

PAGA SETTLEMENT AND RELEASE

1. This PAGA Settlement and Release (hereinafter “Agreement”) is made and entered into by and between Plaintiff Elijah Scholer (“Plaintiff”) on behalf of all aggrieved employees, and Defendant Hakkasan Holdings, LLC (hereinafter “Defendant”). Plaintiff and Hakkasan are collectively referred to herein as “the Parties.”

2. This Agreement shall be binding on Plaintiff, on the Aggrieved Employees (as defined below), on the State of California and its state labor law enforcement agencies (including but not limited to the Labor and Workforce Development Agency (LWDA) and its departments, divisions, commissions, boards, agencies and employees), and on Defendant and its present and former parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity which could be jointly liable with Defendant, subject to the terms and conditions hereof and the approval of the Court.

I. DEFINITIONS

3. “Action” refers to the civil action filed by Plaintiff Elijah Scholer, filed on May 29, 2020, entitled Elijah Scholer, v. Hakkasan Holdings, LLC; and DOES 1 through 100, inclusive, in the Superior Court of the State of California for The County of San Diego, Case No. 37-2020-00017863-CU-OE-CTL.

4. “PAGA Counsel” and “Plaintiff’s Counsel” shall refer to Thomas M. Diachenko of Law Offices of THOMAS M. DIACHENKO, APC; and Jason Whooper of W LAW.

5. “Counsel for Defendant” and “Defense Counsel” shall refer to Julie R. Trotter and Anurita S. Varma of the law firm, CALL & JENSEN, APC.

6. “Covered Period” shall mean the period from May 29, 2019, through the date the Court grants approval of this PAGA Settlement Agreement and enters a Judgment based thereon.

7. “PAGA Representative” or “Plaintiff” shall refer to Named Plaintiff Elijah Scholer.

8. “Court” refers to the Superior Court of the State of California for the County of San Diego.

9. “Covered Claims” means claims brought in the Action pursuant to Labor Code section 2699 *et seq.* for PAGA penalties only in Plaintiff’s first cause of action based on alleged violations of California Labor Code and applicable wage laws, including but not limited to: California Labor Code sections 7, 98.6, 200, 201, 202, 203, 204, 210, 212, 216, 218.6, 221, 222, 223, 224, 225, 225.5, 226, 226.3, 226.7, 232.5, 246, 256, 351, 500, 510, 512, 516, 558, 558.1, 1102.5, 1174, 1174.5, 1182.12, 1193.6, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2502, 2751, 2802, 2698, 2699, 2699.3, 2699.5, 6310, 6311, based on the facts and theories set forth in the Action for the Covered Period.

10. “Aggrieved Employees” shall mean all current and former employees of Defendant and who worked for Defendant within the state of California at any time during the Covered Period (1) the position of VIP Host at Defendant’s Omnia-San Diego location; and (2) the positions of VIP Marketing Manager and Promotions Manager at Defendant’s Omnia-San Diego location. As of the date of this Agreement, there are approximately 9 Aggrieved Employees.

11. “Eligible Pay Periods” shall mean the total number of pay periods that an individual worked as an Aggrieved Employee during the Covered Period.

12. “Settlement” and “Agreement” shall mean this Settlement and Release Agreement.

13. “Effective Date” means the date the Court enters the order approving the settlement of the Covered Claims as described in this Agreement.

II. NATURE OF ACTION

14. On May 26, 2020, Plaintiff Scholer sent the LWDA and Defendant notice of his intent to pursue a representative action against Defendant pursuant to the Private Attorneys General Act of 2004 (“PAGA”), as codified in California Labor Code § 2698 *et seq.*, on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees.

15. After the case was at issue, the Parties engaged in informal discovery and began to engage in informal arms' length settlement discussions. Through the exchange of information and attendant discussions between the Parties, Plaintiff reviewed time and wage records and relevant policies that applied to the alleged aggrieved employees. Both sides also engaged in discovery through depositions.

16. The Parties engaged in a full day of mediation on March 18, 2022, with a respected wage and hour mediator, Hon. Linda Quinn, after which the Parties agreed to settle the Covered Claims by accepting a mediator's proposal.

17. PAGA Counsel considered the following facts and arguments in determining that the Agreement was fair and reasonable:

a. Defendant's Legal Defenses:

1. Defendant argued that there are not many similarly situated employees that would fall under Plaintiff's PAGA claim as very few employees were classified as exempt.

2. Defendant argued that Plaintiff's PAGA claims are unmanageable and fatally vague, and would be dismissed on that basis. Additionally, with the U.S. Supreme Court's pending decision in *Viking River Cruises v. Moriana* on PAGA waivers in arbitration agreements, it is possible that Plaintiff's PAGA claims would never proceed to trial and instead would be dismissed due to the clear waiver of representative claims in the Parties' Arbitration Agreement.

b. Defendant's Factual Defenses:

1. Defendant argued that there were no violations. Defendant argued that it had compliant wage and hour policies. Defendant also argued it paid its employees for all hours worked. Defendant further argued that to the extent any meal or rest breaks were taken short or late or not at all, it was based on the employee's voluntary choice and there was no violation. Defendant further argued that its classification of some positions as exempt was supported by California law.

2. In accordance with the PAGA (Labor Code § 2699(e)(1) and (e)(2)), the court in a PAGA action has the same discretion “to assess a civil penalty” that the Labor Commissioner would have, as well as complete discretion to “award a lesser amount than the maximum civil penalty amount specified [by PAGA] if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Defendant pointed out that even if Plaintiff could establish liability, a court could reduce any PAGA penalties based on Defendant’s efforts to comply with wage and hour laws.

3. Defendant produced copies of its pertinent policies including safety, overtime, reimbursement, meal and rest period policies as well as payroll records for Plaintiff for purposes of settlement. Defendant argued that Plaintiff’s PAGA claim has little to no value and there are minimal damages due to the fact that there is no continuing PAGA period; only months after Plaintiff’s termination, Defendant’s business was derailed due to the pandemic, the location at which Plaintiff worked shut down, and all employees there were terminated and never rehired.

4. Consequently, while PAGA Counsel disagreed with Defendant’s legal analysis above, PAGA Counsel anticipated that, at trial, Defendant could make a potentially persuasive argument that the Court could exercise its discretion under PAGA to significantly reduce or altogether waive any penalties under PAGA. In consideration of the foregoing facts and arguments and how they might impact any judgment ultimately awarded to Aggrieved Employees if the Court was persuaded by them, PAGA counsel determined that the Agreement was fair and reasonable.

18. The Parties recognize that the issues presented in the Action are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will

cause inconvenience, distraction, disruption, delay, and expense disproportionate to the potential benefits of litigation. The Parties have considered the risk and uncertainty of the outcome inherent in any litigation.

19. Based on their own independent investigations and evaluations, including a full day of mediation on March 18, 2022, with a respected wage and hour mediator, Hon. Linda Quinn, Plaintiff and his respective counsel are of the opinion that the settlement for the consideration and on the terms set forth in this Agreement is fair, reasonable, and adequate and is in the best interests of the Plaintiff, the Aggrieved Employees, the State of California, and Defendant in light of all known facts and circumstances and the risks inherent in litigation, including the potential appellate issues.

20. The purpose of this Agreement is to settle and compromise the Covered Claims that Plaintiff and the Aggrieved Employees have against Defendant and the Releasees (as defined below).

21. In consideration of the mutual covenants, promises and representations set forth in this Agreement, Plaintiff, on behalf of himself and the Aggrieved Employees, agree to settle and compromise the Covered Claims, subject to the terms and conditions set forth in this Agreement.

III. TERMS OF SETTLEMENT

22. Neither the existence of this Agreement nor anything contained in this Agreement shall be construed or deemed as an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant. Nothing herein shall constitute an admission by Defendant that the Covered Claims were properly brought as a representative action other than for settlement purposes. Settlement of the Covered Claims, the negotiation and execution of this Agreement, and all acts performed or documents executed pursuant to or in furtherance of this Agreement or the settlement of the Covered Claims: (a) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendant or of the truth of any of the factual allegations in the operative Complaint in the Action; (b) are not, shall not be

deemed to be, and may not be used as, an admission or evidence of any fault or omissions on the part of Defendant in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal; (c) are not, shall not be deemed to be, and may not be used as, an admission or evidence of the appropriateness of these or similar claims for representative treatment, class certification, or administration other than for purposes of administering this Agreement; and (d) shall not constitute or be deemed a waiver of any right of to compel arbitration of any dispute with an Aggrieved Employee that is not the subject of the releases detailed in this Agreement. Notwithstanding the foregoing, evidence of this Agreement may be admitted and otherwise used in any and all proceedings for the limited purpose of enforcing any or all terms of this Agreement or defending any claims released or barred by this Agreement.

23. The Amount of PAGA Settlement. As consideration for the settlement described herein and the release contained in this Agreement, Defendant agrees to pay a total settlement of \$5,000.00 (“Settlement Payment”), which is due from Defendant to be paid to Plaintiff’s Counsel thirty (30) days after the Effective Date. The Settlement Payment will be allocated as follows:

a. PAGA Counsel’s attorney fees and cost reimbursements in the amount of \$2,000.00 made payable to “Law Offices of Thomas M. Diachenko, APC and delivered to 1916 Third Avenue, San Diego, CA 92101;

b. \$3,000 shall be designated as “PAGA Penalties,” to be allocated 75% to the LWDA and the remaining 25% to the Aggrieved Employees pursuant to Labor Code section 2699(i) as outlined below.

24. Allocation and Calculation of the PAGA Penalties. Each Aggrieved Employee shall receive a portion of the PAGA Penalties on a pro-rata basis as set forth below. The anticipated total “PAGA Penalty Fund” will be \$3,000.00. Seventy-Five percent (75%) of the PAGA Penalty Fund (\$2,250.00) will be paid to the LWDA as required by Labor Code section 2699(i). The remaining Twenty-Five percent (25%) of the PAGA Penalty Fund (anticipated to be \$750.00) will be distributed to Aggrieved Employees on a pro-rata basis based on the formula set forth below.

Each Aggrieved Employee's pro-rata share of the PAGA Penalty Fund represents their Individual Settlement Payment.

a. Individual Settlement Calculation. The Aggrieved Employees shall receive a pro rata share of the PAGA Penalty Fund allocated to Aggrieved Employees. Each Aggrieved Employee shall receive a pro rata value based on the number of pay periods they worked in the Covered Period. All Individual Settlement Payments made to Aggrieved Employees will be reported on an IRS Form 1099.

b. Fair Formula. The Parties recognize and agree that the precise value of each Aggrieved Employee's Individual Settlement Payment is subject to a variety of differing calculations and formulas. The Parties hereby agree that the formula for allocating payments as provided herein is reasonable and designed to provide a fair settlement to the Aggrieved Employees.

25. Tax Treatment of Settlement Amounts. With regard to settlement payments to Aggrieved Employees and Plaintiff, IRS Form 1099s will be issued. Nothing in this Agreement is intended to constitute legal advice regarding federal, state, and/or local tax obligations. Plaintiff acknowledge that he has obtained no tax advice from Defendant, or from PAGA Counsel, and that neither PAGA Counsel, nor Defendant, nor its attorneys, have made any representation concerning the tax consequences, if any, of the Settlement Amount in this Agreement or any payment to be made pursuant to this Agreement. To the extent that this Agreement or any of its attachments is interpreted to contain or constitute advice regarding any state or federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code. Neither PAGA Counsel, nor Defendant, are responsible for any employee tax obligations regarding the allocation of the settlement payments. Payment of PAGA Counsel Fees & Costs will be reflected in a Form 1099 to PAGA Counsel who shall assume full responsibility and liability for the payment of taxes due on such payments.

IV. DISMISSAL WITH PREJUDICE AND RELEASE

26. Dismissal With Prejudice. Within thirty (30) calendar days after Defendant distributes the PAGA Penalties in accordance with this Settlement, Defendant shall provide PAGA Counsel a declaration certifying that Defendant distributed the PAGA penalties in accordance with this Settlement. Within fourteen (14) calendar days after PAGA Counsel receives the declaration from Defendant, Plaintiff shall file with the Court a request for dismissal with prejudice of the first cause of action for the Covered Claims.

27. Release of Claim:

a. Release of Covered Claims By All Aggrieved Employees. Upon the approval by the Court and non-objection by the LWDA of this Agreement, effective on the Effective Date, each Aggrieved Employee (including Plaintiff), shall, for the Covered Period, fully release and forever release and discharge Defendant, its past or present officers, directors, shareholders, members, owners, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys, if any, and any individual or entity which could be jointly liable with Defendant (all such released persons and entities, collectively, "Releasees") from any and all PAGA penalty claims under California Labor Code section 2698 *et seq.* for the time period starting on May 29, 2019, and ending on the Effective Date that have been or could have been asserted in the Action or in the notice letters that Plaintiff sent to the Labor and Workforce Development Agency regarding his claims against Defendant based on the facts and legal theories asserted therein.

V. APPROVAL STIPULATION

28. The Parties recognize that in accordance with Labor Code Section 2699(1), Court approval is required in the event of a settlement of a PAGA action on a representative basis. However, as explained in *Arias v. Superior Court* (2009) 46 Cal.4th 969, the Parties are not

obligated to follow the class action procedural rules in PAGA cases and therefore need not obtain approval of the PAGA settlement through a motion for preliminary or final approval. Instead, in order to comply with the requirements of Labor Code Section 2699(l), the Parties shall submit a joint stipulation, or if the Court rejects the joint stipulation then a motion to the Court, identifying the key terms of this Agreement and requesting that the Court approve the amount of PAGA penalties provided for in the Agreement (“Approval Stipulation”). Counsel for both parties agree to use their best efforts and to cooperate with each other to obtain approval of the settlement according to the terms of this Agreement. The Agreement is contingent upon the approval by the Court. If the Court should fail to approve this Agreement in the form agreed to by the Parties, the Parties agree to coordinate efforts to address the Court’s questions or concerns and resubmit the Approval Stipulation or motion. If (a) the Parties are unable, following good faith efforts, to obtain approval of the terms of the Agreement, or (b) the Court’s approval of this Agreement is reversed, modified, or declared or rendered void, then (i) this Agreement shall be considered null and void; (ii) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect; and (iii) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court. Invalidation of any material portion of this Agreement, shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

VI. ADMINISTERING THE SETTLEMENT

29. Subject to the Court approval of this Agreement, the Settlement Payment shall be paid as follows:

30. No later than thirty (30) calendar days after the Effective Date, Defendant will make the settlement payments in accordance with the terms of this Agreement.

31. Concurrently with sending each Aggrieved Employee their share of the Settlement Amount, Hakkasan will include a “Notice of PAGA Action Settlement” (attached hereto as Exhibit

A) along with each Aggrieved Employee's check. Hakkasan shall send each Aggrieved Employee their check via U.S. First Class mail to each Aggrieved Employee's address with directions to the Postmaster to return all undeliverable mail to Hakkasan. For each returned check/notice that is returned as undeliverable, Defendant shall promptly attempt to locate the Aggrieved Employee's by using an address refresher database.

32. Settlement checks shall remain valid and negotiable for one hundred eighty (180) calendar days from the date of their issuance. If there are uncashed checks following this period, Defendant will send the uncashed funds to the State of California Department of Industrial Relations Unclaimed Wages Fund in the name of the Aggrieved Employee who did not cash his or her check.

VII. NOTICE TO LWDA

33. Plaintiff's Counsel shall be responsible for providing timely notice of the PAGA Settlement to the LWDA in accordance with Labor Code section 2699(1)(2).

34. Plaintiff's Counsel shall be responsible for providing timely notice of the Court's order approving the PAGA Settlement to the LWDA in accordance with Labor Code section 2699(1)(3).

VIII. PARTIES' AUTHORITY

35. The signatories hereto hereby represent that they are fully authorized to enter into this Agreement and bind the Parties hereto to the terms and conditions hereof.

IX. MUTUAL FULL COOPERATION

36. The Parties agree to fully cooperate with each other to accomplish the terms of this Agreement, including, but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts contemplated by this Agreement

and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as practicable after execution of this Agreement, PAGA Counsel shall, with the assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the approval of this Agreement from the Court.

X. NO PRIOR ASSIGNMENTS

37. The Parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein. None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Aggrieved Employee, PAGA Counsel (which includes Plaintiff's Counsel), or Defense Counsel without the express written consent of each other Party and their respective counsel. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement, and shall not be construed to confer any right or to avail any remedy to any other person.

XI. NULLIFICATION

38. If (a) the LWDA timely objects or (b) the Court should for any reason fail to approve this Agreement in the form agreed to by the Parties (except for the amount of attorneys' fees or costs), or (c) the Court's approval of this Agreement is reversed, modified, or declared or rendered void, then (i) this Agreement shall be considered null and void; (ii) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect; and (iii) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court. Invalidation of any material portion of this Agreement, shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

XII. ATTORNEYS' FEES, COSTS AND EXPENSES

39. Except as specifically set forth herein, each Party shall bear its/his/her own attorneys' fees, costs, and expenses, taxable or otherwise, incurred by him/her/it arising out of the Covered Claims, and shall not seek reimbursement thereof from any other Party to this Agreement. However, in the event it becomes necessary for any Party to file a legal action to interpret or enforce this Agreement, then the prevailing Party in such an action shall be entitled to its reasonable legal fees, including reasonable attorneys' fees, reasonable expert fees, and costs.

XIII. CONSTRUCTION

40. The Parties hereto agree that the terms and conditions of this Agreement are the result of lengthy, intensive, arms-length negotiations between the Parties and that this Agreement constitutes the entire agreement between Plaintiff (on behalf of himself and all other Aggrieved Employees) and Defendant regarding actual or potential claims asserted by Plaintiff against Releasees. Excluding Plaintiff's individual Settlement Agreement and Release and any Arbitration or Confidentiality Agreement executed by Plaintiff with Defendant, if any, both of which will remain in full force and effect, this Agreement supersedes all prior agreements, written or oral, between or among the Parties regarding those claims or potential claims and the resolution of those claims. Consequently, no other agreement, statement, or promise made by one Party to another as to any matter addressed in this Agreement shall be binding or valid.

XIV. CAPTIONS AND INTERPRETATIONS

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

XV. MODIFICATION

42. This Agreement may not be amended, changed, altered, or modified, except in writing and signed by the Parties (or their successors-in-interest) hereto. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

XVI. MISCELLANEOUS

43. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns. This Agreement shall be binding on all Aggrieved Employees and the State of California who will be barred from relitigating the claims released in this Agreement.

44. This Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all Parties. The counterparts may be transmitted electronically (PDF) or by facsimile, and may be signed using DocuSign.

45. This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California, irrespective of the State of California's choice of law principles.

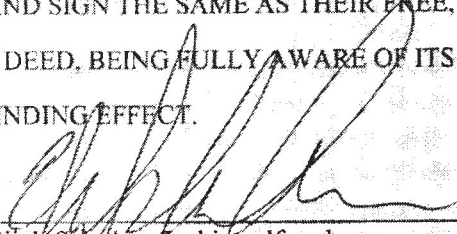
46. The Parties have cooperated in the negotiation and preparation of this Agreement. This Agreement shall not be construed against any Party on the basis that the Party, or the Party's counsel, was the drafter or participated in the drafting of this Agreement.

47. The San Diego County Superior Court shall retain jurisdiction to enforce this Agreement pursuant to California Code of Civil Procedure section 664.6. The Court shall retain continuing jurisdiction over this Action and over all Parties and Aggrieved Employees, to the fullest extent to enforce and effectuate the terms and intent of this Agreement.

48. This Agreement shall not be subject to collateral attack by any Aggrieved Employee. Such prohibited collateral attack shall include, but not be limited to, claims that the Aggrieved Employee failed, for any reason, to timely receive his or her Individual Settlement Payment.

THE PARTIES HAVE READ THE FOREGOING AGREEMENT. THEY HAVE CONSULTED WITH LEGAL COUNSEL REGARDING THE FOREGOING AGREEMENT AND KNOW THE CONTENTS THEREOF AND SIGN THE SAME AS THEIR FREE, KNOWING, AND VOLUNTARY ACT AND DEED, BEING FULLY AWARE OF ITS CONSEQUENCES AND ITS FINAL AND BINDING EFFECT.

DATED: 4.7.22


Elijah Scholer, for himself and as a
Representative of other Aggrieved Employees

DATED: 4/8/22

HAKKASAN HOLDINGS, LLC,

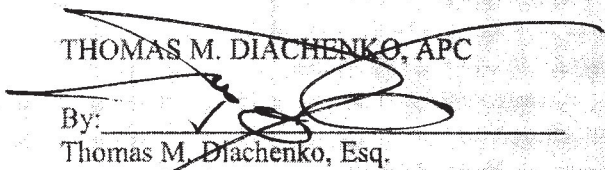
By: Deanna Brinkerhoff

Title & Name: Deanna Brinkerhoff, VP, Legal & Bus. Affairs

APPROVED AS TO FORM ONLY:

DATED: 4/8/22

THOMAS M. DIACHENKO, APC

By: 
Thomas M. Diachenko, Esq.
Attorney for Plaintiff and Aggrieved Employees

DATED: 04/07/2022

W LAW

By: 
Jason Whooper, Esq.
Attorney for Plaintiff and Aggrieved Employees

DATED: April 8, 2022

CALL & JENSEN, APC

By Julie R. Trotter
Julie Trotter, Esq.
Attorneys for Defendant, HAKKASAN
HOLDINGS, LLC