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Attorneys for Plaintiff SOFIJA MARKOVIC, individually
And on behalf of others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

SOFIJA MARKOVIC, an individual, on
behalf of herself, and all others similarly
situated

Plaintiff,

v.

BBG SD4 LLC d/b/a Raglan Public House, a
California Limited Liability Company; BBG
SD5 LLC d/b/a Dunedin New Zealand Eats, a
Delaware Limited Liability Company; BBG
SD3 LLC d/b/a Queenstown Public House, a
California Limited Liability Company; BBG
Cal, LLC d/b/a Bare Back Grill; a California
Limited Liability Company, and Arbor SD,
LLC d/b/a Queenstown Bistro, a California
Limited Liability Company; and DOES 1
through 100, Inclusive,

Defendants.

Case No. 37-2020-00016435-CU-OE-
CTL

*[Assigned for all purposes to the Hon.
Katherine A. Bacal, Department C-69]*

CLASS ACTION

**DECLARATION OF ARMAND R.
KIZIRIAN IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Hearing

Date: April 21, 2023
Time: 1:30 p.m.
Dept: C-69

*[Motion for Preliminary Approval of Class
Action Settlement; [Proposed] Order Filed
Concurrently Herewith]*

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I, Armand R. Kizirian, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California. I am a member in good standing of the State Bar of California. I am one of the attorneys of record in the instant litigation, and I make this declaration in support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement. All of the information set forth herein is based on my personal and firsthand knowledge and if called and sworn as a witness, I could and would competently testify thereto.

2. I am of counsel to Boyamian Law, Inc. I graduated from the U.C.L.A. School of Law in 2013 and was admitted to practice in California that year. I have been named a Super Lawyer Rising Star for 2019-2022 by Thomson Reuters. I am also a member of the California Employment Lawyers Association and the Consumer Attorneys Association of Los Angeles.

3. Since my admission to the bar, my practice has focused upon plaintiffs-side employment matters, especially wage and hour class and representative actions. I have litigated numerous off-the-clock, unpaid overtime, meal break, rest break, misclassification, and piece-rate cases. In addition, my practice has also encompassed individual employment actions such as for wrongful termination and retaliation.

4. I have been closely involved in a significant number of wage and hour and consumer class and representative matters since I began practicing several years ago. Many of these cases have resulted in substantial recoveries for employees and consumers across California. Examples of these recoveries include the following matters:

a. *Cortes v Daley Foods*, Case No. BC 496955 and *Gutierrez v. Daley Foods*, Case No. BC524915 (Los Angeles County Superior Court, 2015), wage and hour class action involving California Labor Code violations relating to restaurant workers, settled for \$2.2 million.

b. *Fuentes, et al. v. Macy's West Stores, Inc.*, Case No. CV 14-00790-ODW (FFMx) (C.D. Cal 2015) wage and hour class action involving misclassification of independent contractors, which settled for \$4 million.

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- 1 c. *Leos v. FedEx*, Case No. 14-02864-ODW-AGR (C.D. Cal. 2015), a class action for
2 unpaid wages pursuant to the Living Wage Ordinance, settled for \$385,000.
- 3 d. *Timothy J. Connell, et al, Klara Paksy, et al and Dale Bystrom, et al v. CVS Pharmacy,*
4 *Inc., et al.*, LASC Case Nos. BC523172, BC523491, BC525991 (2016) wage and hour
5 class action involving Labor Code overtime violations on behalf of pharmacists
6 (\$7,461,600 settlement).
- 7 e. *Angil Sharobiem, et al v. CVS Pharmacy, Inc., et al.*, Case No. 2:13-cv-09426-GHK-
8 FFM (C.D. Cal. 2016) wage and hour class action involving Labor Code overtime
9 violations on behalf of pharmacists (\$2,937,600 settlement).
- 10 f. *Rimanpreet Uppal v. CVS Pharmacy, Inc., et al.*, Case No. 3:14-cv-02629-VC (N.D.
11 Cal. 2016) wage and hour class action involving Labor Code overtime violations on
12 behalf of pharmacists (\$2,350,800 settlement).
- 13 g. *Ian H. Stark, et al. v. CVS Pharmacy, Inc., et al.*, LASC Case Nos. BC476431,
14 BC489738, BC501118, BC502723, BC526977, BC570812 (2016) wage and hour class
15 action involving Labor Code travel time violations on behalf of pharmacists
16 (\$2,000,000 settlement).
- 17 h. *Phillips v. AccentCare, Inc., et al.*, Case No. CIVDS1620673 (2017) wage and hour
18 class action involving Labor Code overtime violation on behalf of home health nurses
19 and other home health professionals (\$1,500,000.00).
- 20 i. *Pursell v. Pacific Wings, LLC*, LASC Case No. BC522083 (2017) wage and hour class
21 action involving Labor Code off-the-clock, overtime, meal and rest break, and
22 unreimbursed business expense violations on behalf of restaurant servers (\$1,300,000).
- 23 j. *Hooper v. URS Midwest, Inc.*, Case No. CIVDS1607489 (2017) wage and hour class
24 action involving Labor Code overtime violation on behalf of Car Haulers (\$2,900,000).
- 25 k. *Tyrer v First Student, Inc.*, Case No. BC459305 (2017) wage and hour class action
26 involving Labor Code overtime violations on behalf of school bus drivers (\$475,000
27 settlement).
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- 1 l. *Nunez v. CompuCom Systems, Inc.*, LASC Case No. BC618385 (2017) wage and hour
2 class action involving Labor Code overtime, meal and rest break, and unreimbursed
3 business expense violations on behalf of home-based service technicians (\$1,500,000).
- 4 m. *Garcia v. Macy's West Stores, Inc., et al.*, Case No. 3:16-cv-04440-WHO (N.D. Cal.
5 2017) wage and hour class action involving misclassification of independent contractors
6 (\$1,550,000 partial settlement).
- 7 n. *Oard v. Daily Press, LLC, et al.*, Case No. 5:16-cv-02039-SVW-KK (C.D. Cal. 2018)
8 wage and hour class action involving misclassification of independent contractor
9 newspaper carriers (\$500,000 settlement).
- 10 o. *Patrick Malone, et al. v. KAG West, LLC, et al.*, Alameda County Superior Court Case
11 Nos. RG15784137 and RG16814354 (2019) wage and hour class and PAGA actions
12 involving overtime and meal and rest break violations for truck drivers (\$1,600,000
13 settlement).
- 14 p. *Raymond Cressall, et al. v. Galpin Motors, Inc., et al.*, San Bernardino County Superior
15 Court Case No. CIVDS1809319 (2019), wage and hour class action concerning
16 overtime and meal and rest break violations in re a commission-only compensation plan
17 (\$2,000,000).
- 18 q. *Pae, et al. v. Fox Restaurant Concepts, LLC, et al.*, Case No. 2:16-CV-06965-DSF-
19 FFM (C.D. Cal. 2019) wage and hour class action involving Labor Code off-the-
20 clock, overtime, meal and rest break, and unreimbursed business expense violations
21 on behalf of restaurant servers (\$900,000).
- 22 r. *Miranda, et al. v. R&L Carriers Shared Services, LLC*, Case No. 2:18-cv-10063-
23 SVW-JC (C.D. Cal. 2020), wage and hour class and PAGA action involving failure to
24 provide meal and rest breaks and reimbursement of necessary expenditures to
25 California-based truck drivers (\$375,000).
- 26 s. *Delores Humes, et al. v. First Student, Inc.*, Eastern District of California Case No.
27 1:15-cv-01861-BAM (2020), wage and hour class action involving Labor Code
28 wage statement violations on behalf of school bus drivers (\$650,000 settlement);

1 additionally obtained reversal of denial of class certification via appeal to Ninth
2 Circuit, *Humes v. First Student, Inc.*, 758 F. App'x 593 (9th Cir. 2019).

3 t. *Rita Khatchadourian, et al. v. Sterling Bank and Trust, FSB*, Alameda County
4 Superior Court Case No. RG19003028 (2020), wage and hour PAGA action
5 concerning overtime, meal break, rest break, and commission agreement violations
6 for bank employees (\$300,000 settlement).

7 u. *Mejia v. Dunn-Edwards Corp.*, Los Angeles County Case No. BC640070 (2020),
8 wage and hour PAGA action concerning off-the-clock work and meal and rest break
9 violations for paint store employees (\$250,000 settlement).

10 v. *Garcia v. Macy's West Stores, Inc., et al. ("Garcia II")*, Case No. 3:16-cv-04440-
11 WHO (N.D. Cal. 2020) wage and hour class action involving misclassification of
12 independent contractors (\$3,500,000 partial settlement).

13 w. *Perez v. The Roman Catholic Archbishop of Los Angeles*, Los Angeles County Superior
14 Court Case No. BC714614 (2021) wage and hour class action on behalf cemetery
15 workers concerning unpaid overtime, meal and rest break violations (\$1,300,000
16 settlement).

17 x. *Espinoza v. Williams Sonoma, Inc., et al.*, Los Angeles County Superior Court Case No.
18 BC693245 (2021) wage and hour class action involving misclassification of
19 independent contractors (\$2,250,000 settlement).

20 y. *Gonzales v. San Gabriel Transit, Inc.*, Los Angeles County Superior Court Case No.
21 BC536584, California Court of Appeal Case No. B282377, California Supreme Court
22 Case No. S259027 – denial of class of misclassified taxi cab drivers reversed by Court
23 of Appeal after published opinion, *Gonzales v. San Gabriel Transit, Inc.*, 40 Cal. App.
24 5th 1131, 1149 (2019), *review dismissed, cause remanded sub nom.*, 481 P.3d 1144
25 (Cal. 2021).

26 z. *Ornelas v. Tapestry, Inc.*, Northern District of California Case No. 3:18-cv-06453-
27 WHA (2022), wage and hour class action involving employee security inspections
28 (\$342,500 settlement).

1 aa. *Caballero v. Fidelitone Last Mile, Inc.*, San Bernardino County Superior Court Case
2 No. CIVSB2102002 (2022), wage and hour class action involving misclassification of
3 independent contractors (\$1,000,000 settlement).

4 bb. *Whitten v. Rite-Aid*, Los Angeles County Superior Court Case No. BC646398 (2022),
5 wage and hour class action involving security checks for warehouse employees
6 (\$1,762,424 settlement).

7 5. Defendants own and operate a collection of New Zealand themed and inspired full-
8 service restaurants in the greater San Diego area and advertise themselves as being part of the “New
9 Zealand Eats Group” or “NZ Eats Group” family. Plaintiff Sofija Markovic worked at Defendants’
10 restaurant for approximately two years. Plaintiff was employed by Defendants as a server and
11 bartender primarily at Defendants’ Dunedin New Zealand Eats location and performed in those
12 functions until her separation in or around July 24, 2019. Throughout her employment with
13 Defendants, Plaintiff worked as a non-exempt, hourly employee.

14 6. While Plaintiff predominantly worked at the Dunedin New Zealand Eats location, she
15 occasionally also worked at BBG’s Queenstown Public House restaurant because management sent her
16 to that location. At the outset, this sparked an inquiry by Plaintiff’s Counsel into the relationship
17 between the two restaurant locations. Through Plaintiff Counsel’s investigation, it became apparent
18 that during the Class Period, Defendants maintained five restaurant operations under one common
19 management group. Outreach efforts conducted by Plaintiff’s Counsel revealed that employees of any
20 given restaurant entity are regularly sent to work in the facilities of another restaurant entity and that a
21 common management team runs all five of the entities. In example, through Plaintiff’s Counsel’s
22 review of Defendants’ liquor licenses, Plaintiff learned that the liquor licenses of all of the restaurants
23 show a great degree of overlapping members/officers for the five LLCs that are the named Defendants
24 in this suit.

25 7. Turning to the core of the suit, Plaintiff alleges that, during her employment, she and the
26 other Class Members performed work off-the-clock and, as a result, were not compensated for all
27 hours worked, including overtime. Plaintiff principally alleges that the off-the-clock work stems from
28 (a) performing work before the start of the shift; (b) punching out to not trigger a meal violation while

1 still working, e.g., waiting on tables; (c) managers adjusting the time punches to mask meal break
2 violations and undo the recording of overtime; and (d) waiting after clocking out for management to
3 reconcile their tips and pay them out.

4 8. Moreover, Class Members, including Plaintiff, were not provided with legally
5 compliant meal periods and rest breaks. Defendants failed to schedule meal and rest periods. With
6 respect to rest breaks, Plaintiff and other Class Members were not provided any training about
7 statutory breaks under California law, were not scheduled to take rest breaks, and in fact, rest breaks
8 were not made available to them.

9 9. Class Members, including Ms. Markovic, were also required to purchase uniforms
10 unique to the NZ Eats Group in order to perform their work for Defendants. Specifically, Plaintiff
11 bought pants and shirts directly from Defendants for approximately \$80. These articles of clothing
12 were required to be worn by Plaintiff and Restaurant Employees when working at any of the NZ Eats
13 Group's locations. These items of clothing were not used by Class Members, including Plaintiff,
14 outside of their work at the NZ Eats Group.

15 10. The other alleged violations for penalties, including inaccurate wage statements and
16 waiting time penalties, are derivative of the failure of Defendants to provide statutory mandated and
17 compliant meal period and rest breaks to Plaintiff and Class Members.

18 11. In summary, Plaintiff alleges that as a result of Defendants' actions, approximately
19 1,300 Class Members were underpaid, denied statutory breaks and the premium pay owed for those
20 denials, were not reimbursed for the business expenses they incurred, and were not paid waiting time
21 penalties if and when they left their employment and were not provided with accurate wage statements.

22 12. On May 26, 2020, Plaintiff Sofija Markovic filed the instant class action lawsuit in San
23 Diego Superior Court on behalf of herself and a putative class of all of Defendants' non-exempt
24 California-based restaurant employees. Plaintiffs' suit included nine causes of action: (1) Failure to
25 Provide Meal Periods (Lab. Code §§ 226.7 and 512); (2) Failure to Provide Rest Periods (Lab. Code §
26 226.7); (3) Failure to Pay Overtime Compensation (Labor Code § 510); (4) Failure to Pay Minimum
27 Wages (Labor Code § 1194 et seq.); (5) Failure to Reimburse For Necessary Business Expenditures
28 (Lab. Code § 2802); (6) Failure to Provide Reporting Time Pay (Labor Code § 1198); (7) Failure to

1 Furnish Accurate Wage and Hour Statement (Lab. Code § 226); (8) Waiting Time Penalties (Lab.
2 Code §§ 201-203); and (9) Unfair Competition (Bus. & Prof. Code § 17200 et seq.).

3 13. On June 2, 2020, Plaintiff filed the operative First Amended Complaint, which added a
4 tenth cause of action for civil penalties pursuant to the Private Attorneys General Act of 2004 (Lab.
5 Code § 2699 et seq.). Plaintiff's operative complaint seeks damages on behalf of herself and a class
6 including unpaid wages, statutory penalties, interest, and attorney's fees and costs.

7 14. Throughout this litigation, the Parties have engaged in formal discovery. Plaintiff
8 served written document requests on February 1, 2021, consisting of Special Interrogatories, Form
9 Interrogatories – Employment, Requests for Production of Documents, and Requests for Admissions.
10 After Plaintiff served her discovery, but before Defendants responded, the Parties attended a full-day
11 mediation on August 31, 2021 with the Hon. Steven R. Denton (Ret.). In advance of this mediation,
12 the Parties engaged in an informal exchange of discovery. The mediation was not successful, and the
13 Parties continued litigating the matter.

14 15. On November 15, 2021, Defendants provided objections and responses to Plaintiff's
15 outstanding discovery. After meeting and conferring, when the Parties could not come to an
16 agreement, Plaintiff filed a series of motions to compel further responses on January 28, 2022. The
17 Parties briefed these motions but, before the Court issued its ruling as to all of these motions, the
18 Parties agreed to attend a second mediation with Judge Denton (Ret.).

19 16. Meanwhile, Defendants had served their own set of discovery, consisting of Special
20 Interrogatories, Form Interrogatories – Employment, Form Interrogatories – General, and Requests for
21 Admissions on March 25, 2022. Defendants followed this up by serving Plaintiff with Requests for
22 Production of Documents on April 26, 2022. Plaintiffs responded to this set of discovery on May 27
23 and May 31, 2022.

24 17. Defendants thereafter served a Notice of Deposition to Plaintiff on July 11, 2022.
25 Similarly, Plaintiffs served deposition notices for Defendants' person most knowledgeable on July 22,
26 2022. Moreover, Plaintiffs also served a series of discovery requests, including Special
27 Interrogatories, Form Interrogatories – Employment, Requests for Production of Documents, and
28 Requests for Admissions on some of the Defendants on July 22, 2022.

1 18. The Parties attended their second full-day mediation with Judge Denton (Ret.) on
2 October 18, 2022. After extensive negotiations, and with Judge Denton's assistance, the Parties were
3 able to reach the instant settlement. A true and correct copy of the Parties Settlement Agreement is
4 attached hereto as **Exhibit "1"**. After such substantial litigation, the Parties and their counsel are
5 sufficiently familiar with the facts of this case and the applicable laws to make an informed judgment
6 as to the fairness of the Settlement, the respective strengths and weaknesses of the claims of the class
7 Plaintiff sought to certify, and the risks of proceeding in litigation. The Parties are represented by
8 competent counsel and had the opportunity to consult with counsel prior to the signing the Settlement
9 Agreement.

10 19. The total settlement amount is \$400,000 which includes payment to Class Members, the
11 Plaintiff's service award, the costs of administration of the settlement, attorneys' fees and costs, and
12 payment to the LWDA in the amount of \$15,000. Plaintiff requests, and Defendants do not oppose, an
13 award of attorneys' fees and costs in the amount of \$133,333.33 for all work previously performed in
14 connection with the action and all remaining work to be performed, as well as reimbursement for costs
15 and expenses not to exceed \$30,000. Further, Plaintiff requests, and Defendants do not oppose, a
16 service award of \$10,000 to Ms. Markovic to be deducted from the Gross Settlement Amount.
17 Plaintiff expects settlement administration costs to amount to approximately \$21,666, but in any event
18 not exceed \$35,000. The Net Settlement Amount (approximately \$176,666.67) will be available for
19 distribution to Class Members pursuant to the formula described above.

20 20. The settlement value was proposed by the mediator in this action, the Hon. Steven R.
21 Denton (Ret.). Plaintiff conducted an extensive investigation into class certification, merits, and
22 damages. Plaintiff determined based on this investigation and discovery that the settlement amount
23 proposed by the mediator was fair and reasonable and that a significant risk of recovering nothing
24 existed if the litigation continued. Indeed, should the Court not approve the Settlement, Class
25 Members run the very real risk of receiving nothing. That is because consistently throughout this
26 litigation, Defendants have represented that they are not on sound financial footing and would not be
27 able to satisfy a large judgment should Plaintiff secure it through a class action trial. To this end,
28 Defense Counsel provided Plaintiff's Counsel with financial documents which corroborated

1 Defendants' representation regarding their financial condition.

2 21. Moreover, even before a class action trial were to be held, Plaintiff would first still need
3 to pursue further discovery, secure class certification, and survive a likely motion for summary
4 judgment. Moreover, throughout all of this, Plaintiff would need to convince the Court that all five
5 entities, each holding a different restaurant, are part of the same common enterprise and should remain
6 in this suit, even if Ms. Markovic herself only worked at two out of the five restaurants.

7 22. Finally, Plaintiff would need to ultimately prevail on the merits at trial, in a case in
8 which Defendants vigorously dispute liability as well as the amount of damages, before Plaintiff is in a
9 position to collect anything on behalf of Class Members. Throughout such a process, attorneys' fees
10 and litigation costs would increase significantly if Plaintiff were to take this case through class
11 certification, summary judgment, and a class action trial, with no guarantee of success.

12 23. The settlement considers the strengths and weaknesses of both Parties' respective
13 positions. Plaintiff's Counsel communicated with numerous Class Members and also engaged in
14 formal and informal discovery receiving policies, procedures, and data from Defendants, specifically
15 time and pay data that took a significant time to review with Plaintiff's retained expert. Class Counsel
16 believes that Plaintiff and the class has viable claims in that Defendants implemented and engaged in
17 unlawful wage and hour policies and practices by requiring employees to work outside of their shifts
18 while off the clock, and working through meal and rest breaks.

19 24. The maximum potential damages support the proposed settlement. Based on the time
20 and pay data provided by Defendants, and based on various assumptions provided by Plaintiff's
21 Counsel given their outreach to Class Members, Plaintiff's retained expert calculated up to a *maximum*
22 of \$4,800,686 in damages for the class claims. This was broken down by Plaintiff's expert to
23 \$763,340 in unpaid wages, assuming 15 minutes of work off the clock each shift, 20% of which was
24 overtime; \$1,237,354 in meal break penalties assuming no valid meal break waiver was in place;
25 \$2,631,591 in rest break penalties assuming Class Members were unable to take rest breaks; and
26 \$168,400 in unreimbursed business expenses assuming \$80 per employee in such expenses. In
27 addition to this amount, Plaintiff's expert calculated \$2,810,627 in waiting time penalties and
28 \$2,502,100 in inaccurate wage statement penalties.

1 25. Of course, it is unlikely that Plaintiff would be able to show violations quite to this
2 degree. While Plaintiff believes wage and hour compliance at Defendants’ restaurants were poor,
3 Plaintiff does not believe a court would find Defendants’ policies to be facially unlawful, thus making
4 it unlikely that a 100% violation would apply to the meal and rest breaks. While Plaintiff feels more
5 confident about the off-the-clock figure as an average for the class, it is also possible that this figure is
6 not as substantial across all of Defendants’ restaurants.

7 26. Similarly, while the potential for PAGA penalties can be much higher than the
8 underlying amount owed with the claims, it is nevertheless true that in awarding PAGA penalties after
9 a finding of liability, a court has “broad discretion to award PAGA penalties as the Court sees fit.”
10 *Magadia v. Wal-Mart Assocs., Inc.*, 384 F. Supp. 3d 1058, 1100 (N.D. Cal. 2019), *reversed in part and*
11 *vacated in part on other grounds*, 999 F.3d 668 (9th Cir. 2021); *see* Labor Code Section 2699(e)(2)
12 (“...a court may award a lesser amount than the maximum civil penalty amount specified by this part
13 if, based on the facts and circumstances of the particular case, to do otherwise would result in an award
14 that is unjust, arbitrary and oppressive, or confiscatory.”).

15 27. In Plaintiff’s assessment, it is not likely that this Court would award the full amount of
16 the available PAGA penalties in this suit given the facts of the case. Instead, Plaintiff believes that the
17 Court would likely award 20% of underlying core wage and claims as penalties. *See e.g. Carrington v.*
18 *Starbucks Corp.*, 30 Cal.App.5th 504 (2018) (reducing the maximum PAGA penalty amount by 90%,
19 at \$5 per pay period). Thus, if after trial it were established that Plaintiffs and Class Members were
20 entitled to \$4,800,686 for unpaid wages, unpaid overtime, meal break penalties, and rest break
21 penalties, Plaintiff believes the high end of damages in PAGA penalties would be \$960,137.20.

22 28. All in all then, with \$4,800,686 in core wage and hour class damages, \$2,810,627 in
23 waiting time penalties, \$2,502,100 in inaccurate wage statement penalties, and \$960,137.20 in PAGA
24 penalties, the likely high watermark of a Plaintiff victory at trial would be \$11,073,550.20. The
25 settlement of \$400,000 therefore represents approximately 3.6% of the maximum total damages.

26 29. While on the lower end, Plaintiff’s Counsel is of the belief that the settlement amount is
27 reasonable here because of (1) the financial condition of Defendants where a large award could lead to
28 the filing of bankruptcy, (2) the hurdles Plaintiff faces in pursuing this action on behalf of all

1 restaurants, which are incorporated as different entities, and (3) and the risk of not being able to secure
2 class certification given the variances in experiences of the Class Members. For all these reasons,
3 Plaintiff's Counsel believes that the amount here is a fair and reasonable.

4 30. The discovery and investigation conducted in this case have allowed both Parties to act
5 prudently in coming to an informed settlement. The Parties engaged in extensive formal and informal
6 discovery in advance of the mediation. Plaintiff's Counsel communicated with numerous Class
7 Members and also engaged in informal discovery, including receiving data from Defendants,
8 specifically extensive time and pay records of the Class. Based on this and other documentation and
9 information obtained directly from Class Members, Plaintiff's Counsel completed an extensive and
10 detailed analysis of the Plaintiffs' claims and Defendants' potential liabilities.

11 31. In addition to the above discovery, Plaintiffs' Counsel performed a substantial amount
12 of other work in these cases, including but not limited to the following:

- 13 • Plaintiff's counsel spent many hours reviewing the relevant case law, Wage Orders, and
14 applicable statutes related to the merits of the Plaintiff's potential claims;
- 15 • Contacted and interviewed numerous Class Members about issues relevant to the case;
- 16 • Reviewed voluminous documents and data concerning the recordation of time and
17 corresponding pay information for Class Members, and worked with an expert
18 statistician to develop a damages analysis on which to guide Plaintiff's position at
19 mediation;
- 20 • Engaged in substantial formal discovery, and brought several motions to compel further
21 responses when Defendants did not provide satisfactory replies
- 22 • Prepared a detailed mediation brief;
- 23 • Achieved a substantial settlement on behalf of the Settlement Class after extensive
24 negotiations before, during and after the mediation; and
- 25 • Negotiated terms of settlement and drafted settlement agreement and notice and
26 prepared motion for preliminary approval.

27 32. The proposed settlement follows a lengthy investigation, informal discovery, litigation
28 and negotiations between the Parties. The prospect of settlement of the case was discussed over a

1 period of many months and multiple meetings, and negotiations were, at all times, adversarial, non-
2 collusive, in good faith, and at arms-length. Indeed, as a result of various issues that arose during the
3 course of negotiating the terms of the Settlement Agreement, the Parties did not finalize the terms of
4 the agreement until recently. Thus, the Settlement Agreement is the product of extensive and informed
5 negotiations between counsel with substantial litigation experience, who are fully familiar with the
6 legal and factual issues in this case, and who have experience litigating and settling complex and class
7 action cases, including employment cases.

8 33. Plaintiff seeks a service award of \$10,000 to Ms. Markovic. Plaintiff's Counsel is of
9 the opinion that the service award is reasonable and proper and is supported by the particular
10 circumstances of this case as well as the applicable law. Plaintiff greatly assisted Plaintiff's Counsel in
11 developing the claims at issue in this case. Plaintiff continually made herself available throughout the
12 course of this litigation, including for the mediation. Moreover, the assistance Plaintiff provided
13 allowed Plaintiff's Counsel to effectively press the class's claims through mediation until such a time
14 where resolution was reached in this matter.

15 34. Moreover, Plaintiff is providing a general release to Defendants as part of this
16 settlement and a release of all unknown claims pursuant to Civil Code Section 1542. This is something
17 that is not being asked of the Class Members and should bear on the amount of the service award.

18 35. In addition, the numerosity requirement of class certification is met as there are
19 approximately 1,300 Class Members. Moreover, the proposed class is ascertainable because all of the
20 Class Members would have had to of been hired to work at Defendants' restaurants. Through formal
21 discovery and the informal exchange of information prior to the mediation, Defendants gathered and
22 provided the time and payroll information of the Class Members

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36. A true and correct copy of the quote provided by the Parties' chosen settlement administrator, Simpluris, Inc., is attached hereto as **Exhibit "2"**. Plaintiff's Counsel have worked on numerous occasions with Simpluris, Inc., and believe their work is excellent and their costs reasonable, particularly here as Simpluris quoted \$21,666 to administer a 1,300 class member settlement.

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

Executed on March 29, 2023, in Glendale, California.

A.R.K.
Armand R. Kizirian

Exhibit “1”

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Attorneys for Plaintiff SOFIJA MARKOVIC,
individually, and on behalf of all others
similarly situated

Attorneys for Defendants BBG SD4 LLC;
BBG SD5 LLC; BBG SD3 LLC; BBG
CAL, LLC; and ARBOR SD LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

SOFIJA MARKOVIC, an individual

Plaintiff,

v.

BBG SD4 LLC d/b/a Raglan Public House, a
California Limited Liability Company; BBG
SD5 LLC d/b/a Dunedin New Zealand Eats, a
Delaware Limited Liability Company; BBG
SD3 LLC d/b/a Queenstown Public House, a
California Limited Liability Company; BBG
Cal, LLC d/b/a Bare Back Grill; a California
Limited Liability Company, and Arbor SD,
LLC d/b/a Queenstown Bistro, a California
Limited Liability Company; and DOES 1
through 100, Inclusive,

Defendants.

Case No. 37-2020-00016435-CU-OE-CTL

CLASS ACTION

*[Assigned for All Purposes Hon. Katherine
A. Bacal, Dept. SD-69]*

**CLASS AND REPRESENTATIVE
ACTION SETTLEMENT AND
RELEASE AGREEMENT**

Action Filed: May 26, 2020

1 **CLASS AND REPRESENTATIVE ACTION SETTLEMENT AND RELEASE**
2 **AGREEMENT**

3 This Class and Representative Action Settlement and Release Agreement (“Settlement”
4 or “Agreement”) is entered into between Plaintiff SOFIJA MARKOVIC (“Plaintiff”),
5 individually and in her capacity as the representative of Settlement Class Members as defined
6 herein, on the one hand, and Defendants BBG SD4 LLC d.b.a. RAGLAN PUBLIC HOUSE;
7 BBG SD5 LLC d.b.a. DUNEDIN NEW ZEALAND EATS; BBG SD3 LLC d.b.a.
8 QUEENSTOWN PUBLIC HOUSE; BBG CAL, LLC d.b.a. BARE BACK GRILL; and
9 ARBOR SD LLC d.b.a. QUEENSTOWN BISTRO (“Defendants”), on the other hand, subject to
10 the terms and conditions hereof and the approval of the Court. Plaintiff and Defendants are
11 referenced collectively herein as “the Parties.”¹

12 **I. CONDITIONAL NATURE OF SETTLEMENT**

13 This Settlement is made in compromise of disputed claims as set forth in the class action
14 lawsuit captioned *Markovic v. BBG SD4 LLC, et al.*, which is now pending in the Superior Court
15 of California, County of San Diego as Case No. 37-2020-00016435-CU-OE-CTL. This lawsuit
16 will be referred to herein as “the Lawsuit.” This Agreement is made for the sole purpose of
17 settling the Lawsuit on a class-wide basis. The Settling Parties (as defined in Section 2 of this
18 Agreement) enter into this Agreement on a conditional basis.

19 Furthermore, in the event that the Court does not enter the Final Approval Order, or a
20 Judgment is not entered in the Lawsuit, or the conditions precedent are not met for any reason,
21 this Settlement shall be deemed null and void *ab initio*, it shall be of no force or effect
22 whatsoever, it shall not be referred to or utilized for any purpose whatsoever, and the
23 negotiations, terms and entry of the Agreement shall remain subject to the provisions of
24 California Evidence Code sections 1119 and 1152 and any other analogous rules of evidence
25 that might apply. Notwithstanding this provision, the Parties hereby stipulate that the terms of
26 Section 15.12 shall survive and be admissible in evidence even if the Settlement does not
27 become final.

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¹ Capitalized terms are defined in Section 3 unless otherwise noted.

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3 Defendants deny all claims as to liability, damages, penalties, interest, fees, restitution,
4 injunctive relief, and all other forms of relief as well as the class allegations asserted in the
5 Lawsuit. Defendants have agreed to resolve the Lawsuit through this Settlement, but to the extent
6 this Settlement is deemed void, Defendants do not waive, but rather expressly reserve, all rights
7 to challenge all such claims and allegations in the Lawsuit upon all procedural and factual
8 grounds, including without limitation the ability to challenge class, collective, and representative
9 action treatment on any grounds, as well as asserting any and all other potential defenses or
10 privileges. The Class Representative and Class Counsel agree that Defendants retain and reserve
11 these rights.

12 **II. PARTIES TO AGREEMENT**

13 This Agreement is made and entered into by and among the following, herein referred to
14 as the “Settling Parties”: (i) the Class Representative (on behalf of herself and each of the Class
15 Members and Aggrieved Employees), with the assistance of Class Counsel; and (ii) Defendants,
16 with the assistance of their counsel of choice. The Settling Parties intend this Agreement to fully,
17 finally, and forever resolve, discharge, and settle the Released Claims upon and subject to the
18 terms and conditions hereof.

19 **III. DEFINITIONS**

20 As used in this Agreement, the following terms shall have the meanings specified below:

21 3.1 “Aggrieved Employees” means all current and former non-exempt employees of
22 Defendants who worked in the State of California at any time between March 30, 2019 and
23 December 31, 2022 (the “PAGA Period”).

24 3.2 “Attorneys’ Fees” means the fees for work performed by Class Counsel and
25 approved for reimbursement by the Court as set forth in Section 8.2 of this Agreement.

26 3.3 “Claims Administrator” or “Administrator” means Simpluris who the
27 Parties have selected to administer this Settlement. The Parties may jointly select a different
28 claims administrator, subject to the approval of the Court.

3.4 “Claims Administration Costs” mean the fees and expenses reasonably and

1 necessarily incurred by the Claims Administrator as a result of performing the settlement
2 administration procedures and functions expressly required in this Settlement and shall include all
3 costs of administering the Settlement, including but not limited to: formatting, printing and
4 mailing the Notice Packet, including filling in individuating information about the amount each
5 Settlement Class Member is estimated to receive; performing a National Change of Address
6 database search of Class Member addresses to update prior to the initial mailing of the Notice
7 Packet; skip-tracing of bad addresses upon the return of undelivered Notice Packets; establishing
8 a toll-free phone number and post office box for receipt of Class Member communications;
9 establishing a website where Class Members may view and download the operative complaint,
10 this Settlement Agreement, the Settlement Notice, approval motions/briefing, as well as any
11 Orders or Tentative Rulings issued by the Court; calculating, processing, reviewing, and issuing
12 Settlement Payments to participating Class Members and others as ordered by the Court;
13 reviewing and resolving Class Members' disputed claims regarding payments under this
14 Agreement; calculating tax withholdings and payroll taxes, making related payment to federal and
15 state tax authorities, and issuing tax forms relating to payments made under the Settlement;
16 establishing a QSF or other appropriate vehicle for receipt of the Gross Settlement Amount and
17 disbursement of payments provided by this Agreement and ordered by the Court; preparing any
18 tax returns and any other filings required by any governmental taxing authority or agency; and
19 any other costs and fees incurred and/or charged by the Claims Administrator in connection with
20 the execution of its duties under this Agreement, which shall not exceed Thirty-Five Thousand
21 U.S. Dollars and No Cents (\$35,000.00).

22 3.5 "Settlement Class Members" means all current and former non-exempt employees
23 of Defendants who worked in the State of California at any time between May 26, 2016 and
24 December 31, 2022.

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3.6 "Class Counsel" means:

3 Michael H. Boyamian (SBN 256107)
4 Armand R. Kizirian (SBN 293992)
5 Boyamian Law, Inc.
6 550 North Brand Blvd., Suite 1500
7 Glendale, California 91203
8 Telephone: 818-547-5300
9 Facsimile: 818-547-5678

10 Alex Hartounian, (SBN 252210)
11 alex@h-lf.com
12 Hartounian Law Firm, P.C.
13 234 E. Colorado Blvd. Suite 800
14 Pasadena, California 91101
15 Telephone: (818) 794-9675
16 Facsimile: (818) 459-6997

17 3.7 "Class Period" means the period from May 26, 2016 through December 31, 2022.

18 3.8 "Class Representative" and "Plaintiff" means Plaintiff Sofija Markovic.

19 3.9 "Court" means the Superior Court for the State of California, County of San
20 Diego.

21 3.10 "Day" means calendar day, unless expressly stated otherwise.

22 3.11 "Defendants" means Defendants BBG SD4 LLC dba Raglan Public House; BBG
23 SD5 LLC dba Dunedin New Zealand Eats; BBG SD3 LLC dba Queenstown Public House; BBG
24 CAL, LLC dba Bare Back Grill; and ARBOR SD LLC dba Queenstown Bistro.

25 3.12 "Defendants' Counsel" means:

26 Janice P. Brown (SBN 114433)
27 jbrown@meyersnave.com
28 Arlene R. Yang (SBN 297450)
ayang@meyersnave.com
MEYERS NAVE
600 B Street, Suite 1650
San Diego, California 92101
Telephone: (619) 330-1700
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Noah J. Woods (SBN 264823)
nwoods@littler.com
LITTLER MENDELSON, P.C.
501 W Broadway Suite 900
San Diego, California 92101

Telephone: (619)-232-0441

3.13 "Effective Date" means the date on which the Court's Final Approval Order becomes final. For purposes of this paragraph, the Court's Final Approval Order "becomes final" upon the last to occur of the following: (a) the Court has entered a Judgment approving the Settlement; (b) the period for filing any appeal, writ or other appellate proceeding opposing the Settlement has elapsed without any appeal, writ or other appellate proceeding having been filed; i.e., within 60 calendar days after entry of the Judgment; or (c) when any appeal, writ or other appellate proceeding opposing the Settlement has been dismissed finally and conclusively with no right to pursue further remedies or relief; or (d) when any appeal, writ or other appellate proceeding has upheld the Court's Judgment with no right to pursue further remedies or relief.

3.14 "Employer Payroll Tax Liability" means payroll taxes paid by the employer (FICA, FUTA, Medicare, and California payroll and withholding taxes).

3.15 "Final Approval Order" means an Order Granting Final Approval of Settlement of the Lawsuit.

3.16 "Gross Settlement Amount," "Settlement Fund," and "Gross Settlement Fund" is the sum of Four Hundred Thousand U.S. Dollars (\$400,000.00), which shall cover payment of all claims on behalf of the Settlement Class and Aggrieved Employees, Claims Administration Costs, Attorneys' Fees, Litigation Expenses, the PAGA Penalty Payment, the Service Enhancement Payment to the Class Representative, but not the Employer Payroll Tax Liability, which shall be paid separately by Defendants. The Gross Settlement Amount with the Employer Payroll Tax Liability is the maximum amount Defendants may be required to pay under this Settlement.

3.17 "Judgment" means a judgment entered by the Court following entry of the Final Approval Order.

3.18 "Last Known Address" means the most recently recorded mailing address for a Class Member as such information is contained in the personnel records maintained by Defendant.

1 3.19 “Lawsuit” means the lawsuit captioned *Markovic v. BBG SD4 LLC, et al*, which is
2 now pending in the Superior Court of California, County of San Diego as Case No. 37-2020-
3 00016435-CU-OE-CTL.

4 3.20 “Litigation Expenses” means the expenses and costs of litigation incurred by Class
5 Counsel as detailed in their billing statement and approved for reimbursement by the Court as set
6 forth in Section 8.2 of this Agreement.

7 3.21 “LWDA” means the California Labor and Workforce Development Agency.

8 3.22 “Net Settlement Amount” means the Gross Settlement Amount less Class
9 Counsel’s Attorneys’ Fees, Litigation Expenses, Claims Administration Costs, the portion of the
10 PAGA Penalty Payment payable to the State of California, and the Service Enhancement
11 Payment to the Class Representative. To the extent the Court does not approve the full requested
12 amount of Attorneys’ Fees, Litigation Expenses, Claims Administration Costs, or the Service
13 Enhancement Payment, the Net Settlement Amount will increase accordingly.

14 3.23 “Notice of Proposed Class Action Settlement” or “Notice” shall mean the notice of
15 this Settlement to be provided to Class Members, in the same or substantially same form as set
16 forth in **Exhibit A** to this Agreement, pending approval by the Court.

17 3.24 “Notice Packet” refers collectively to the documents mailed to the Class Members
18 pursuant to the terms of this Settlement and includes the following: (1) Notice (**Exhibit A**); (2)
19 Request for Exclusion Form (**Exhibit B**); (3) a Change of Address Form (**Exhibit C**), and (4) a
20 pre-printed return envelope addressed to the Claims Administrator.

21 3.25 “Notice Period” means a period of forty-five (45) calendar days from the date the
22 Claims Administrator first mails the Notice Packet to Class Members. If the 45th day falls on a
23 Sunday or holiday, the Notice Period shall end on the next business day that is not a Sunday or
24 holiday.

25 3.26 “Notice Response Deadline” shall be the last day of the Notice Period.

26 3.27 “PAGA Penalty Payment” means amount to be paid to settle any and all PAGA
27 Released Claims for which penalties under California’s Private Attorneys General Act
28 (“PAGA”), California Labor Code sections 2698 *et seq.*, may be sought or are otherwise

1 available, as set forth in Section 8.4 of this Agreement.

2 3.29 "PAGA Work Weeks" means the total number of weeks worked by an Aggrieved
3 Employee during the PAGA Period, rounded up to the next full week.

4 3.30 "Parties" mean the Plaintiff/Class Representative and the Defendants.

5 3.31 "QSF" shall mean the Qualified Settlement Fund established by the Claims
6 Administrator for the benefit of the Class Members and from which the Settlement Payments and,
7 if applicable, employee-side payroll taxes shall be paid.

8 3.32 "Reasonable Address Verification Measure" means utilization of the National
9 Change of Address Database maintained by the United States Postal Service prior to the initial
10 mailing of the Notice Packets, the customary skip-tracing measures used by the Administrator
11 upon the return of undelivered Notice Packets, and the forwarding of Notice Packets returned to
12 the Administrator with updated addresses affixed thereto by the U.S. Postal Service to the
13 updated address.

14 3.33 "Released Claims" shall have the meaning set forth in Section 11 of this
15 Agreement.

16 3.34 "Released Parties" means Defendants and each and all of their respective past and
17 present parents, subsidiaries, affiliated companies and corporations, and each and all of their
18 respective past and present directors, officers, managers, employees, general partners, limited
19 partners, principals, agents, insurers, reinsurers, shareholders, attorneys, advisors, representatives,
20 predecessors, successors, divisions, joint venturers, assigns, or related entities, and each and all of
21 their respective executors, successors, assigns and legal representatives.

22 3.35 "Request for Exclusion" means the document which a Class Member must
23 complete and timely submit to request exclusion from the Settlement, in the form set forth in
24 **Exhibit B** to this Agreement, pending approval by the Court.

25 3.36 "Service Enhancement Payment" shall have the meaning set forth in Section 8.5 of
26 this Agreement.

27 3.37 "Settlement" means the terms and conditions set forth in this Agreement.

28 3.38 "Settlement Payment" means the total amount due to an individual Settlement

1 Class Member, which shall be calculated as described in Section 8.7 of this Agreement.

2 3.39 "Updated Address" means a mailing address that was updated via a Reasonable
3 Address Verification Measure, or an updated mailing address provided by the United States
4 Postal Service, a Settlement Class Member, or any other valid source.

5 3.40 "Work Weeks" means the total number of weeks worked by a Class Member
6 during the Class Period, rounded up to the next full week.

7 **IV. PROCEDURAL BACKGROUND**

8 On May 26, 2020, Plaintiff Sofija Markovic filed a class action lawsuit in San Diego
9 Superior Court (Case No. 37-2020-00016435-CU-OE-CTL) on behalf of herself and a putative
10 class of all of Defendants' non-exempt California-based restaurant employees. Plaintiffs' suit
11 included nine causes of action: (1) Failure to Provide Meal Periods (Lab. Code §§ 226.7 and
12 512); (2) Failure to Provide Rest Periods (Lab. Code § 226.7); (3) Failure to Pay Overtime
13 Compensation (Labor Code § 510); (4) Failure to Pay Minimum Wages (Labor Code § 1194 et
14 seq.); (5) Failure to Reimburse For Necessary Business Expenditures (Lab. Code § 2802); (6)
15 Failure to Provide Reporting Time Pay (Labor Code § 1198); (7) Failure to Furnish Accurate
16 Wage and Hour Statement (Lab. Code § 226); (8) Waiting Time Penalties (Lab. Code §§ 201-
17 203); and (9) Unfair Competition (Bus. & Prof. Code § 17200 et seq.).

18 On June 2, 2020, Plaintiff filed the operative First Amended Complaint, which added a
19 tenth cause of action for civil penalties pursuant to the Private Attorneys General Act of 2004
20 (Lab. Code § 2699 et seq.). Plaintiff's operative complaint seek damages on behalf of herself and
21 a class including unpaid wages, statutory penalties, interest, and attorney's fees and costs.

22 The Parties have engaged in formal discovery. Plaintiff served written document requests
23 on February 1, 2021, consisting of Special Interrogatories, Form Interrogatories – Employment,
24 Requests for Production of Documents, and Requests for Admissions. After Plaintiff served her
25 discovery, but before Defendants responded, the Parties attended a full-day mediation on August
26 31, 2021 with the Hon. Steven R. Denton (Ret.). In advance of this mediation, the Parties
27 engaged in an informal exchange of discovery. The mediation was not successful, and the Parties
28 continued litigating the matter.

On November 15, 2021, Defendants provided objections and responses to Plaintiff's outstanding discovery. After meeting and conferring, when the Parties could not come to an agreement, Plaintiff filed a series of motions to compel further responses on January 28, 2022. The Parties briefed these motions but, before the Court issued its ruling as to all of these motions, the Parties agreed to attend a second mediation with Judge Denton (Ret.).

Meanwhile, Defendants had served their own set of discovery, consisting of Special Interrogatories, Form Interrogatories – Employment, Form Interrogatories – General, and Requests for Admissions on March 25, 2022. Defendants followed this up by serving Plaintiff with Requests for Production of Documents on April 26, 2022. Plaintiffs responded to this set of discovery on May 27 and May 31, 2022.

Defendants thereafter served a Notice of Deposition to Plaintiff on July 11, 2022. Similarly, Plaintiffs served deposition notices for Defendants' person most knowledgeable on July 22, 2022. Moreover, Plaintiffs also served a series of discovery requests, including Special Interrogatories, Form Interrogatories – Employment, Requests for Production of Documents, and Requests for Admissions on some of the Defendants on July 22, 2022.

The Parties attended their second full-day mediation with Judge Denton (Ret.) on October 18, 2022. After extensive negotiations with Judge Denton's assistance, the Parties were able to reach the instant settlement. After such substantial litigation, the Parties and their counsel are sufficiently familiar with the facts of this case and the applicable laws to make an informed judgment as to the fairness of the Settlement, the respective strengths and weaknesses of the claims of the class Plaintiff sought to certify, and the risks of proceeding in litigation. The Parties are represented by competent counsel and have had the opportunity to consult with counsel prior to the signing this Agreement.

V. DEFENDANTS' DENIAL OF LIABILITY

Defendants specifically and generally deny any and all liability or wrongdoing of any sort with regard to any of the Released Claims and makes no concessions or admissions of liability of any sort. Defendants maintain that for any purpose other than settlement, the Lawsuit is not appropriate for class action treatment pursuant to California Code of Civil Procedure § 382.

1 Nonetheless, Defendants have concluded that further litigation would be protracted, distracting
2 and expensive, and that it is desirable that the Lawsuit be fully and finally settled in the manner
3 and upon the terms and conditions set forth in this Agreement. Defendants have also taken into
4 account the uncertainty and risks inherent in any litigation. Defendants have therefore
5 determined that it is desirable and beneficial to settle the Lawsuit in the manner and upon the
6 terms and conditions set forth in this Agreement.

7 The Parties agree there is a bona fide dispute as to whether wages and/or penalties are
8 owed to Plaintiff and the Class Members and neither this Agreement, nor the Settlement-related
9 documents, nor the Settlement itself shall be construed as an admission of either fact or law on
10 any issue by any Party.

11 **VI. CLAIMS OF THE CLASS REPRESENTATIVE AND BENEFITS OF**
12 **SETTLEMENT**

13 The Class Representative and Class Counsel believe that the claims asserted in the
14 Lawsuit have merit and that evidence developed to date supports the claims. However, the Class
15 Representative and Class Counsel recognize and acknowledge the significant expense, resources
16 and time required to continue proceedings necessary to prosecute the Lawsuit against Defendants
17 through trial and through appeals. The Class Representative and Class Counsel have also taken
18 into account the uncertain outcome and the risks of litigation, the difficulties and delays inherent
19 in this and similar litigation, and the problems of proving liability and damages and rebutting
20 possible defenses to the Class Action Complaint. Based upon their evaluation, the Class
21 Representative and Class Counsel have determined that the settlement set forth in this Agreement
22 is fair, reasonable, adequate, and in the best interests of the Class Representatives, the Settlement
23 Class, and the State of California. Both Class Counsel and the Class Representative believe that
24 the settlement set forth in this Agreement confers substantial benefits upon the Settlement Class
25 and each of the Settlement Class Members.

26 **VII. CONDITIONS PRECEDENT TO EFFECTIVENESS OF AGREEMENT**

27 7.1 The Parties enter into this Agreement and the Settlement on a conditional basis.
28 This Agreement and Settlement will become final and effective only upon the occurrence of all of

the following events:

7.1.1 The Court enters an order granting conditional certification of the proposed settlement class;

7.1.2 The Court enters an order granting preliminary approval of the Settlement;

7.1.3 The Court enters a Final Approval Order; and

7.1.4 The Effective Date occurs, and any challenge to the Settlement, whether by objection or appeal, is resolved in favor of enforcement of the Settlement.

7.2 Unless the Court orders otherwise or agreed in writing by the Parties, this Agreement shall be deemed null and void *ab initio* upon the failure of any of these four conditions to occur.

VIII. SETTLEMENT CONSIDERATION—NO CLAIM FORM REQUIRED; DEDUCTIONS FROM THE GROSS SETTLEMENT AMOUNT; CALCULATION OF SETTLEMENT PAYMENTS FROM THE NET SETTLEMENT AMOUNT

This shall be an all-in Settlement without a reversion. Settlement Class Members who do not request exclusion from the Settlement using the procedures specified below will be automatically paid without submitting any claim form.

8.1 **Payment of the Gross Settlement Amount:** Defendants will pay the Gross Settlement Amount in full and final settlement of the Lawsuit. The Gross Settlement Amount will constitute adequate consideration for this Settlement. Since any uncashed settlement check funds will be distributed pursuant to the *cypres* doctrine, this Agreement and the associated Judgment do not and will not create any unpaid residue or unpaid residual, and no distribution of such shall be required. No money shall revert to Defendants.

8.2 **Attorneys' Fees and Litigation Expenses:** Class Counsel will submit an application for: (a) an award of Attorneys' Fees of no more than 33 1/3% or one third of the Gross Settlement Amount, One Hundred Thirty-Three Thousand and Three Hundred Thirty-Three U.S. Dollars and Thirty-Three Cents (\$133,333.33); and (b) an award of Class Counsel's actual Litigation Expenses to date in the amount of up to Thirty Thousand Dollars and Zero Cents (\$30,000.00) as documented on an itemized cost sheet with appropriate support, both of which would be paid out of the Gross Settlement Amount. The amounts set forth in this section will

1 constitute complete consideration for all work performed and expenses incurred to date and for all
2 worked to be performed and expenses to be incurred through the completion of the Lawsuit, its
3 settlement, and the effort to secure final Judgment by Class Counsel. The Attorneys' Fees shall
4 be allocated between the firms that serve as Class Counsel as set forth in their fee-sharing
5 agreements which will be submitted to the Court as part of filing the Motion for Attorneys' Fees,
6 Litigation Expenses, and Service Enhancement Payment.

7 8.2.1 In the event that the Court (or any appellate court) awards less than the
8 amount requested for Attorneys' Fees or Litigation Expenses, only the awarded amounts shall be
9 paid and shall constitute satisfaction of those obligations and full payment thereunder, and any
10 remaining or unawarded portion of the requested Attorneys' Fees or Litigation Expenses shall be
11 made a part of the Net Settlement Amount for distribution to Settlement Class Members. To the
12 extent the Court does not approve any or all of the amount of Attorneys' Fees or Litigation
13 Expenses, the Settlement shall remain binding except as otherwise provided, and this will not be a
14 justification for Plaintiffs to withdraw from the Settlement.

15 8.3 **Claims Administration Costs:** From the Gross Settlement Amount, Claims
16 Administration Costs shall be paid in an amount not to exceed Thirty-Five Thousand U.S. Dollars
17 and No Cents (\$35,000.00), subject to approval from the Court.

18 8.4 **Payment of the PAGA Penalties:** From the Gross Settlement Amount,
19 Defendant will pay Twenty Thousand Dollars (\$20,000.00) for settlement of any and all Released
20 Claims for which penalties under PAGA, Labor Code section 2698 *et seq.*, may be sought or are
21 otherwise available, as the PAGA Penalty Payment. Pursuant to the express requirements of
22 Labor Code section 2699(i), the PAGA Penalty Payment shall be allocated as follows: \$15,000.00
23 (75%) to the LWDA for the enforcement of labor laws and education of employers, and
24 \$5,000.00 (25%) to the Aggrieved Employees as a part of the Net Settlement Amount. The
25 PAGA Penalty Payments to Settlement Class Members are not wages and will be reported on an
26 IRS Form 1099. Each Aggrieved Employee shall receive a pro-rata portion of the PAGA Payment
27 based on the number of eligible pay periods worked by each Aggrieved Employee. Each
28 Aggrieved Employee's Individual PAGA Settlement Payment shall be determined by multiplying

1 the 25 percent of the PAGA Payment allocated to Aggrieved Employees by the ratio of (a) the
2 number of Eligible Pay Periods worked by that employee to (b) the total number of eligible pay
3 periods worked by all Aggrieved Employees. All Aggrieved Employees shall automatically
4 receive their portion of the PAGA Penalties consistent with this section regardless of their
5 decision to opt-out of the Class Settlement.

6 **8.5 Service Enhancement Payment to the Class Representative:** From the Gross
7 Settlement Amount, Plaintiffs intend to request approval for, subject to Court approval, a Service
8 Enhancement Payment for the Class Representative, Sofija Markovic, in the amount of Ten
9 Thousand Dollars (\$10,000). The amount paid to the Class Representative is in consideration for
10 her efforts in connection with this Lawsuit. Moreover, the Class Representative is providing a
11 general release, thus compensating Plaintiff for the much broader rights she is giving up as part of
12 this Agreement. The Class Representative shall be issued an Internal Revenue Service Form
13 1099 for any Service Enhancement Payment. The Class Representative hereby acknowledges that
14 she has obtained no tax advice from Defendants and that neither Defendants nor their attorneys
15 have made any representation concerning the tax consequences, if any, of the Service
16 Enhancement Payment. The Class Representative agrees that she is solely responsible for the tax
17 consequences of the Service Enhancement Payment.

18 **8.5.1** In the event that the Court (or any appellate court) awards less than the
19 amount requested for the Service Enhancement Payment, only the awarded amount shall be paid
20 and shall constitute satisfaction of those obligations and full payment thereunder, and any
21 remaining or unawarded portion of the requested Service Enhancement Payment shall be made a
22 part of the Net Settlement Amount for distribution to Settlement Class Members. To the extent the
23 Court does not approve any or all of the amount of the Service Enhancement Payment, the
24 Settlement shall remain binding except as otherwise provided, and this will not be a justification
25 for Plaintiff to withdraw from the Settlement.

26 **8.5.2** The Service Enhancement Payment, if approved by the Court, is in addition
27 to Plaintiff's Settlement Payment as described in Section 8.7 below.

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1 **8.6 Employer Payroll Tax Liability:** The Employer Payroll Tax Liability on the
2 portions of all Settlement Payments on account of wages in the form of back pay (as described in
3 Section 8.8 of this Agreement) shall be paid separately by Defendants and shall not come out of
4 the Gross Settlement Amount. Under no circumstances shall any portion of the Gross Settlement
5 Fund revert to the Defendants.

6 **8.7 Payment to Settlement Class Members:** The Net Settlement Amount (as defined
7 in Section 3.22, after payment of all enumerated amounts from the Gross Settlement Amount)
8 shall be used to make the Settlement Payments described below.

9 **8.7.1** Each Settlement Payment (not including the additional payment to
10 Aggrieved Employees) shall be calculated by dividing the Net Settlement Amount (less the
11 PAGA allocation) by the total number of Work Weeks worked by Settlement Class Members
12 during the Class Period then multiplying that amount by the number of Work Weeks the
13 individual Settlement Class Member worked as a non-exempt hourly employee working for
14 Defendants in California during the Class Period. Each additional payment to Aggrieved
15 Employees will be calculated by dividing the portion of the PAGA allocation to be paid to
16 Aggrieved Employees by the total number of PAGA Work Weeks worked by Aggrieved
17 Employees during the PAGA Period then multiplying that amount by the number of PAGA Work
18 Weeks the Aggrieved Employee worked during the PAGA Period.

19 **8.8 Taxes:** For the purpose of calculating applicable taxes for the Settlement
20 Payments to Settlement Class Members (including any payments to the Class Representative
21 exclusive of any Service Enhancement Payment), the Parties agree that one-fourth (1/4) of each
22 Settlement Payment constitutes wages in the form of back pay (and each Settlement Class Member
23 will be issued an Internal Revenue Service Form W-2 for such payment to him or her), and three-
24 fourths (3/4) of each Settlement Payment constitutes interest, penalties, liquidated damages and
25 other non-wage payments (and each Settlement Class Member will be issued an Internal Revenue
26 Service Form 1099 for such payment to him or her). Defendants shall not be responsible for
27 payroll tax payments on any portion of the Gross Settlement Amount that is attributable to
28 Attorneys' Fees, Litigation Expenses, PAGA Penalty Payments, penalties, or interest. The Parties

1 further understand that the Class Representative and any Settlement Class Member who receives
2 any Settlement Payment pursuant to this Agreement shall be solely responsible for any and all tax
3 obligations associated with such receipt.

4 8.9 Defendants will not use the Settlement Payments to calculate any additional
5 benefits including without limitation vacation, holiday pay, pension, or 401(k) plan contributions.
6 Defendants contend that the Settlement Payments do not represent any modification of previously
7 credited hours of service or other eligibility criteria under any employee pension or employee
8 welfare benefit plan sponsored by Defendants. Nor do Defendants consider the Settlement
9 Payments “compensation” for purposes of determining eligibility for, or benefit accrual within, an
10 employee pension benefit plan, an employee welfare benefit plan, or other plan sponsored by
11 Defendants or its predecessors, subsidiaries, or successors.

12 **IX. NOTICE PROCEDURE**

13 9.1 **Selection and Compensation of Claims Administrator:** The Parties agree to
14 jointly utilize a third-party Claims Administrator to give notice of and communicate with
15 Settlement Class Members regarding the Settlement and to establish a website where Settlement
16 Class Members may view and download the operative complaint, this Settlement Agreement, the
17 Settlement Notice, approval motions/briefing, as well as any Orders or Tentative Rulings issued
18 by the Court that relate to the Settlement. A Notice of Final Judgment will be posted on the
19 Settlement Administrator’s website if the Court approves the settlement at the Fairness Hearing.
20 The Parties have initially selected Simpluris to administer the Settlement, but may jointly select a
21 different claims administrator subject to the approval of the Court. If the actual cost of claims
22 administration is less than the amount approved by the Court, the remaining amount shall be
23 added to the Net Settlement Amount and distributed as set forth in Section 8.7 of this Agreement.
24 All costs associated with claims administration as approved by the Court shall come out of the
25 Gross Settlement Amount. The Claims Administrator’s actions shall be governed by the terms of
26 this Agreement.

27 9.2 **Establishment and Funding of the QSF:** The Parties agree that the QSF is
28 intended to be a “Qualified Settlement Fund” under Section 468B of the Internal Revenue Code and

1 Treasury Regulation § 1.468B-1 (26 C.F.R. § 1.468B-1 *et seq.*) and will be administered by the
2 Claims Administrator as such. With respect to the QSF, the Claims Administrator shall: 1) open
3 and administer a settlement account in such a manner as to qualify and maintain the qualification of
4 the QSF as a "Qualified Settlement Fund" under Section 468B of the Internal Revenue Code and
5 Treasury Regulation § 1.468B-1; (2) calculate, withhold, remit and report each Settlement Class
6 Member's share of applicable payroll taxes (including, without limitation, federal, state and local
7 income tax withholding, FICA, Medicare and any state or local employment taxes) and indemnify
8 Defendant for any penalty arising out of any error or incorrect calculation and/or interest (if
9 applicable) with respect to any late deposit of the same; (3) satisfy all federal, state and local
10 income and other tax reporting, return, and filing requirements with respect to the QSF; and (4)
11 satisfy out of the QSF all fees, expenses and costs incurred in connection with the opening and
12 administration of the QSF and the performance of its duties and functions as described in this
13 Agreement. The aforementioned taxes, fees, expenses, and costs shall be treated as and included in
14 the costs of administering the QSF and as Claims Administration Costs. The Parties and the
15 Claims Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund
16 on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1(j)(2)(i), and such election
17 statement shall be attached to the appropriate returns as required by 26 C.F.R. § 1.468B-
18 1(j)(2)(ii). The Parties agree to cooperate with the Claims Administrator and one another to the
19 extent reasonably necessary to carry out the provisions of this section of the Agreement.

20 **9.3 Claims Administration:** Defendants will provide for each Settlement Class
21 Member the following information drawn from records of Defendants: 1) name; 2) Social
22 Security number; 3) last known residential address; 4) last known telephone numbers; and 5)
23 number of Work Weeks for which the Class Member would be entitled to recover as set forth in
24 Section 8.7 ("Class Data") to the Claims Administrator. Defendants will provide the Class Data
25 to the Claims Administrator no later than twenty-one (21) days (or, if that date falls on a weekend
26 or holiday, the next business day thereafter) after the date the Court enters an order granting
27 preliminary approval of the Settlement. Class Data shall be used by the Claims Administrator
28 solely for the purpose of notifying the Class Members of the Settlement. The Claims

1 Administrator shall run the Class Data list through the National Change of Address database and
2 will use the most recent address for each Class Member when mailing the Class Notice. Class
3 Data shall be provided in a format to be mutually agreed upon by the Claims Administrator and
4 Defendant.

5 9.4 **Notice to Class Members:** As soon as practicable after receiving the Class Data,
6 but no later than ten (10) business days after its receipt, the Claims Administrator shall send the
7 Notice Packet to the Class Members via United States First Class Mail. The envelope containing
8 the Notice Packet shall include language beneath the Administrator's address which reads as
9 follows: *Important Legal Document – You May Get Money From A Class Action Settlement; Your*
10 *Prompt Reply To Correct A Bad Address Is Required.* The Notice shall specify the Court-approved
11 Notice Response Deadline by which Class Members must submit any dispute regarding the
12 payment amount, Requests for Exclusion, objections to the Settlement, or Change of Address
13 requests. The costs of mailing this Notice Packet will be considered part of the Claims
14 Administration Costs to be paid from the Gross Settlement Amount. Except as specifically set forth
15 in Subsections 9.4.1 through 9.4.3 below, the Notice Packet shall be deemed received by the Class
16 Member to whom it was sent.

17 9.4.1 In the event that subsequent to the first mailing of a Notice Packet and prior
18 to the Notice Response Deadline, that Notice Packet is returned to the Claims Administrator by the
19 United States Postal Service with a forwarding address for the recipient, the Claims Administrator
20 shall re-mail the Notice Packet to that address within five (5) business days, the Notice Packet will
21 be deemed mailed as of the date of re-mailing, the forwarding address shall be deemed the
22 Updated Address for that Class Member, and any responses from the Class Member (*i.e.*, a dispute
23 regarding calculation of Work Weeks, a Request for Exclusion, or an objection) are due to the
24 Claims Administrator by the Notice Response Deadline or within twenty-one (21) days from the
25 date of re-mailing, whichever is later.

26 9.4.2 In the event that subsequent to the first mailing of a Notice Packet, the
27 Notice Packet is returned to the Claims Administrator by the United States Postal Service because
28 the address of the recipient is no longer valid, but no forwarding address is provided, the Claims

1 Administrator shall perform Reasonable Address Verification Measures in an effort to ascertain
2 the current address of the particular Class Member in question. If such an address is ascertained,
3 the Claims Administrator shall re-mail the Notice Packet within five (5) business days of
4 receiving such information, the Notice Packet will be deemed mailed as of that date of re-mailing,
5 the newly obtained address shall be deemed the Updated Address for that Class Member, and any
6 responses from the Class Member (i.e., a dispute regarding calculation of Work Weeks, a Request
7 for Exclusion, or an objection) are due to the Claims Administrator by the Notice Response
8 Deadline or within twenty-one (21) days from the date of re-mailing, whichever is later.

9 9.4.3 In the event that subsequent to the first mailing of a Notice Packet, the
10 Notice Packet is returned to the Claims Administrator by the United States Postal Service but no
11 Updated Address is obtained for that Class Member using either method specified above, the
12 Notice Packet shall be re-mailed to the Last Known Address within five (5) business days of
13 receiving such information, the Notice Packet will be deemed mailed as of that date of re-mailing,
14 and the Class Member shall have until the Notice Response Deadline or within twenty-one (21)
15 days from the date of re-mailing to submit a response, whichever is later. In either event, the
16 Notice Packet shall be deemed received when it is mailed for the second time under this
17 paragraph.

18 9.4.4 In the event that any Notice Packet is returned to the Claims Administrator
19 as undeliverable is associated with a Settlement Class Member who is currently employed by
20 Defendants, counsel for Defendants will make immediate efforts to obtain a current mailing
21 address and provide such updated address to the Claims Administrator for remailing of the Notice
22 Packet.

23 9.5 **Disputes Regarding Work Weeks:** In calculating each individual Settlement
24 Class Member's share of the settlement, Defendants' reasonably available records regarding the
25 Work Weeks of Class Members shall be presumed to be correct. Settlement Class Members will
26 be provided with the individualized information upon which their respective shares of the Net
27 Settlement Amount will be based. Settlement Class Members who dispute Defendants' records
28 must submit a challenge in writing to the Claims Administrator and will bear the burden of proof,

1 *i.e.*, a Class Member who fails to provide written documentation supporting a different the
2 number of Work Weeks than that specified in his or her Notice will have his or her dispute
3 denied. All such disputes must be submitted to the Claims Administrator by the Notice Response
4 Deadline (as evidenced by the date of the postmark of the submission). Defendants will
5 investigate the dispute provide their findings to the Claims Administrator. The Claims
6 Administrator will determine whether any correction to the number of Work Weeks for the
7 Settlement Class Member raising the dispute should be made. In no case will a dispute regarding
8 the number of Work Weeks result in a payment by Defendants in excess of the Gross Settlement
9 Amount.

10 9.6 **Requests for Exclusion:** Settlement Class Members who wish to be excluded
11 from the Settlement must submit a written Request for Exclusion to the Claims Administrator by
12 the Notice Response Deadline (as evidenced by the date of the postmark of the submission). The
13 Request for Exclusion must be submitted on the form attached as **Exhibit B** hereto and signed by
14 the Settlement Class Member. Requests for Exclusion must be made individually and cannot be
15 made on behalf of a group or other Settlement Class Members. If a Settlement Class Member
16 submits a Request for Exclusion that fails to include all required information or that cannot be
17 verified by the Claims Administrator as being an authentic submission by the Settlement Class
18 Member, it will be considered invalid, and the Claims Administrator shall mail notification of the
19 deficiency to the Settlement Class Member within five (5) business days of receipt. The
20 Settlement Class Member shall have until the Notice Response Deadline or twenty-one (21) days
21 from the date of the mailing of notification of the deficiency (whichever is later), to cure any
22 deficiencies, at which point his or her Request for Exclusion will be rejected if not received and
23 that Settlement Class Member will be mailed his or her share of the Net Settlement Amount
24 (according to the formulas set forth in this Agreement).

25 Any valid Request for Exclusion will be effective only as to the Class Settlement. Any
26 Settlement Class Member who is an Aggrieved Employee will be bound by the release of PAGA
27 claims and will receive their share of the PAGA Penalty Payment regardless of submitting a
28 Request for Exclusion.

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2 9.7 **No Request for Exclusion by Class Representative:** The Class Representative
3 shall not request exclusion from the Settlement. The Class Representative agrees that by signing
4 this Agreement she is accepting the terms of this Settlement.

5 9.8 **Objections to Settlement:** Settlement Class Members who do not request
6 exclusion from the Class may object to the Agreement by submitting copies of their written
7 objections to the Claims Administrator (as evidenced by the date of the postmark of the
8 submission) by the Notice Response Deadline. This Notice Response Deadline applies to any
9 objections notwithstanding any argument regarding alleged non-receipt of the Notice Packet.
10 Written objections should be signed by the Settlement Class Member or their counsel and should:
11 (1) state the objecting Settlement Class Member's name, address, telephone number, or the
12 equivalent information of their counsel if they are represented by an attorney, and the last four
13 digits of the Settlement Class Member's Social Security number, (2) state the case name and
14 number as follows: *Sofija Markovic v. BBG SD4 LLC, et al.*, Case No. 37-2020-00016435-CU-
15 OE-CTL, (3) state concisely each objection to the Settlement, (4) explain the basis for each such
16 objection, and (5) be dated. If the Settlement Class Member intends to use any document(s) to
17 support his or her objection, a copy of the document(s) should be included with the written
18 objection at the time of submission. Submitting an objection to this Settlement does not affect the
19 Settlement Class Members' right to obtain the benefits of this Settlement. The Claims
20 Administrator shall forward a copy of any written objections and/or supporting documentation
21 that it receives to both Class Counsel and Counsel for Defendant within two (2) business days of
22 receipt.

23 9.9 **Anyone wishing to appear at the final approval hearing to discuss concerns or**
24 **objections to the Settlement shall be permitted to do so, whether or not they submit a written**
25 **objection.** Anyone wishing to appear at the final approval hearing to object to the Settlement can,
26 but is not required to, indicate this in his or her written objections. The Claims Administrator shall
27 forward a copy of any Objection received to both Class Counsel and Counsel for Defendant within
28 two (2) business days of receipt. Settlement Class members who wish to appear at the final

1 fairness hearing may contact Class Counsel to arrange a remote appearance through Microsoft
2 Teams, at least five days before the hearing if possible. **Any remote appearance fees for an**
3 **appearance by an objecting class member imposed by the San Diego Superior Court will be**
4 **paid by Class Counsel.** At the time the Parties entered into this Agreement, a Settlement Class
5 Member could find information on remote appearances for Department C-69, where this matter is
6 pending, by going to <https://www.sdcourt.ca.gov/sdcourt/civil2/civilvirtualhearings>.

7 9.10 Any Settlement Class Member who fails to serve timely written objections in the
8 manner set forth herein shall be deemed to have waived any objections and shall be foreclosed
9 both from making any objection to the Settlement and from filing any appeal from any Final
10 Approval Order issued by the Court. Settlement Class Members who timely and validly request
11 exclusion from the Settlement shall have no right to object and shall be foreclosed from making
12 any objection to the Settlement.

13 **X. PAYMENT OF CLAIMS**

14 10.1 **Eligibility for Settlement Payments:** Settlement Class Members need not submit a
15 claim form to receive a Settlement Payment. As a condition of receiving any Settlement Payment
16 under this Agreement, Settlement Class Members must not request exclusion from the Class. Each
17 Settlement Class Member shall be entitled to a payment equal to the sum of their individually
18 determined Settlement Payment, less the required taxes and withholdings. Settlement Class
19 Members who have submitted untimely or invalid Requests for Exclusion will still be considered
20 part of the Settlement Class, will still be bound by the Settlement and the Released Claims, and
21 will be entitled to receive Settlement Payments.

22 10.2 **Distribution of Settlement Payments.** After the Court grants final approval of
23 the Settlement, and the Effective Date has passed, the Claims Administrator shall prepare a final
24 list of all Settlement Class Members, excluding those who timely and validly opted out of the
25 Class. For each Settlement Class Member on this list, the Claims Administrator will calculate the
26 amounts due to each Settlement Class Member using the methodology set forth in Section 8.7 of
27 this Agreement (excluding any individuals who effectively and timely requested exclusion from
28 the Settlement) and provide that calculation to Class Counsel and Defendants' Counsel within

1 five (5) days after the Effective Date.

2 10.3 No later than twenty (20) business days after the Effective Date has passed,
3 Defendant shall pay to the Claims Administrator the Gross Settlement Amount of \$400,000.00.
4 Defendants will wire the funds requested by the Claims Administrator into the QSF set up and
5 controlled by the Claims Administrator.

6 10.4 The Settlement Payments to the Settlement Class, the PAGA Penalty Payment to
7 Aggrieved Employees, and the PAGA Penalty Payment to the LWDA will be paid by the Claims
8 Administrator no later than thirty (30) business days after the Effective Date.

9 10.5 Class Counsel's Attorneys' Fees and Litigation Expenses and the Service
10 Enhancement Payment to the Class Representative will be paid by the Claims Administrator no
11 later than thirty (30) business days after the Effective Date. Payments made shall constitute full
12 satisfaction of any claim for fees or costs. Class Representative and Class Counsel, on behalf of
13 themselves and all Settlement Class Members, agree that they shall not seek nor be entitled to any
14 additional attorneys' fees or costs for the Released Claims. Class Counsel shall provide the Claims
15 Administrator with the pertinent taxpayer identification numbers and instructions on the total
16 amount of the payment for wiring and reporting purposes within five (5) days after the Effective
17 Date has passed (or, if that date falls on a weekend or holiday, the next business day thereafter).
18 Other than any reporting of this fee payment as required by this Agreement or law, which
19 Defendants shall make, Class Counsel shall be responsible for the reporting and payment of any
20 federal, state, and/or local income or other form of tax on any payment that they receive pursuant
21 to this Agreement.

22 10.6 Not later than seventy-five (75) calendar days following the Effective Date (or, if
23 that date falls on a weekend or holiday, the next business day thereafter), the Claims Administrator
24 shall provide Class Counsel and Defendants' Counsel with a declaration under oath to verify the
25 mailing of Settlement Payment checks and the other distributions from the Gross Settlement
26 Amount. Any checks issued to Settlement Class Members shall remain negotiable for a period of
27 ninety (90) calendar days from the date of mailing of the Settlement Payment checks. Uncashed
28 checks will be voided, and the funds redistributed to those Settlement Class Members who cashed

1 their first check (referred to as the “redistribution”) and calculated *pro rata* based on each such
2 Class Member’s respective Workweeks relative to the Workweeks worked by all such Class
3 Members. Checks from the redistribution shall remain negotiable for a period of ninety (90)
4 calendar days from the date of mailing and, if not cashed, will be voided. Settlement Class
5 Members who fail to negotiate their Settlement Payment check(s) in a timely fashion shall remain
6 subject to the terms of the Settlement, the Released Claims, and the Final Approval Order from the
7 Court. The funds associated with any Settlement Payment checks from the redistribution which
8 are not timely negotiated will be paid to Legal Aid at Work pursuant to the *cy pres* doctrine within
9 two hundred (200) calendar days from the date of mailing the Settlement Payment checks for
10 redistribution. No later than two hundred ten (210) calendar days from the date of mailing of the
11 Settlement Payment checks for redistribution (or, if that date falls on a weekend or holiday, the
12 next business day thereafter), the Claims Administrator shall provide Class Counsel and
13 Defendant’s Counsel with a declaration as to the total amount of any uncashed settlement checks
14 and the *cy pres* payment.

15 10.7 Defendant understands its legal obligation not to retaliate against the Settlement
16 Class Members for their participation and/or election to participate in the benefits to be afforded
17 any of them by the Settlement Payments and/or the Lawsuit.

18 **XI. RELEASED CLAIMS**

19 11.1 **Settlement Class Member Released Claims.** Upon the Effective Date, each of
20 the Settlement Class Members, on behalf of themselves and each of their heirs, representatives,
21 successors, assigns, and attorneys, shall be deemed to have, and by operation of the Judgment
22 shall have, fully, finally, and forever released, relinquished, and discharged the Released Parties
23 from the following claims, which pursuant to the Agreement are being released through and
24 including the dates of the Class Period: the claims, rights, demands, liabilities and causes of
25 action alleged, arising from, or reasonably related to, the same or similar set of operative facts
26 and or allegations as those set forth in the Complaint or First Amended Complaint, including all
27 claims for any unpaid wages, unpaid overtime wages, minimum wage violations, violations of the
28 meal and rest break requirements of the California Labor Code, and any claims for damages,

1 penalties, interest, punitive damages, liquidated damages, attorneys' fees, costs, injunctive relief,
2 declaratory relief, or accounting reasonably related to the allegations in the First Amended
3 Complaint, (collectively, the "Settlement Class Release"). Any and all federal claims, including
4 but not limited to claims under the Fair Labor Standards Act, shall likewise be released, and shall
5 be barred by the settlement by virtue of res judicata, in accordance with *Rangel v. PLS Check*
6 *Cashers of Cal., Inc.*, 889 F.3d 1106 (9th Cir. 2018). The Settlement Class Release and the PAGA
7 Release (defined in section 11.2 below) shall be collectively referred to as the "Released Claims."

8 11.1.1 All Settlement Class Members shall be bound by the release described in
9 Section 11.1 and considered Participating Class Members in this Settlement *unless* they formally
10 request exclusion from this Settlement by submitting a valid and timely Request for Exclusion or
11 comparable documentation.

12 11.1.2 Consistent with the foregoing, Settlement Class Members may not sue or
13 otherwise make a claim against any of the Released Parties that is in any way related to, arises out
14 of, or is connected with any of the Released Claims set forth in this section.

15 11.2 **Aggrieved Employees' Released Claims.** Upon the Effective Date, Aggrieved
16 Employees shall release any and all Private Attorneys General Act ("PAGA") claims or causes of
17 action for the claims alleged in, or that may arise out of, the Complaint, First Amended Complaint
18 and/or LWDA Letter (which is attached hereto as **Exhibit D**), or that could have reasonably been
19 alleged in the Complaint, First Amended Complaint and LWDA Letter, including but not limited
20 to: California Labor Code sections 201, 202, 203, 204, 210, 225.5, 226, 226.3, 226.7, 510, 511,
21 512, 551, 553, 558, 1174(d), 1194-1197, 1197.1, 1198, 2016, 2802, 2698, et seq., as well as
22 relevant IWC Orders and regulations, civil penalties, attorneys' fees or costs, and any other
23 applicable relief under PAGA that could have reasonably been alleged in the First Amended
24 Complaint and/or LWDA letter. (the "PAGA Release"). It is understood and acknowledged that
25 the PAGA Release is binding upon Representative Plaintiff and all Aggrieved Employees during
26 the PAGA Period from March 30, 2019 to December 31, 2022. Aggrieved Employees, including
27 those Class Members who have opted out of the Settlement, are not able to opt out of the PAGA
28 Penalty Payment, including the release of PAGA Claims, defined herein.

1 **11.3 Class Representative Released Claims:** Upon the Effective Date, the Class
2 Representative, and each of her successors, assigns, heirs, personal representatives and all those
3 who claim through her or who assert claims on his behalf, releases all of the Released Parties for the
4 period from May 26, 2016 through the date of her signature on this Agreement, from all claims,
5 demands, rights, liabilities and causes of action of every nature and description whatsoever, known
6 or unknown, asserted or that might have been asserted, including all statutory claims (including any
7 state or federal statute, rule, or regulation), common law claims (including but not limited to those
8 sounding in contract, tort, or equity), or claims for compensation to the fullest extent permitted by
9 law, whether for economic damages, noneconomic damages, punitive damages, penalties,
10 restitution, injunctive or declaratory relief, interest, attorneys' fees, costs, or any other forms of
11 monetary or non-monetary relief, arising out of, relating to, or in connection with any facts,
12 transactions, events, policies, occurrences, acts, disclosures, statements, omissions, or failures to act
13 by or on the part of any of the Released Parties. (The release set forth in this paragraph shall be
14 referred to hereinafter as the "General Release.").

15 With respect to the General Release, for the period from May 26, 2016 through the date of
16 her signature on this Agreement, Plaintiff acknowledges, stipulates, and agrees that upon the date
17 the Court grants final approval, Plaintiff shall be deemed to have, expressly and affirmatively
18 waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits
19 which she may otherwise have pursuant to section 1542 of the California Civil Code, or any other
20 similar provision under federal or state law, which provides:

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

27 Accordingly, if the facts relating in any manner to this Settlement are found hereafter to be other
28 than or different from the facts now believed to be true, the release of claims contained herein

1 shall be effective as to all unknown claims.

2 11.3.1 The Class Representative may hereafter discover facts in addition to or
3 different from those which they now know or believe to be true with respect to the subject matter of
4 the Class Representative Released Claims, but they shall be deemed to have, and by operation of
5 the Judgment shall have, fully, finally, and forever settled and released any and all Class
6 Representative Released Claims, known or unknown, suspected or unsuspected, contingent or non-
7 contingent, whether or not concealed or hidden, which then exist, or heretofore have existed upon
8 any theory of law or equity now existing or coming into existence in the future, including, but not
9 limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty,
10 law or rule, without regard to the subsequent discovery or existence of such different or additional
11 facts.

12 **XII. MOTIONS FOR COURT APPROVAL**

13 12.1 **Motion for Preliminary Approval:** Class Counsel will file a motion for
14 preliminary approval. Class Counsel shall endeavor to provide to Defendants for review and
15 comment at least five (5) business days before the filing of the motion. Class Counsel shall file, if
16 required by the Court: (i) this Agreement and its Exhibits, (ii) a noticed motion seeking the Court's
17 preliminary approval of this Settlement, (iii) a proposed order granting such preliminary approval
18 and setting hearing for final approval, and (iv) any other document consistent with the Settlement
19 and reasonably necessary to obtain the Court's preliminary approval of the Settlement.

20 12.2 **Motion for Final Approval:** The Parties shall request that the motion for final
21 approval be set for hearing a reasonable period of time after the Notice Response Deadline, as the
22 Court's calendar will allow. Class Counsel shall prepare the motion for final approval of the
23 Settlement according to the timeline the Court directs, and shall endeavor to provide to Defendants
24 for review and comment a draft motion for final approval at least five (5) business days before the
25 filing of the motion. Sufficiently in advance of the final approval hearing to meet the statutory
26 notice requirements, Plaintiff shall file with the Court: (i) a noticed motion for final approval
27 which shall include Class Counsel's motion for Attorneys' Fees, Litigation Expenses, and Service
28 Enhancement Payment, (ii) a proposed order granting final approval and entering Judgment

thereon, and (iii) any other documents consistent with the Settlement and reasonably necessary to obtain the Court's final approval of the Settlement and entry of Judgment. The Parties will ask the Court to maintain jurisdiction of this matter for the purpose of monitoring compliance with and performance under this Agreement and any and all orders and judgments, including the Judgment entered by the Court.

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XIII. RIGHT TO REVOKE

13.1 Defendants' Right to Revoke: Defendants have the right in their sole discretion to terminate this Agreement and withdraw from the Settlement at any time prior to date the Court enters the Final Approval Order on this Settlement if: (a) the Settlement is construed in such a fashion that Defendants are required to pay more than the Gross Settlement Amount, excluding Defendants' separate obligation to pay employer-side payroll taxes; (b) the Court denies Plaintiff's motion for preliminary approval of the Settlement with prejudice; or (c) seven and a half percent (7.5%) or more of all Settlement Class Members timely and validly request exclusion from the Settlement. In the event that Defendants exercise their right to revoke, Defendants shall be responsible for all settlement administration costs incurred.

If Defendants intend to exercise their right to revoke this Agreement because 7.5% or more of Settlement Claims Members submitted timely and valid requests for exclusion, Defendants must notify Class Counsel in writing within fourteen (14) calendar days after the Notice Response Deadline otherwise such revocation shall not be valid.

13.2 Proportional Increase to Gross Settlement Amount: During negotiations Defendants estimated that the settlement class consisted of approximately 1,246 individuals eligible to participate in this Settlement as of July 23, 2022. If the actual number of Settlement Class Members eligible to participate in the settlement exceeds this estimate by ten percent (10%) or more as of July 23, 2022, then the gross settlement fund shall increase by the same percentage in excess of 10% (i.e., an 11% increase as of July 23, 2022 shall require an additional 1% added to the gross settlement fund).

13.3 Termination of Settlement Agreement: If the conditions of the Settlement set

1 forth in this Agreement are not satisfied, or if Defendants or Plaintiff terminate and withdraw from
2 the Agreement pursuant to Sections 13.1 or 13.2 above, or if the Court does not enter the Final
3 Approval Order as provided for in this Agreement, or if appellate review is sought and on such
4 review the Court's Final Approval Order is materially modified or reversed, or if one or more of the
5 terms of the Settlement is not approved or the Settlement with respect to one or more such terms is
6 materially modified or reversed, then this Settlement shall be canceled, terminated, and shall have
7 no force or effect, and any class certified for settlement purposes will be vacated. In such an
8 event, neither the Agreement, nor the settlement documents, nor the negotiations leading to the
9 Settlement may be used as evidence for any purpose, and Defendants shall retain the right to
10 challenge all claims and allegations in the Lawsuit, to assert all applicable defenses, and to dispute
11 the propriety of class certification on all applicable grounds. If the Effective Date does not occur
12 (due to failure of the Court to grant final approval or otherwise), or if this Settlement is terminated,
13 revoked, or canceled pursuant to its terms, the Parties to this Settlement shall be deemed to have
14 reverted to their respective status as of the date immediately prior to the execution of this
15 Settlement. Notwithstanding this provision, the Parties hereby stipulate that the terms of Section
16 15.12 shall survive and be admissible in evidence even if the Settlement does not become final.

17 **XIV. COOPERATION**

18 14.1 The Parties shall cooperate fully with one another in seeking approval of the Court
19 of this Agreement and to use their respective best efforts to consummate the Settlement and cause
20 the Final Approval Order and Judgment to be entered and to become final. The Parties therefore
21 agree to cooperate in good faith to promptly prepare, execute and finalize all Settlement-related
22 documents, seek all necessary Court approvals, and do all other things necessary to consummate
23 the Settlement. The Parties also agree to mutually seek to stay any pending or subsequently filed
24 class action lawsuits that allege any of the Released Claims set forth in Section 11 of this
25 Agreement.

26 14.2 No Party to this Agreement shall seek to evade his, her, or its good faith
27 obligations to seek approval and implementation of this Settlement by virtue of any ruling, order,
28 governmental report, or other development, whether in the Lawsuit, in any other litigation, or

otherwise, that hereafter might occur and might be deemed to alter the relative strengths of the Parties with respect to any claims or defenses or their relative bargaining power with respect to negotiating.

14.3 The Parties and their respective counsel of record deem this Settlement to be fair and reasonable and have arrived at this Settlement after arms-length negotiations taking into account all relevant factors, present and potential.

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14.4 The Class Representative and Class Counsel agree to waive appeals of an order granting final approval of this Settlement or entering Judgment in the Lawsuit as to Defendants so long as such order is consistent with the material terms of this Agreement, with the exception of appeals concerning the Court's award of Attorneys' Fees, Litigation Expenses, and Service Enhancement Award in this matter.

14.5 Other than as necessary to implement the Settlement, neither Plaintiff nor Class Counsel shall initiate any publicity, disclosure or contact with the media, or respond to any inquiry from the media, regarding the Settlement other than to confirm that this Action has settled.

XV. MISCELLANEOUS PROVISIONS

15.1 All of the Parties have been represented by counsel throughout all negotiations that preceded the execution of this Agreement, and this Agreement is made with the consent and advice of counsel.

15.2 This Agreement may not be modified or amended, except in a writing that is signed by the respective counsel of record for the Parties and approved by the Court.

15.3 This Agreement and its Exhibits attached hereto constitute the entire agreement between the Parties concerning the subject matter hereof, and supersede and replace all prior negotiations, understandings, memoranda of understanding and proposed agreements, written and oral, relating thereto. No extrinsic oral or written representations or terms shall modify, vary, or contradict the terms of the Agreement unless made in writing, signed by duly authorized representatives of all Parties, and approved in writing by a final order of the Court. No waiver of

1 any term, provision, or condition of this Agreement, whether by conduct or otherwise, in any one
2 or more instance shall be deemed to be or construed as a further or continuing waiver of any such
3 term, provision or condition.

4 15.4 This Agreement shall be subject to, governed by, construed, enforced, and
5 administered in accordance with the laws of the State of California, without giving effect to the
6 principles of conflict of laws, both in its procedural and substantive aspects, and shall be subject to
7 the continuing jurisdiction of the Court. This Agreement shall be construed as a whole according to
8 its fair meaning and intent, and not strictly for or against any party, regardless of who drafted (or
9 was principally responsible for drafting) this Agreement or any specific term or condition thereof.
10 In any construction to be made of the Agreement, the Agreement shall not be construed against any
11 party and the canon of contract interpretation set forth in California Civil Code section 1654 shall
12 not be applied.

13 15.5 The Settlement shall be binding upon and inure to the benefit of the Settling
14 Parties' respective successors, assigns, heirs, spouses, marital communities, executors,
15 administrators and legal representatives. The Agreement and Settlement are not designed to and
16 do not create any third-party beneficiaries either express or implied.

17 15.6 The Parties agree they can consult mediator Hon. Steven R. Denton (Ret.) to
18 advise on disputes that may arise in connection with interpreting the terms of the Settlement.
19 However, Judge Denton's opinions will be non-binding on the Parties and the Parties agree only
20 the Court shall retain jurisdiction with respect to disputes that may arise in connection with
21 interpreting the terms of the Agreement, and the implementation and enforcement of the terms of
22 the Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of
23 implementing and enforcing the terms of the Agreement.

24 15.7 This Agreement may be executed in one or more counterparts, each of which shall
25 be deemed an original and together shall constitute one and the same instrument. When each of
26 the Parties has signed at least one such counterpart, this Agreement shall become effective and
27 binding as to all of the Parties as of the day and year last executed. Fax and/or electronically
28 scanned signatures, including signatures made via DocuSign or a similar service, shall be deemed

1 as effective as originals.

2 15.8 The Parties hereto represent, covenant, and warrant that they have not directly or
3 indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any
4 person or entity any portion of any liability, claim, demand, action, cause of action or rights
5 herein released and discharged except as set forth herein.

6 15.9 Each individual signing this Agreement warrants that he or she has the authority
7 and is expressly authorized to enter into this Agreement on behalf of the party (or parties) for
8 which that individual signs.

9 15.10 Any notices or other documents that must or may be transmitted to Class Counsel
10 and/or Defendants' Counsel, pursuant to any section of this Agreement, shall be transmitted to the
11 addresses set forth in the definitions of Class Counsel and Defendants' Counsel, respectively, set
12 forth above.

13 15.11 The Parties and all counsel acknowledge and agree that for the purposes of any
14 claims, actions, and/or proceedings arising out of this Agreement, notice provided to Class
15 Counsel shall be deemed to be notice to the Plaintiff.

16 15.12 The Parties have stipulated to stay any and all deadline(s) to bring the case to trial,
17 including pursuant to Cal. Civ. Code Section 583.320. This stay shall remain in place until such
18 time as the Settlement is either approved or nullified, as set forth herein.

19
20 *[signatures on following page]*
21
22
23
24
25
26
27
28

IN WITNESS WHEREOF, each of the undersigned has agreed to and accepted the foregoing terms and conditions by executing this Agreement as of the date indicated below.

APPROVED AND AGREED:

Dated: 3/14/2023

DocuSigned by:
Sofija Markovic
5E489418DF65433
By: SOFIJA MARKOVIC
Representative Plaintiff

Dated: _____

DEFENDANT BBG SD4 LLC

By: _____

Name: _____

Title: _____

Defendant BBG SD4 LLC d/b/a Raglan Public House

Dated: _____

DEFENDANT BBG SD5 LLC

By: _____

Name: _____

Title: _____

Defendant BBG SD5 LLC d/b/a Dunedin New Zealand Eats

Dated: _____

DEFENDANT BBG SD3 LLC

By: _____

Name: _____

Title: _____

Defendant BBG SD3 LLC d/b/a Queenstown Public House

///

1 IN WITNESS WHEREOF, each of the undersigned has agreed to and accepted the
2 foregoing terms and conditions by executing this Agreement as of the date indicated below.

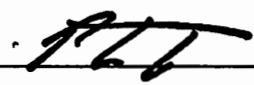
3 **APPROVED AND AGREED:**

4
5 Dated: _____

By: _____
SOFIJA MARKOVIC
Representative Plaintiff

6
7 Dated: MARCH 13, 2023

DEFENDANT BBG SD4 LLC

8
9 By: _____ 

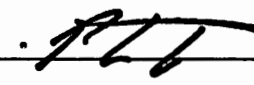
10 Name: PHILIP LAMONT

11 Title: MANAGING MEMBER

12 Defendant BBG SD4 LLC d/b/a Raglan Public
13 House

14 Dated: MARCH 13, 2023

DEFENDANT BBG SD5 LLC

15
16 By: _____ 

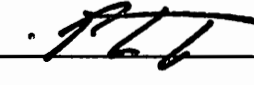
17 Name: PHILIP LAMONT

18 Title: MANAGING MEMBER

19 Defendant BBG SD5 LLC d/b/a Dunedin New
20 Zealand Eats

21 Dated: MARCH 13, 2023

DEFENDANT BBG SD3 LLC

22
23 By: _____ 

24 Name: PHILIP LAMONT

25 Title: MANAGING MEMBER

26 Defendant BBG SD3 LLC d/b/a Queenstown
27 Public House

28 ///

1 Dated: MARCH 13, 2023

DEFENDANT BBG CAL LLC

2

By: 

3

Name: PHILIP LAMONT

4

Title: MANAGING MEMBER

5

Defendant BBG Cal LLC d/b/a Bare Back Grill

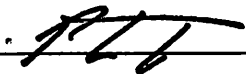
6

7

8 Dated: MARCH 13, 2023

DEFENDANT ARBOR SD LLC

9

By: 

10

Name: PHILIP LAMONT

11

Title: MANAGING MEMBER

12

Defendant Arbor SD LLC d/b/a Queenstown
Bistro

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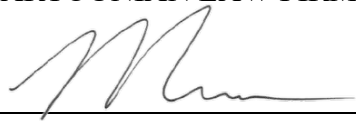
1 **APPROVED AS TO FORM:**

2

3 Dated: March 10, 2023

BOYAMIAN LAW, INC.
HARTOUNIAN LAW FIRM, P.C.

4

5 By: 

6 MICHAEL H. BOYAMIAN
7 ARMAND R. KIZIRIAN
8 ALEX HARTOUNIAN
Attorneys for Plaintiff SOFIJA MARKOVIC and
the Settlement Class

9

10 Dated: _____

MEYERS NAVE

11

12 By: _____

JANICE P. BROWN
ARLENE R. YANG
MEYERS NAVE

14 NOAH J. WOODS
15 LITTLER MENDELSON, P.C.

16 Attorneys for Defendants BBG SD4 LLC; BBG
17 SD5 LLC; BBG SD3 LLC; BBG CAL, LLC; and
ARBOR SD LLC

1 **APPROVED AS TO FORM:**

2
3 Dated: _____

BOYAMIAN LAW, INC.
HARTOUNIAN LAW FIRM, P.C.

4
5 By: _____

6 MICHAEL H. BOYAMIAN
7 ARMAND R. KIZIRIAN
8 ALEX HARTOUNIAN
Attorneys for Plaintiff SOFIJA MARKOVIC and
the Settlement Class

9
10 Dated: March 28, 2023

MEYERS NAVE

11
12 By:  _____

13 JANICE P. BROWN
14 ARLENE R. YANG
15 MEYERS NAVE

16 NOAH J. WOODS
17 LITTLER MENDELSON, P.C.

18 Attorneys for Defendants BBG SD4 LLC; BBG
19 SD5 LLC; BBG SD3 LLC; BBG CAL, LLC; and
20 ARBOR SD LLC
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Exhibit “A”

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Markovic v. BBG SD4 LLC, et al. ("NZ Eats Group")

Case No. 37-2020-00016435-CU-OE-CTL

Superior Court of the County of San Diego

THIS IS A COURT-AUTHORIZED NOTICE.

IT IS NOT A SOLICITATION.

PLEASE READ THIS NOTICE CAREFULLY ABOUT YOUR LEGAL RIGHTS.

GENERAL INFORMATION

1. Why did I get this notice?

The Court has preliminarily approved a settlement of the lawsuit, *Markovic v. BBG SD4 LLC, et al.*, Case No. 37-2020-00016435-CU-OE-CTL, in the Superior Court of the County of San Diego (the "**Lawsuit**"). This lawsuit involves employees who worked at the following restaurants: Raglan Public House, Dunedin New Zealand Eats, Queenstown Public House, Bare Back Grill, and Queenstown Bistro. More specifically, the settlement is on behalf of the following proposed class:

- "**Settlement Class Members**" is defined as means all current and former non-exempt employees of BBG SD4 LLC dba Raglan Public House, BBG SD5 LLC dba Dunedin New Zealand Eats, BBG SD3 LLC dba Queenstown Public House, BBG CAL, LLC dba Bare Back Grill, and ARBOR SD LLC dba Queenstown Bistro ("Defendants"), who worked in the State of California at any time between May 26, 2016 and December 31, 2022.

You received this notice because Defendants' records show that you are a member of the above class. According to Defendants' records, and as explained more fully below, your estimated share of the settlement is \$ [REDACTED]. The actual amount you may receive may be different and will depend on a number of factors.

Your options are explained in this notice. To exclude yourself from, or object to, the settlement, you must act by **XXXX**. If you want to participate in the Settlement, you do not need to do anything to obtain your share of the Settlement.

2. What is this Lawsuit about?

Plaintiff Sofija Markovic ("Plaintiff") filed this Lawsuit asserting claims that Defendants violated sections of the California Labor Code and the California Business and Professions Code. Specifically, Plaintiff alleges that Defendants failed to pay all wages, including overtime and minimum wages, failed to provide compliant meal and rest breaks, failed to pay final wages upon termination, failed to timely pay wages during employment, failed to provide compliant wage statements, failed to keep requisite payroll records, failed to reimburse for all business expenses, and maintained unfair business practices. The settlement also seeks to recover penalties pursuant to the California Private Attorneys General Act ("**PAGA**"). Defendants deny the allegations in the Lawsuit and contend that they complied with the law. The Court has not made a ruling on the merits of the case.

3. Why is this a class action?

In a class action, one or more people called Class Representative(s) (in this case the Plaintiff), sue on behalf of people who appear to have similar claims, in this case the Settlement Class Members. The Settlement Class Members are referred to herein as the "**Class Members**." One court resolves the issues for all Class Members

in one lawsuit, except for those who exclude themselves from the Class. The Lawsuit is before the Superior Court of the County of San Diego (the “Court”).

4. Do I have a lawyer in this case?

The Court has appointed Class Counsel listed below to represent your interests in this case: Michael H. Boyamian and Armand R. Kizirian of Boyamian Law, Inc. and Alex Hartounian of Hartounian Law Firm, P.C.

5. What is the settlement amount and how will the Individual Settlement Payment be calculated?

The Settlement provides that Defendants will pay a maximum of Four Hundred Thousand U.S. Dollars and Zero Cents (\$400,000.00) (the “**Maximum Settlement Amount**”). The “**Net Settlement Amount**” is the portion of the Maximum Settlement Amount that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion (“**Settlement Class Members**”). The Net Settlement Amount is the Maximum Settlement Amount less the following amounts (which will be requested, but which are subject to the Court’s Final Approval):

- A. **Attorneys’ Fees to Class Counsel:** Class Counsel have been prosecuting the Lawsuit on behalf of the Settlement Class on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees which will be paid from the Maximum Settlement Amount. Such amount shall not exceed One Hundred Thirty-Three Thousand and Three Hundred Thirty-Three U.S. Dollars and Thirty-Three Cents (\$133,333.33). Settlement Class Members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses.
- B. **Litigation Costs/Expenses to Class Counsel** not to exceed Thirty Thousand Dollars (\$30,000.00).
- C. **Service Payments to the Class Representative** will be requested by Class Counsel for the Class Representative, Sofija Markovic. The Court will determine the actual amount awarded to the Class Representative which will be paid from the Maximum Settlement Amount. Such amount shall not exceed Ten Thousand Dollars (\$10,000.00).
- D. **Settlement Administration Costs** not to exceed Thirty-Five Thousand Dollars (\$35,000.00).
- E. **PAGA Settlement Payment** of Twenty Thousand Dollars and Zero Cents (\$20,000.00). The PAGA Settlement Payment will be further attributed as follows: 75% (or \$15,000.00) will be allocated to the LWDA and 25% (or \$5,000.00) will be allocated to Aggrieved Employees based on the number of eligible workweeks.

The portion of the Net Settlement Amount that you are eligible to claim (“**Individual Settlement Payment**”) will be determined on a pro rata basis, based on the number workweeks you worked in California as a Class Member for Defendants during the Class Period (“**Workweeks**”).

Your Individual Settlement Payment will be apportioned as one-fourth (1/4) for wages and three-fourths (3/4) for penalties and interest. The wage portion of the Individual Settlement Payment will be subject to withholding for the employee and will be reported on a W-2 Form. Employer-side payroll taxes will be paid separately. The penalties and interest portions of each Individual Settlement Payment will not be subject to any withholdings and will be reported on an IRS Form 1099. PAGA Settlement Payments to Aggrieved Employees will be reported on a Form 1099. If any government agency disagrees with this allocation, you might be responsible for additional tax, interest and penalties with respect to your payment. You should consult with an accountant or other tax professional with any questions. Neither the parties, their lawyers, nor the Court is providing you with tax advice.

6. **How much will my Individual Settlement Payment be?**

According to Defendants' records, the total number of workweeks that you worked as an employee during the pertinent time period is **[Bold]**. Based on this information, your estimated payment is \$[redacted]. The actual amount you may receive may be different and will depend on a number of factors. Defendants' records will be presumed correct. But if you believe that you worked more workweeks during the pertinent time period, please follow the procedure discussed in section 7 immediately below.

7. **What do I do if I think the calculation of my Workweeks are wrong?**

If you dispute the accuracy of Defendants' records as to the number of weeks worked during the periods described above you must contact the Settlement Administrator and provide any documentation you have supporting such dispute. Submission of these documents must be postmarked before [45 calendar days from the date of mailing] (the "**Response Deadline**"). All disputes regarding your Workweeks will be resolved and decided by the Settlement Administrator, and the Settlement Administrator's decision on all disputes will be final. The Settlement Administrator's contact information is listed below:

[Settlement Administrator]

[Address]

[Telephone No.]

HOW CAN I GET A PAYMENT?

8. **How do I get my Individual Settlement Payment?**

You do not need to do anything to get your Individual Settlement Payment. You will be entitled to the Payment, and you will release the Released Claims. You will not be able to start a lawsuit, continue with a lawsuit, or be a part of any other lawsuit against Defendants or any of the Released Parties about the Released Claims. You must notify the Settlement Administrator of any change or correction in your contact information. **It is your responsibility to keep the Settlement Administrator informed of any change in your address.** If you no longer receive mail at the address to which this Notice was mailed, you may use the enclosed Change of Address Form to notify the Settlement Administrator of your current mailing address and telephone number.

Your payment will not be made until [redacted] at earliest. Please be patient.

You must cash your settlement check by the expiration date stated on the check. Your failure to cash your check by the expiration date will result in you not receiving the amount represented by your check because the check will become null and void (but you will still be bound by the settlement and releases). If your check is voided because you do not cash it in time, you will be unable to receive the funds as they will either be distributed to the other Class Members or given to Legal Aid at Work, the Court-approved *cy pres* beneficiary.

9. **What am I giving up to get an Individual Settlement Payment?**

Unless you exclude yourself, you remain in the Class, which means you will not be able to sue or be part of any other lawsuit against the "Released Parties" for any of the "Released Claims" in this Lawsuit. Specifically, you will be giving up or "releasing" the "Released Claims" described below:

"Released Claims" means the claims, rights, demands, liabilities and causes of action alleged and, arising out of from, or reasonably related to, the same or similar set of operative facts alleged and or allegations as those set forth in the Complaint or First Amended Complaint, including all claims for any unpaid wages, unpaid overtime wages, minimum wage violations, violations of the meal and rest break requirements of the California Labor Code, and any claims for damages, penalties, interest, punitive damages, liquidated damages, attorneys' fees, costs, injunctive relief, declaratory relief, or accounting reasonably related to the allegations in the First Amended

Complaint. Any and all federal claims, including but not limited to claims under the Fair Labor Standards Act, shall likewise be released, and shall be barred by the settlement by virtue of res judicata, in accordance with *Rangel v. PLS Check Cashers of Cal., Inc.*, 889 F.3d 1106 (9th Cir. 2018). These claims shall be released on behalf of yourself and each of your heirs, representatives, successors, assigns, and attorneys, and shall be effective as to the Released Parties by operation of the Judgment, should the Court so enter it.

“Released Parties” shall mean Defendants and each and all of their respective past and present parents, subsidiaries, affiliated companies and corporations, and each and all of their respective past and present directors, officers, managers, employees, general partners, limited partners, principals, agents, insurers, reinsurers, shareholders, attorneys, advisors, representatives, predecessors, successors, divisions, joint venturers, assigns, or related entities, and each and all of their respective executors, successors, assigns and legal representatives.

EXCLUDING YOURSELF FROM THE SETTLEMENT

10. How do I exclude myself from the settlement?:

If you want to keep the right to sue or continue to sue Defendants with respect to the Released Claims, then you must submit a Request for Exclusion in conformity with the requirements described here. If you exclude yourself, you will not receive an Individual Settlement Payment. You will still receive any amount attributed to you for the PAGA Settlement Payment, from which you are not permitted to opt-out.

Even if you exclude yourself, you will still be deemed to have released all claims under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”) that could have been premised on the facts, claims, causes of action, or legal theories described in the Lawsuit or on any of the claims, causes of action or legal theories of relief as disclosed in the Letter to the LWDA and as pleaded in the operative complaints in the Lawsuit.

To exclude yourself from the Settlement Agreement, you must either return the accompanying Request for Exclusion Form or submit a signed written Request for Exclusion in accordance with the following terms by the Response Deadline. The statement (1) must state that you have decided to exclude yourself from the Settlement Agreement, (2) must contain your name, address, and the last four digits of your social security number, (3) must be signed by you, and (4) must be mailed, faxed, emailed, or submitted by any other form of electronic transmission to the Settlement Administrator via the contact information listed below, by the Response Deadline. You cannot exclude yourself by phone.

[Settlement Administrator]

[Address]

[Email]

[Telephone No.]

[Facsimile]

Requests for Exclusion which are postmarked or fax-stamped after the Response Deadline [45 calendar days from the date of mailing] may not be accepted.

11. If I don’t exclude myself, can I sue Defendants for the same thing later?

No. Unless you submit a Request for Exclusion, you give up the right to sue Defendants and Released Parties for the Released Claims. If you have a pending lawsuit involving Released Claims, you should consult your lawyer.

12. How do I tell the Court that I don't like the settlement?

If you are a Class Member, you can object to the settlement and give your reasons for why you think the Court should not approve one or more of its provisions. The Court will consider your views. To make a written objection, you must mail, email, fax or submit via any other form of electronic submission, your objection to the Settlement Administrator no later than **[45 calendar days from the date of mailing]**. Your objection must be signed and must include your full name, address, the name of this case and case number (provided above), the last four digits of your social security number or employee ID number, and the specific reason for your objection. You may also come to the Final Approval Hearing on **[DATE]** if you wish to make an objection even if you do not submit a written objection.

13. What is the difference between objecting and being excluded?

Objecting is telling the Court that you do not like something about the settlement. You may only object if you remain a Settlement Class Member. Excluding yourself is telling the Court that you do not want to be a Settlement Class Member. If you exclude yourself, you cannot object.

THE COURT'S FINAL APPROVAL HEARING

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

The Court has only preliminarily approved the settlement. The Court will hold a fairness hearing to decide whether to finally approve the settlement, and the amounts to be awarded as attorneys' fees and costs to Class Counsel and as service awards to Plaintiff. You may ask the Court for permission to speak at the Fairness Hearing. Unless you have something to tell the Court, it is not necessary for you to appear at the Fairness Hearing. You cannot speak at the Fairness Hearing if you exclude yourself from the settlement.

Presently, the Final Approval Hearing is scheduled to be held in Department C-69 of the San Diego County Superior Court, Hall of Justice, located at 330 W Broadway, San Diego, CA 92101 on **[REDACTED]**. The date and location of the Final Approval Hearing may change. If you are interested in participating in the Final Approval Hearing, you should confirm the date and location by contacting Class Counsel.

15. Do I have to come to the hearing?

No. If you agree to the settlement, you do not have to come to Court to talk about it. You have a right to attend the hearing, but you are not required to do so. You may also retain your own lawyer at your expense to attend on your behalf. If you would like to attend the Final Approval Hearing remotely, you may do so via Microsoft Teams. The webpage listing information specific to appearing remotely in Department C-69 may be found at <https://www.sdcourt.ca.gov/sdcourt/civil2/civilvirtualhearings>. Please note, you may be required to set up an account with Microsoft Teams and/or download the Microsoft Teams software to your device in order to make a remote appearance. If you intend to make such an appearance, you are urged to set up Microsoft Teams on your device, including setting up a free account, well in advance of the Final Approval Hearing.

16. How will I learn if the settlement is approved?

A notice of final judgment will be posted on the Settlement Administrator website located at [www.\[REDACTED\].com](http://www.[REDACTED].com).

17. What happens if I do nothing at all?

If you do nothing, you will receive your share of the Net Settlement Amount, and you will release the Released Claims. You will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendants or any of the Released Parties about the Released Claims.

GETTING MORE INFORMATION

18. **Who may I contact if I have questions about the Settlement?**

This notice summarizes the proposed Settlement Agreement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by contacting the Settlement Administrator or Class Counsel or by reviewing the Settlement Agreement and other documents filed in this matter online by going to <https://roa.sdcourt.ca.gov/roa/>, following the instructions, entering the case number (37-2020-00016435-CU-OE-CTL) and purchasing the desired documents. Note that the case number provided is *not* a Legacy Case Number, as will be prompted on the Court's website.

Please **do not** contact the Clerk of the Court, the Judge, or Defendants' managers, supervisors, or their attorneys for information.

ADDITIONAL IMPORTANT INFORMATION

19. **Defendants have agreed to this settlement and will not retaliate in any manner whatsoever** against any Class Member, whether they choose to stay in the Class as a Settlement Class Member and receive an Individual Settlement Payment, or request to be excluded from the Settlement, or object to the settlement.

Exhibit “B”

REQUEST FOR EXCLUSION FORM

Markovic v. BBG SD4 LLC, et al. ("NZ Eats Group")

San Diego County Superior Court Case No. 37-2020-00016435-CU-OE-CTL

DO NOT FILL OUT THIS FORM if you want to be included in this class action settlement and to receive your portion of the Settlement. If you do want to receive your portion of the settlement, you do not have to do anything.

INSTRUCTIONS

If you do *not* want to participate in the Settlement, you may "opt out" of the Settlement by returning this Request for Exclusion Form. If you choose to opt out of the Settlement: (a) you will have no right to receive any money under the Settlement; (b) you will not be bound by the Settlement; and (c) you will have no right to object to the Settlement and/or be heard at the final approval hearing.

To opt out, you must sign and return this Request for Exclusion Form to the Claims Administrator, c/o [TPA] at the address listed below, and you must return it postmarked **no later than [DEADLINE]** to:

Markovic v. BBG SD4 LLC, et al. Claims Administrator
c/o [TPA]
[ADDRESS]

OPT OUT SIGNATURE

By signing this Request for Exclusion Form, I hereby opt out of the lawsuit and the Settlement. By signing this Request for Exclusion Form, I understand that I will have no right to receive any money under the Settlement, and I will have no right to object to the Settlement and/or be heard at the final approval hearing.

Date: _____, 2023

(Signature (under penalty of perjury))

(Address)

(Typed or Printed Name)

(City, State, Zip Code)

(Last Four Digits of
Social Security Number)

(Telephone Number
Including Area Code)

Exhibit “C”

Markovic v. BBG SD4 LLC, et al. ("NZ Eats Group")

Case No. 37-2020-00016435-CU-OE-CTL

Superior Court of the County of San Diego

CHANGE OF ADDRESS FORM

«Name»

«Address»

«City», «State» «Zip»

You must notify the Settlement Administrator of any change or correction in your contact information. **It is your responsibility to keep the Settlement Administrator informed of any change in your address.**

If you no longer receive mail at the address to which this Notice was mailed (printed above), if your mailing address was printed incorrectly, or if for any reason you want your Individual Settlement Payment or future correspondence concerning this Action to be sent to a different address, you may use this Change of Address Form to notify the Settlement Administrator of your current or preferred mailing address and telephone number.

Full Legal Name: _____

Address: _____

City: _____

State: _____ Zip: _____

Home Phone: _____

Cell Phone: _____

Email Address: _____

Please return this completed Change of Address Form to:

[Settlement Administrator]

[Address]

Exhibit “D”



BOYAMIAN LAW

March 30, 2020

Via Online Submission

Labor Workforce and Development Agency
Attention: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, California 94102

**Re: Notice of PAGA Claims Pursuant to Labor Code Section 2699.3
Sofija Markovic adv. BBG SD5, LLC, et al.**

Dear Labor and Workforce Development Agency and Employer:

My office represents Sofija Markovic ("Markovic" or "Claimant") with respect to various wage and hour claims on behalf of herself and other similarly situated current and former non-exempt, hourly "back of the house" and "front of the house" Restaurant Employees, including, but not limited to, the titles of any "server", "cooks", "food runner", "busser", "bus boy", "waiter", "waitress", or other similarly situated titles (hereinafter "Restaurant Employees" or "Aggrieved Employees") of BBG SD4 LLC d/b/a Raglan Public House, BBG SD5 LLC d/b/a Dunedin New Zealand Eats, BBG SD3 LLC d/b/a Queenstown Public House, BBG Cal, LLC d/b/a Bare Back Grill, and Arbor SD, LLC d/b/a Queenstown Bistro (collectively "BBG" or the "Company"). The purpose of this letter is to satisfy the notice requirements of Labor Code Section 2699.3(a) against these entities as well as any others that are affiliated or under common control or ownership. Also, under separate cover and being sent out today, is a check made out to the Labor Workforce and Development Agency in the amount of seventy-five dollars (\$75.00) for the filing fee of this matter.¹

Below we set forth the facts and theories which we believe support our contention that BBG has violated and continues to violate various provisions of the California Labor Code including, but not limited to, failure to provide meal and rest breaks, failure to pay for all hours worked, and failure to reimburse for necessary business expenditures.

Facts & Theories About the Case

BBG SD4 LLC d/b/a Raglan Public House, BBG SD5 LLC d/b/a Dunedin New Zealand Eats, BBG SD3 LLC d/b/a Queenstown Public House, BBG Cal, LLC d/b/a Bare Back Grill, and Arbor SD LLC d/b/a Queenstown Bistro, are companies conducting business in the State of

¹ Sent Via First Class U.S. Mail to the following address: Department of Industrial Relations, Accounting Unit, 455 Golden Gate Avenue, 10th Floor, San Francisco, CA 94102.

California as New Zealand themed and inspired full-service restaurants. This collection of restaurants advertise themselves as being part of the “New Zealand Eats Group” or “NZ Eats Group” operating and serving in or around the greater San Diego area. (<https://dnp-sd.com/about-us/>) While all locations are registered as separate business entities, they are nevertheless treated as a single enterprise by management. Employees of one restaurant entity are regularly sent to work in the facilities of another restaurant entity, common management runs all of the entities, and corporate formalities are not observed amongst the entities. These various entities therefore have such a unity of interest and ownership that the separate personalities do not really exist and that the corporate structure is just a shield of the alter ego of each other.

Ms. Markovic commenced her employment with the Company in or around October 28, 2017. Ms. Markovic predominantly worked at the Dunedin New Zealand Eats location but occasionally also worked at BBG’s Queenstown Public House location. She separated from her employment with the Company in or around July 13, 2019. Throughout her tenure with BBG, Ms. Markovic worked as a Server and was classified as a non-exempt, hourly employee with eligibility for overtime pay.

(1) Meal and Rest Break Violations

Our investigation has revealed that Restaurant Employees, including Ms. Markovic, are not provided with legally compliant meal periods and rest breaks. With respect to rest breaks, Ms. Markovic and other similarly situated Restaurant Employees are not provided any training about statutory breaks under California law, are not scheduled to take rest breaks, and in fact, rest breaks are not made available to them. Our investigation has also revealed that the Company’s restaurant locations are allocated a set budget for labor in which the General Manager assigned to the restaurant location is required to create a schedule. However, the schedule generally did not allocate enough shifts to cover tables or designate a “breaker”, which, coupled with how busy the restaurant locations were, resulted in meal and rest periods not being made available to Ms. Markovic and other similarly situated Restaurant Employees.

California law requires that an employer provides an employee who works more than five hours a meal break that is no less than 30 minutes in duration. 8 CCR 11050(11)(A). Unless an employee is relieved of all duty during the 30-minute meal period, the meal period is considered an on-duty meal period and counted as time worked. *Id.* However, an on-duty meal period is permitted only when the nature of the work prevents an employee from being relieved of all duty and the parties agree in writing to an on-the-job paid meal period. *Id.* If an employer fails to provide an employee a lawful meal period, the employer must pay the employee one hour of pay for each violation. 8 CCR 11050(11)(D). Additionally, California law mandates that an employer must “authorize and permit” an employee to take a duty-free rest period not less than 10 minutes in duration for every four hours of work. 8 CCR 11050(12)(A). Violation of the rest break provisions requires the employer pay the employee one hour of pay for each workday a rest period was not provided. 8 CCR 11050(12)(B). Lastly, in California, the employer is required to keep records of all hours worked. Labor Code § 1174(d).

With respect to meal periods, the Company engaged in an unlawful act of “shaving time” by automatically deducting a 30-minute meal period from the hours worked by Restaurant Employees, even though the Company’s time records show that Restaurant Employees worked more than six hours but no time punched out to account for a statutorily mandated meal period. For example, BBG’s Regional Manager (Darren Roach) had the ability to adjust, edit, and manipulate the time records of the Restaurant Employees, including Ms. Markovic’s time punches, and insert a 30-minute unpaid meal period when in fact the Restaurant Employees were never provided with a timely, 30-minutes or more, uninterrupted meal break in the first place. Said differently, managers and supervisors would routinely access the Aloha timekeeping software to manipulate and adjust the times recorded by Restaurant Employees for meal breaks in order to avoid and minimize the practice of compensating Ms. Markovic and other similarly-situated Restaurant Employees with one additional hour of pay to account for a meal and/or rest period violation. Indeed, in the nearly two years of her employment with BBG, Ms. Markovic was never paid any meal period premiums despite the high frequency of not being provided with a meal and rest break.

BBG would also fail to provide legally compliant rest breaks to Aggrieved Employees, including Ms. Markovic. With respect to rest breaks, Ms. Markovic and other similarly situated Restaurant Employees are not provided any training about statutory breaks under California law, are not scheduled to take rest breaks, and in fact, rest breaks are not made available to them. Ms. Markovic and the other Aggrieved Employees would not be able to take a rest break on most shifts because of how busy the restaurant location is coupled with the fact that there are not enough Restaurant Employees to cover other Restaurant Employees, like Ms. Markovic, who should be on a legally-compliant rest break. At a minimum, “an employer must inform employees in a meaningful or consistent way that they could take rest breaks, [and] the definition of any such rest breaks.” *Godfrey v. Oakland Port Services Corp.*, 230 Cal.App.4th 1267, 1286 (2014).

(2) Violations of Reporting Time Pay

The Company also failed to pay reporting time wages to Restaurant Employees. The IWC Wage Order requires BBG to pay half of the employee’s “usual or scheduled day’s work,” and in no event less than two (2) hours pay on each instance the employer requires an employee to report to work.

(A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.

Ms. Markovic and other aggrieved employees frequently worked non-stop 10-hour shifts. However, on days when they would report to work but were sent home or were informed

in route to the job site that work not available, they were not paid required reporting time wages. As a result of the above Labor Code Violations and failure to pay required wages and penalties to employees when due, the Company is liable for civil penalties under Cal. Labor Code § 2698 et seq. The Company is further liable under Cal. Labor Code § 226 for failing to furnish and maintain accurate wage statements.

(3) Failure to Reimburse for Necessary Expenditures

Restaurant Employees, including Ms. Markovic, were also required to purchase uniforms unique to BBG in order to perform their work for the Company. Specifically, Ms. Markovic bought pants and shirts directly from the Company for approximately \$80. These articles of clothing were required to be worn by Ms. Markovic when working at any of the BBG's locations. These items of clothing were not used by Ms. Markovic outside of her work at BBG.

California Labor Code Section 2802 requires employers to always reimburse employees for all expenses or losses incurred in the direct consequence of the discharge of the employee's work duties. The Department of Industrial Relations provides that "If an employer requires that an employee wear a uniform, the employer must pay the cost of the uniform. Labor Code Section 2802, Industrial Welfare Commission Orders, Section 9. The term "uniform" includes wearing apparel and accessories of distinctive design and color." (https://www.dir.ca.gov/dlse/FAQ_Deductions.htm)

(4) Other Claims

Because Ms. Markovic and other similarly situated employees were not fully compensated for all hours worked, were deprived of overtime compensation, BBG also failed to provide accurate wage statements in a violation of Labor Code Section 226, and failed to fully compensate former employees in a timely manner when their employment ended, in violation of Labor Code Section 201 et seq.

Accordingly, we believe that BBG has violated, and continues to violate, numerous provisions of California law, including, without limitation Labor Code Sections §§ 201, 202, 203, 204, 210, 216, 221, 225.5, 226, 226.3, 226.7, 510, 511, 512, 551, 552, 558, 1194-1197.1, 1198, 2802, and 2698, et seq., as well as the relevant IWC orders and regulations, and that Ms. Markovic and other similarly situated Restaurant Employees are entitled to all civil and statutory penalties allowed by law. Our investigation is continuing, and there may be more violations uncovered.

California Labor Code Section 2699.3(a) requires an aggrieved employee to inform the Agency before filing a civil action under the Private Attorneys General Act of 2004 ("PAGA"). Based on the foregoing facts, Ms. Markovic is asserting PAGA claims on behalf of herself and on behalf of all other Restaurant Employees employed by the BBG in its California restaurant

locations from March 30, 2019, to the present. Claimant seeks civil penalties under PAGA for the following Labor Code violations:

1. Violations of Labor Code sections 216, 1194, 225.5, 558 for failing to pay minimum and overtime wages due. Specifically, by automatically deducting thirty-minutes of paid time to cover up a meal break violation, BBG does not pay minimum and overtime wages to Claimant and other non-exempt, hourly employees for all hours worked, as required by Labor Code sections 216, 510, 511, 558, 1182.1-1182.3, 1194-1197.1 and 1198.
2. Violations of Labor Code section 558 for failing to pay wages due, including those for missed meal and rest periods as required by Labor Code sections 226.7, 512, 551-553. Specifically, with respect to meal breaks, BBG does not permit Claimant and other non-exempt, hourly employees to take an uninterrupted, off-duty, and/or full meal periods, and does not pay one additional hour of pay at their regular rate of compensation for each missed meal period. The Company also does not provide Claimant and other non-exempt, hourly employees with rest periods. Nor does it pay one additional hour of pay at their regular rate of compensation for each missed rest period.
3. Violations of Labor Code sections 226 and 226.3, requiring employers to provide specific information on employees' itemized wage statements, as the Company does not include all hours worked and wages earned on the wage statements of Claimant and other non-exempt, hourly employees.
4. Violations of Labor Code sections 204 and 210, based on the Company's failure to pay Claimant and similarly situated non-exempt, hourly employees on the regular pay day all owed wages, and the Company's failure to fully compensate former employees in a timely manner when their employment ended, in violation of Labor Code Section 201 et seq.

Accordingly, we believe the Company has violated, and continues to violate, numerous provisions of California law, including, without limitation Labor Code Sections §§ 201, 202, 203, 204, 210, 216, 221, 223, 225.5, 226, 226.3, 226.7, 510, 511, 512, 551, 552, 558, 1174, 1174.5, 1194-1197.1, 1198, 2802, and 2698, et seq., as well as the relevant IWC orders and regulations, and that Claimant and other similarly situated current and former non-exempt, hourly Restaurant Employees are entitled to all damages, restitution and statutory penalties allowed by law. Our investigation is continuing, and there may be more violations uncovered.

We respectfully request that the Labor Workforce Development Agency notify this office within sixty (60) days if it wishes to investigate this matter further or, in the alternative, notify us that you will not pursue an investigation so that we may pursue these penalties under the Private Attorney General Act of 2004. Should you have any questions or concerns or require additional information, please do not hesitate to contact the undersigned. If the Company wishes to resolve these claims without resorting to protracted litigation, please contact the undersigned forthwith to discuss this matter further.

Thank you for your immediate attention to this matter.

Sincerely,

BOYAMIAN LAW, INC.



Michael H. Boyamian

CC: BBG SD5 LLC (Dunedin New Zealand Eats) *(via certified mail)*
Attention: Frank Pabst *(Agent of Service of Process)*
934 23rd Street
San Diego, California 92102

BBG SD4, LLC (Raglan Public House) *(via certified mail)*
Attention: Frank Pabst *(Agent of Service of Process)*
2150 W. Washington Street, #104
San Diego, California 92110

BBG SD3, LLC (Queenstown Public House) *(via certified mail)*
Attention: Eryka Dennis *(Agent of Service of Process)*
12526 High Bluff Drive, Suite 300
San Diego, California 92130

BBG Cal, LLC (Bare Back Grill) *(via certified mail)*
Attention: Frank Pabst *(Agent of Service of Process)*
4025 Camino Del Rio South, Suite 300
San Diego, California 92109

Arbor SD, LLC (Queenstown Bistro) *(via certified mail)*
Attention: Frank Pabst *(Agent for Service of Process)*
4025 Camino Del Rio South, Suite 300
San Diego, California 92109

Exhibit “2”



3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104
www.simpluris.com

Estimate Number:	20230328-PJI-02	Prepared By:	Patrick J. Ivie
Estimate Date:	3/28/2023	Telephone Number (mobile):	310.995.6455
Estimate Expiration Date:	6/26/2023	Email:	pivie@simpluris.com

	Primary Contact		Additional Contact
Name:	Armand Kizirian, Esq.	Attorney:	
Firm:	Boyamian Law, Inc.	Firm:	
Email:	armand@boyamianlaw.com	Email:	

Case Name: **Markovic v. BBG**

Assumptions

In addition to the assumptions enumerated below, this estimate assumes that

- (1) Simpluris will receive data in a single, complete file; (2) there will be no substantial change to class size or in response rate;
- (3) administration costs will be paid from the QSF, and (4) Simpluris will submit revisions to this estimate to account for any material changes to scope.

Anticipated Class Size:	1,300	Undeliverable Rate:	10%
Claims Rate:	N/A	Mail Skip Trace Success Rate:	85%
Opt-out Rate:	1%	Call Rate:	4%
Language(s) for Communication	EN	Average Call Length:	4 Minutes
Unclaimed Funds:	2nd Dist; Cy Pres	Fund Distribution:	Simpluris
State(s):	CA	Number of Distributions:	2
Length of Administration:	10 Months	Tax Year(s):	2

Case Setup

- Class website: interactive website hosting case documents, with option for electronic payment
- Data compilation: develop case-specific response tracking

Category	Unit Value	# of Units	Total
Project Manager - Case Setup	\$110.00	4	\$440.00
Static Class Website	\$450.00	1	\$450.00
Website Monthly Maintenance	\$135.00	10 Months	\$1,350.00
Database Manager - Initial Data Analysis	\$125.00	4	\$500.00
Total:			\$2,740.00

Notice and Communications

- Full mailed notice: 6-page Settlement Notice, 1-page Request for Exclusion Form, 1-page Change of Address Form.

Category	Unit Value	# of Units	Total
Notice Packet (assuming 8 images)	\$2.00	1,300	\$2,600.00
Postage	\$0.57	1,300	\$741.00
NCOA/CASS/LACS	\$0.20	1,300	\$260.00
Undeliverable Processing and Skip Trace	\$0.50	130	\$65.00
Remail Notice (assuming 85% skip trace success)	\$3.00	111	\$333.00
Remail Postage	\$0.57	111	\$63.27
Mailing Supervisor	\$50.00	3	\$150.00
Total:			\$4,212.27

Inbound Call Center

- Establish case-specific toll-free number and 24/7 IVR
- Live agents during business hours
- Assuming 4-minute calls

Category	Unit Value	# of Units	Total
IVR Call Center Setup	\$450.00	1	\$450.00
Uptime Monitoring and Testing, Tracking, Reporting	\$225.00	10 Months	\$2,250.00
Live Agents (includes toll-free number charges)	\$62.00	4	\$248.00
Total:			\$2,948.00

Administration

- Process incoming class and counsel communications, opt-outs, change of address forms and objections

Category	Unit Value	# of Units	Total
Database Manager	\$125.00	2	\$250.00
Project Manager	\$110.00	4	\$440.00
Response Form Processing	\$3.50	65	\$227.50
Opt-out Processing	\$3.50	13	\$45.50
Case Reporting	\$100.00	4	\$400.00
Total:			\$1,363.00

Award Disbursement

- Establish 26 CFR § 1.468B-1 compliant Qualified Settlement Fund ("QSF")
- Disburse award payments and tax documents
- Conduct regular and annual IRS-mandated QSF reporting and reconciliation (one per calendar year)
- Complete all required filings with state and federal tax authorities

Category	Unit Value	# of Units	Total
Disbursement Data Preparation	\$125.00	2	\$250.00
Disbursement Manager - Data Validation	\$100.00	1	\$100.00
Setup Banking Account/QSF	\$675.00	1	\$675.00
QSF Monthly Reconciliation and Maintenance	\$200.00	10	\$2,000.00
<u>1st Distribution</u>			
Print & Mail Check and Tax Documents	\$0.65	1,300	\$845.00
Postage	\$0.57	1,300	\$741.00
Process Returned Checks (assuming 5%)	\$0.25	65	\$16.25
Skip Trace Search Undeliverable Checks	\$0.35	65	\$22.75
Remail Checks (includes postage)	\$1.25	65	\$81.25
<u>2nd Distribution to the 85% who cashed their first check</u>			
Print & Mail Check and Tax Documents	\$0.65	1,105	\$718.25
Postage	\$0.57	1,105	\$629.85
Process Returned Checks (assuming 5%)	\$0.25	56	\$14.00
Skip Trace Search Undeliverable Checks	\$0.35	56	\$19.60
Remail Checks (includes postage)	\$1.25	56	\$70.00
QSF Reporting and Final Declaration	\$500.00	1	\$500.00
QSF Annual Tax Reporting and Reconciliation	\$1,350.00	2	\$2,700.00
Distribution Manager	\$125.00	4	\$500.00
Total:			\$9,882.95

Case Completion

- Final audit and review
- Send final declaration and reporting to counsel

Category	Unit Value	# of Units	Total
Data Manager-Final Reporting	\$125.00	2	\$250.00
Clerical-Clean Up Any Misc.	\$50.00	1	\$50.00
Project Manager-Wrap-up Final Issues	\$110.00	2	\$220.00
Total:			\$520.00

Total Estimated Cost of Administration:

\$21,666