

**PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT AND
RELEASE**

This Private Attorneys General Act Settlement Agreement and Release (“Settlement Agreement”) is entered into by and between Artur Katabyan and Julia Venegas (collectively the “Plaintiffs”), for themselves and as representatives of the State of California and the Aggrieved Employees (as defined in Section 3(a)(5) below), on the one hand, and, on the other, Defendant Awesome Doughnut LLC (“Defendant”), subject to approval by the Court. The term “Party” or “Parties” as used herein shall refer to Plaintiffs, Defendant, or both, as may be appropriate.

1. **Recitals.** This Settlement Agreement is made with reference to the following facts:

- (a) Plaintiffs are former employees of Defendant.
- (b) On March 19, 2020, Plaintiff Katabyan submitted a letter to the California Labor and Workforce Development Agency (“LWDA”) to notify the LWDA pursuant to the Private Attorneys General Act of 2004, Labor Code section 2698, *et seq.* (“PAGA”) of Plaintiff Katabyan’s intent to seek civil penalties under PAGA for alleged violations of Labor Code §§ 201, 202, 203(a), 226(a)(9), 226.7, 512, and 1194.
- (c) On May 26, 2020, Plaintiff Katabyan filed a Complaint in the Superior Court of California for the County of Los Angeles alleging one cause of action for PAGA penalties, Case No. 20STCV19903.
- (d) On July 27, 2020, Plaintiff Venegas submitted a letter to the LWDA to notify the LWDA pursuant to PAGA of Plaintiff Venegas’s intent to seek civil penalties under PAGA for alleged violations of Labor Code §§ 201, 202, 203(a), 226(a)(9), 226.7, 512, and 1194.
- (e) On October 23, 2020, Plaintiffs filed a First Amended Complaint (the “Operative Complaint”) alleging one cause of action for PAGA penalties (the “Action”).
- (f) On January 14, 2021, the Parties mediated the Action during a full-day mediation with Steven Pearl, Esq. The Parties reached an agreement to resolve the action on January 14, 2021.
- (g) There has been no determination on the merits of the Action or the PAGA Notices but, in order to avoid additional cost and the uncertainty of litigation, the Parties desire to resolve the Released Claims (as defined in Section 8(a) below) as of the date of execution of this Settlement Agreement.

2. **Nonadmission of Wrongdoing.** The Parties agree that neither this Settlement Agreement nor the furnishing of the consideration for this Settlement Agreement shall be deemed or construed at any time for any purpose as an admission by the Released Parties of wrongdoing or evidence of any liability or unlawful conduct of any kind.

PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AND RELEASE

3. **Consideration:**

(a) In consideration for Plaintiffs signing this Settlement Agreement and complying with its terms, Defendant shall pay the maximum gross sum of FOUR-HUNDRED NINETY-FIVE THOUSAND DOLLARS AND ZERO CENTS (\$495,000.00) (the “Total Settlement Amount”) to resolve the Action and Released Claims, as defined in paragraph 9, below, which will be paid as follows:

(1) Attorneys’ fees of up to thirty-three percent (33 1/3%) of the Total Settlement Amount which amounts to ONE HUNDRED SIXTY FIVE THOUSAND DOLLARS AND ZERO CENTS (\$165,000.00) subject to Court approval, and reimbursement of litigation costs and expenses up to the additional amount of EIGHT THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS (\$8,500.00) subject to Court approval (collectively, “Attorneys’ Fees and Costs”), which Defendant will not contest.

(2) An enhancement fee of up to the amount of FIFTEEN THOUSAND DOLLARS AND ZERO CENTS (\$15,000.00) to Plaintiff Katabyan and FIVE THOUSAND DOLLARS AND ZERO CENTS (\$5,000.00) to Plaintiff Venegas (“Enhancement Fee”), totaling TWENTY THOUSAND DOLLARS AND ZERO CENTS (\$20,000.00) which Defendant will not contest.

(3) Costs and expenses of administration of the Settlement up to the amount of SIX THOUSAND TWO HUNDRED DOLLARS AND ZERO CENTS (\$6,200.00) (“Settlement Administration Costs”) to ADMINISTRATOR (the “PAGA Settlement Administrator”).

(4) The amounts stated in Paragraphs 1 – 3 above, once approved by the Court, shall be paid from the Total Settlement Amount. The balance remaining after these deductions is referred to as the “Net Settlement Amount.”

(5) Seventy-five percent (75%) of the Net Settlement Amount shall be distributed to the LWDA (“LWDA Payment”); and the remaining twenty-five percent of the Net Settlement Amount (25%) shall be distributed pro rata based on pay periods worked within the PAGA Covered Period to the Alleged Aggrieved Employees, defined solely for purposes of this Settlement as hourly non-exempt employees of Defendant who worked at restaurant locations in California operated by Defendant at any time during the “Covered PAGA Period” between March 19, 2019 through the date the Court approves this Settlement Agreement (the “Aggrieved Employees”). The 25% portion of the Net Settlement Amount payable to Aggrieved Employees is referred to as the “Employees’ Portion.”

(b) Because this is a settlement of PAGA claims for civil penalties only, no portion of the Settlement is allocated to unpaid wages. One Hundred Percent (100%) of the payments for Attorneys’ Fees and Costs, Enhancement Fees, and the Net Settlement Amount to be paid to the LWDA and Aggrieved Employees as described in Section 3(a) above will be treated and reported for tax purposes as non-wage payments and the Settlement Administrator will be responsible for issuing IRS Forms 1099 as required.

PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AND RELEASE

4. **Court Approval Is Required.** Plaintiffs understand and agree that the State of California and Aggrieved Employees, including Plaintiffs, would not receive the consideration specified in Section 3(a) above, except for Plaintiffs execution of this Settlement Agreement, and the fulfillment of the promises contained herein, as well as Court approval of the Settlement. If this Settlement Agreement is not approved by the Court, it shall be null and void. Plaintiffs shall timely provide notice of this Settlement Agreement and the Court's Approval of this Settlement Agreement to the LWDA in accordance with Labor Code §§ 2698 *et seq.*

5. **Disbursal of Settlement Funds/Dismissal of Action.**

(a) Subject to Section 4 above, Defendant shall remit to the PAGA Settlement Administrator the sums described more fully in Section 3(a) above, within ten (10) days after all of the following has occurred: (i) the Settlement Agreement is fully executed by all Parties and their counsel; (ii) Plaintiffs have provided notice of the Settlement Agreement to the LWDA, (iii) the Court has entered an order approving the Settlement Agreement; and (iv) Plaintiff has provided notice of the Court approval to the LWDA. If the date by which payment by Defendant is due falls on a Saturday, Sunday or legal holiday in the State of California, then the due date shall be extended the next following day which is not a Saturday, Sunday or legal holiday in the State of California.

(b) Upon complete distribution of the Total Settlement Amount by the PAGA Settlement Administrator in accordance with this Settlement Agreement, the Settlement Administrator will notify the parties of distribution of the entire Total Settlement Amount, and within ten (10) business days of such notification, Plaintiff will seek dismissal of the Action in its entirety with prejudice.

6. **Approval and Implementation of the PAGA Settlement.**

(a) The Parties will cooperate in obtaining an order from the Court approving this Settlement Agreement and dismissal of the Action based thereon, as described herein. The Parties further agree to cooperate in the drafting and/or filing of any further documents and/or filings reasonably necessary to be prepared and/or filed, and to take all steps that may be requested by the Court relating in order to obtain approval and implementation of this Settlement Agreement, and the payments described in Section 3(a) above.

(b) The Parties shall seek to obtain Court approval of this Settlement Agreement by way of an unopposed motion to be filed by Plaintiffs' Counsel and/or Stipulation if allowed by the court. Plaintiff's Counsel shall provide a draft of all documents to be submitted in connection with the motion to approve this Settlement Agreement to Adam Siegel and Ariana Sanudo of Jackson Lewis P.C. ("Defendant's Counsel") for review and approval prior to filing.

(c) The Parties expressly acknowledge that the Court's approval of the Settlement Agreement is a condition precedent to any payments described in this Settlement Agreement. Therefore, the Parties further acknowledge that, should the Court not grant approval of this Settlement Agreement and/or should the Court refuse to grant dismissal of the action and closure of the case based on the Settlement, the entirety of this Settlement Agreement shall be null and void.

PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AND RELEASE

7. **Notice to Recipients.**

(a) There shall be no basis for objections to the Settlement Agreement or approval process by the Court by the Aggrieved Employees. There also shall be no opt-out process for the Aggrieved Employees.

(b) Each Aggrieved Employee will be entitled to a *pro rata* share of 25% of the Net Settlement Amount (i.e., the Employees' Portion) based upon the number of pay periods they each worked between March 19, 2019 through the date of the Court's Order Granting Settlement Approval ("Compensable Workweeks"), based on Defendant's payroll records. Specifically, to calculate each Aggrieved Employee's share of the Employees' Portion ("Individual Settlement Share"), the PAGA Settlement Administrator shall:

(1) For each Aggrieved Employee, divide the number of Compensable pay periods he or she worked by the total aggregate number of Compensable pay periods worked by all Aggrieved Employees, and then multiply this amount by the Employees' Portion to arrive at each Aggrieved Employee's Individual Settlement Share.

(2) One Hundred Percent (100%) of all Individual Settlement Shares are to be considered penalties and will not be subject to local, state or federal payroll tax withholdings. All Aggrieved Employees who cash, deposit, or otherwise negotiate their Individual Settlement Share checks shall receive an IRS Form 1099 for their Individual Settlement Share as required by the IRS.

(c) The Parties agree to retain Phoenix Settlement Administrators to serve as the PAGA Settlement Administrator.

(d) The PAGA Settlement Administrator shall distribute each Individual Settlement Share by way of check, along with a cover letter agreed to by the Parties and approved by the Court, in the following manner:

(1) No later than fourteen (14) calendar days after the Court's order granting approval of the Settlement, Defendant shall provide the PAGA Settlement Administrator with a list of all Aggrieved Employees (the "Aggrieved Employees List"), containing the following information for each Aggrieved Employee: (i) first and last name; (ii) last known address; (iii) social security number; and (iv) Compensable pay periods.

(2) The PAGA Settlement Administrator shall conduct one (1) National Change of Address ("NCOA") search for all individuals identified on the Aggrieved Employee List.

(3) No later than fourteen (14) calendar days after the PAGA Settlement Administrator's receipt of the Total Settlement Amount, the PAGA Settlement Administrator shall mail the agreed-upon Cover Letter and Individual Settlement Share checks (together, the "PAGA Settlement Package") to all Aggrieved Employees by first-class United States mail. For each PAGA Settlement Package that is returned undeliverable, the PAGA Settlement Administrator shall promptly attempt to locate an alternate, updated address for the

Aggrieved Employee at issue, by using an address refresher database and shall attempt one (1) re-mailing of the PAGA Settlement Package.

(4) The Individual Settlement Share checks issued to Aggrieved Employees shall remain valid for one hundred eighty (180) calendar days, and thereafter, shall be cancelled. Funds associated with cancelled checks shall be transmitted to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 et seq., for the benefit of those Settlement Class members who did not cash their checks until such time that they claim their property.

(e) Also no later than fourteen (14) calendar days after the PAGA Settlement Administrator receives the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement Administrator shall transmit the LWDA Payment to the LWDA.

8. Release of Claims by Plaintiffs, Aggrieved Employees, and the State of California.

(a) Upon the Effective Date, Plaintiffs and Aggrieved Employees, individually and on behalf of their heirs, executors, administrators, representatives, attorneys, successors and assigns, and the State of California, on behalf of itself and its administrators, representatives, and assigns, will be deemed to have knowingly and voluntarily released and forever discharged Defendant, including Defendant's parent corporation, affiliates, subsidiaries, divisions, predecessors, Krispy Kreme Doughnut Corporation, insurers, successors and assigns, and their current and former employees, attorneys, officers, directors and agents thereof, both individually and in their business capacities, and their employee benefit plans and programs and the trustees, administrators, fiduciaries and insurers of such plans and programs (collectively, the "Released Parties"), to the full extent permitted by law, of and from the Action and from any and all claims asserted and unasserted, arising during the period from March 19, 2019 through the date on which the Court grants approval of the Settlement, for civil penalties under California Labor Code section 2698, *et seq.* ("PAGA") only as well as any interest, fees, and costs available under PAGA, based on the factual allegations in the Operative Complaint or what could have been alleged in the Operative Complaint based on the facts alleged therein and based on the facts alleged in Plaintiffs' PAGA Notices or what could have been alleged based on the facts alleged in Plaintiffs' PAGA Notices, including but not limited to, civil penalty claims under PAGA for violations of Labor Code sections §§ 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 1194, 1194.2, 1197, 1198, and 1199 and Industrial Welfare Commission Wage Orders, including *inter alia* Wage Orders 82001, 13-2001, and 14-2001, in conformity with Labor Code section 2699.3.

(c) Release by Plaintiffs. Upon the Effective Date, in addition to the claims being released by all Aggrieved Employees, Plaintiffs release and forever discharge the Released Parties, to the fullest extent permitted by law, of and from any and all claims, known and unknown, asserted and not asserted, which Plaintiffs have or may have against the Released Parties as of the date of execution of this Settlement Agreement ("Plaintiffs' Released Claims"). Plaintiffs' Released Claims include, but are not limited to, all of the Released Claims and any other claims arising under the California Labor Code; any claim arising out of the California common law of contract; the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, and federal common law; all claims for lost wages and benefits, emotional distress, retaliation, punitive damages, and

attorneys' fees and costs arising under federal, state, or local laws for discrimination, harassment, and wrongful termination, including but not limited to, 42 U.S.C. section 1981, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the California Fair Employment and Housing Act, the California Labor Code, and the law of contract and tort. This release excludes the release of claims not permitted by law.

Plaintiffs' Released Claims include all claims, whether known or unknown. Even if Plaintiffs discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of Plaintiffs' Released Claims, those claims will remain released and forever barred. To effect a full and complete general release as described above, Plaintiffs expressly waive any and all rights and benefits conferred upon them by the provisions of Section 1542 of the California Civil Code or similar provisions of applicable law which are as follows:

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

Thus, notwithstanding the provisions of section 1542, and to implement a full and complete release and discharge of the Released Parties, Plaintiffs expressly acknowledge this Settlement is intended to include in its effect, without limitation, all claims Plaintiffs do not know or suspect to exist in Plaintiffs' favor at the time of signing this Settlement, and that this Settlement contemplates the extinguishment of any such claims. Plaintiffs warrant that Plaintiffs have read this Settlement, including this waiver of California Civil Code section 1542, and that Plaintiffs have consulted with or had the opportunity to consult with counsel of Plaintiffs' choosing about this Settlement and specifically about the waiver of section 1542, and that Plaintiffs understand this Settlement and the section 1542 waiver, and so Plaintiffs freely and knowingly enter into this Settlement. Plaintiffs further acknowledge that Plaintiffs later may discover facts different from or in addition to those Plaintiffs now know or believe to be true regarding the matters released or described in this Settlement, and even so Plaintiffs agree that the releases and agreements contained in this Settlement shall remain effective in all respects notwithstanding any later discovery of any different or additional facts. Plaintiffs expressly assume any and all risk of any mistake in connection with the true facts involved in the matters, disputes, or controversies released or described in this Settlement or with regard to any facts now unknown to Plaintiffs relating thereto.

9. **No Transfer/Assignment of Claims.** Plaintiffs warrant and represent that Plaintiffs have not assigned or transferred or purported to assign or transfer to any person or entity all or any part of or any interest in any claim released under this Settlement Agreement. Plaintiffs are solely responsible for the satisfaction of any assignment or lien to any lien holder and will indemnify and hold the Released Parties harmless against any liens, damages, penalties, fines, fees, assessments, taxes or attorneys' fees that may be imposed against or incurred by any of the Released Parties as a result of the Action of any lien holder or any lien claimant or any court in relation to any interest which any third party may have in any claim which Plaintiffs are releasing under this Settlement Agreement or any interest in any of the proceeds paid to Plaintiffs or Plaintiffs' Counsel under this Settlement Agreement.

PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AND RELEASE

10. **Liens and Attorneys' Fees/Indemnification.**

Plaintiffs are solely responsible for any liens made in connection with any services performed on Plaintiffs' behalf by any attorney, consultants, or expert witnesses. Each Party solely is responsible for any fees and costs they or it has incurred including, but not limited to, fees for attorneys, consultants and expert witnesses. Plaintiffs acknowledge that none of the Released Parties are responsible for the payment of any fees incurred on behalf of Plaintiffs in connection with the prosecution of the Action, except to the extent the Settlement Agreement provides for payment of Attorneys' Fees and Costs.

11. **Governing Law and Interpretation.**

(a) This Settlement Agreement shall be governed and conformed in accordance with the laws of the State of California provided, however, that parol evidence shall not be admissible to alter, vary or supplement the term of this Settlement Agreement. Should any provision of this Settlement Agreement be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable such provision immediately shall become null and void, leaving the remainder of this Settlement Agreement in full force and effect.

(b) In the event of a breach of any provision of this Settlement Agreement, any Party reserves the right to institute an action specifically to enforce any term or terms of this Settlement Agreement or seek damages for breach. In an action to enforce any term or terms of this Settlement Agreement or to seek damages for breach of this Settlement Agreement, the prevailing Party in that action shall be entitled to recover reasonable attorney's fees and costs from the non-prevailing Party.

12. **Amendment.** This Settlement Agreement may not be modified, altered or changed except in writing and signed by both Parties or their counsel wherein specific reference is made to this Settlement Agreement, subject to approval by the Court.

13. **Escalator Clause.** Defendant represents that at present the Aggrieved Employees have collectively worked approximately 40,000 pay periods from March 19, 2019 through January 14, 2021. If the number of pay periods increases by more than 10% by the last day of the Covered PAGA Period, the amount of the Gross Settlement Fund shall increase by a proportionate amount or Defendant, at its sole discretion, may cut of the Covered PAGA Period as of the date the amount of pay periods exceeds more than 10% of the estimated pay periods. For example, if the number of pay-periods exceeds the estimated pay periods by 15%, Defendant shall have the discretion to pay an additional 5% or cut of the Covered PAGA period as of the date of the increase.

14. **Miscellaneous.**

(a) **Other Lawsuits.** Plaintiffs expressly warrant that to the best of their knowledge, information, and belief, they know of no employees or former employees of Defendant who have expressed an intent to file a lawsuit against Defendant.

To the fullest extent permissible under applicable law, and solely for the purposes of this Agreement and not for any other purpose, counsel for the Plaintiffs represent and warrant on behalf of themselves and all others acting on their behalf, that they: (i) have not been retained by any other individuals with claims against Defendant (other than those of which Defendant and/or its counsel has been advised); (ii) are not aware of, and have not been informed of, any other plaintiff, class member, or attorney who intends to bring a claim against Defendant including, but not limited to, any claim based on the subject matter of the Action; and (iii) do not currently intend to bring any other claim against Defendant. Nothing in the foregoing is intended to limit or restrict Plaintiffs' counsel's ability to practice law, or to otherwise violate California Rules of Professional Conduct, Rule 1-500. To the extent any portion of this paragraph is found to violate Rule 1-500, or any other Rule of Professional Conduct, such offending language will be deemed stricken and will be treated as if it is of no force and effect.

(b) This Settlement Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which, taken together shall constitute the same instrument. A signature made on a faxed or electronically mailed copy of the Settlement Agreement or a signature transmitted by facsimile or electronic mail shall have the same effect as the original signature. Electronic signatures obtained via Docusign shall also have the same effect as an original wet signature.

(c) The section headings used in this Settlement Agreement are intended solely for convenience of reference and shall not in any manner amplify, limit, modify or otherwise be used in the interpretation of any of the provisions hereof.

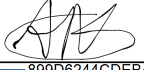
(d) This Settlement Agreement was the result of negotiations between the Parties and their respective counsel. In the event of vagueness, ambiguity or uncertainty, this Settlement Agreement shall not be construed against the Party preparing it, but shall be construed as if all Parties prepared it jointly.

(e) If Plaintiffs or Defendant fail to enforce this Settlement Agreement or to insist on performance of any term, that failure does not mean a waiver of that term or of the Settlement Agreement. The Settlement Agreement remains in full force and effect anyway.

HAVING ELECTED TO EXECUTE THIS SETTLEMENT AGREEMENT, TO FULFILL THE PROMISES AND TO RECEIVE THE CONSIDERATION SET FORTH IN SECTION 3(a) ABOVE, PLAINTIFFS AND DEENDANT, FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTER INTO THIS SETTLEMENT AGREEMENT.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Settlement Agreement as of the date set forth below:

Date: January 14 2021

DocuSigned by:

 899D6244CDFB4BD

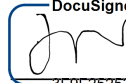
ARTUR KATABYAN

Individually and On Behalf of the State of California and Aggrieved Employees

PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AND RELEASE

Date: January 14, 2021

DocuSigned by:



3F9F252531DE49D...

JULIA VENEGAS

Individually and On Behalf of the State of
California and Aggrieved Employees

AWESOME DOUGHNUT LLC

Date: _____, 2021

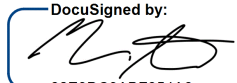
ROGER GLICKMAN
CEO

Approved as to form and content.

FRONTIER LAW CENTER

Date: January 14, 2021

DocuSigned by:



82E9DC9ABF854A6...

By:

MANNY M. STARR
DANIEL GINZBURG
Attorneys for Plaintiffs
ARTUR KATABYAN and JULIA
VENEGAS

JACKSON LEWIS PC

Date: _____, 2021

By:

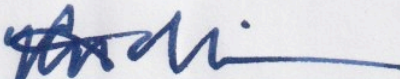
ADAM Y. SIEGEL
ARIANA SANUDO
Attorneys for Defendant
AWESOME DOUGHNUT LLC

Date: _____, 2021

JULIA VENEGAS
Individually and On Behalf of the State of
California and Aggrieved Employees

AWESOME DOUGHNUT LLC

Date: 1/14, 2021


ROGER GLICKMAN
CEO

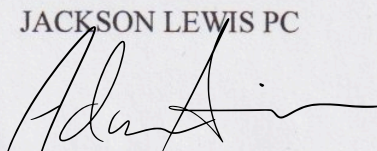
Approved as to form and content.

FRONTIER LAW CENTER

Date: _____, 2021

By: _____
MANNY M. STARR
DANIEL GINZBURG
Attorneys for Plaintiffs
ARTUR KATABYAN and JULIA
VENEGAS

Date: Jan. 14, 2021

JACKSON LEWIS PC
By: 

ADAM Y. SIEGEL
ARIANA SANUDO
Attorneys for Defendant
AWESOME DOUGHNUT LLC