute full satisfaction of the obligation to pay any amounts to any person, attorney, or law firm for attorney's fees, costs or expenses in the Action incurred by any attorney on behalf of the Klugh and the Aggrieved Employees, and shall relieve the Released Parties and the Settlement Administrator of any other claims or liability to any other attorney or law firm for any attorney's fees, costs and expenses to which any of them may claim to be entitled on behalf of the Klugh and/or the Aggrieved Employees.

6.6 Settlement Administrator.

6.6.1 The Settlement Administrator will be paid subject to court approval. Any amount not awarded for costs of administration to the Settlement Administrator will result in the non-awarded amount being made part of the PAGA Payment, available for distribution to the LWDA and the Aggrieved Employees. A Form 1099 – MISC shall be issued to the Settlement Administrator.

6.6.2 The Settlement Administrator shall calculate the portion of the PAGA Payment to be paid to the LWDA and the Individual Settlement Payments to be paid to the Aggrieved Employees in accordance with the terms and provisions of this Agreement; pay any applicable state and/or federal taxes; make payment to the LWDA and mail the Individual Settlement Payment checks to the Aggrieved Employees along with the letter substantially in the form of Exhibit "A," attached hereto; resolve any disputes regarding the calculation or application of the formula for determining the Individual Settlement Payments; issue 1099 forms; calculate and disburse any Attorney's Fees and Cost Award, and/or applicable taxes from the Gross Settlement Fund; and perform such other tasks necessary to effectuate the terms of this Agreement or as the Parties mutually agree or the Court orders the Parties to perform.

6.6.3 Any disputes relating to the Settlement Administrator's ability and need to perform its duties shall be referred to the Court.

7. INTEREST

7.1 The Gross Settlement Fund includes any and all interest accruals and no additional interest shall be due under any circumstances, except if Hillstone fails to fund the Settlement no later than fifteen (15) days after the Effective Date as discussed above.

8. TAXATION

8.1 Klugh and, through Klugh's Counsel, Aggrieved Employees represent and warrant that they understand that it is their sole obligation to pay appropriate federal, state, and local income taxes on any amounts they receive under this Agreement that lawfully qualify as taxable income.

8.2 Neither the Parties nor their respective counsel provide or purport to provide any tax advice to the Aggrieved Employees in connection with this Agreement or otherwise. The Parties agree that they shall not rely upon any terms of this Agreement for the purpose of determining or avoiding federal, state, or local tax obligations.

9. COURT'S APPROVAL

9.1 The Parties agree to use their best efforts to obtain approval as quickly as possible, to the extent not inconsistent with the terms of this Agreement, and will not take any action adverse to each other in obtaining the Court's approval of the Agreement in all respects.

9.2 The Parties will first submit this Settlement for Court approval by means of a Stipulated Judgment. If the Court does not approve a Stipulated Judgment, the Parties will then submit this Settlement for Court approval by noticed motion.

9.3 The Parties agree to a stay of all trial court and arbitration proceedings in the Action.

9.4 In the event an appeal or petition for writ of mandamus is filed from the Court's order granting approval of the Settlement, administration of the Settlement shall be stayed pending final resolution of the appeal or other appellate review.

10. PUBLICITY

10.1 Except as necessary to obtain Court approval, including prior submission to the LWDA, Klugh and Klugh's Counsel shall not communicate the terms or the fact of the Settlement to third parties other than (1) employees or law partners of Klugh's Counsel and/or Klugh's immediate family members; and (2) their respective accountants or lawyers as necessary for tax purposes. Klugh and Klugh's Counsel agree not to refer to the Action, Hillstone, Hillstone's counsel, or the Settlement on any website or electronic or other communication, and to limit their statements (including electronic statements on the internet) regarding the Settlement to only say that the Action has been resolved. The Settlement Administrator shall not host or publish any website in association with the Settlement unless required by court order.

11. INAPPLICABILITY OF CALIFORNIA CIVIL PROCEDURE CODE SECTION 384

11.1 The Parties agree that California Civil Procedure Code ("CCP") Section 384 is not applicable to the Gross Settlement Fund. Neither Klugh nor Klugh's Counsel shall take, or cause any other person to take, a position before the Court that CCP section 384 applies to the Gross Settlement Fund.

12. MISCELLANEOUS PROVISIONS

12.1 Headings. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

12.2 Interpretation of the Agreement. The Agreement will be interpreted and enforced under the laws of the State of California without regard to its conflict of law provisions.

12.3 Final Agreement. This Agreement constitutes the exclusive and final understanding and expression of all agreements between the Parties with respect to the resolution of the Action and supersedes all prior agreements and understandings between the Parties relating to the subject matter of the Action. Klugh, on Klugh's own behalf and as representatives for the Aggrieved Employees, and Hillstone enter into this Agreement based solely upon its terms and not in reliance upon any representations or promises other than those contained in this Agreement. The Agreement may be modified only by a writing signed by the Parties, or their successors, and approved by the Court.

12.4 Counterparts/Facsimile/Electronic. The Agreement may be executed in one or more actual, telecopied or electronic counterparts, all of which will be considered one and the same instrument and all of which will be considered duplicate originals. A signature on this Agreement delivered by facsimile or electronically shall be as legally binding as an original signature, although the Parties will provide original signatures to each other for their records.

12.5 Authority. Counsel for all Parties represent and warrant they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate actions required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effectuate the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties shall seek the assistance of the Court to resolve such disagreement. The persons signing this Agreement on behalf of Hillstone represent and warrant that they are authorized to sign this Agreement on behalf of Hillstone.

12.6 No Effect on Employee Benefits. The Individual Settlement Payments Award shall be deemed not to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) of Klugh or any Aggrieved Employee. The payment of the Individual Settlement Payments does not represent any modification of Aggrieved Employees' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Hillstone. Further, any Individual Settlement Payment shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by Hillstone.

12.7 No Injunctive Relief. Hillstone shall not be required to enter into any consent decree, nor shall Hillstone be required to agree to any provision for injunctive relief, or to modify or eliminate any of its personnel, compensation, or payroll practices, or adopt any new personnel, compensation, or payroll practices.

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

12.9 Cooperation and Drafting. Each of the Parties has cooperated in the drafting and preparation of this Agreement. Hence, in any construction made to this Agreement, the same shall not be construed against any of the Parties.

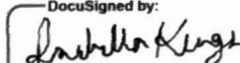
12.10 Invalidity of Any Provision. Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

12.11 Defense. To the extent permitted by law, this Settlement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceedings that may be instituted, prosecuted, or attempted with respect to the Released Claims in breach of or contrary to this Settlement.

WHEREFORE, Klugh, as representatives of herself and Aggrieved Employees, and Hillstone, have executed this Agreement as of the dates set forth below.

Dated: March 22, 2022

By

DocuSigned by:


PLAINTIFF ISABELLA KLUGH

~~April 1~~
Dated: ~~March~~ April 1, 2022

By


DEFENDANT HILLSTONE RESTAURANT GROUP,
INC.

W. Glenn Viers
by its Vice President & General Counsel

APPROVED AS TO FORM:

Dated: March 22, 2022

KOUL LAW FIRM

By


NAZO KOULLOUKIAN
CHRISTINE HARMANDAYAN
Attorneys for ISABEL KLUGH

April
Dated: ~~March~~ April 4, 2022

SHEPPARD MULLIN RICHTER & HAMPTON LLP

By


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