

PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT AGREEMENT AND RELEASE

This Private Attorneys General Act Settlement and Release Agreement (“Agreement”) is made and entered into by Plaintiffs Andrea Aguari and Tobin Bell (collectively referred to as “Plaintiffs”) and Defendants Benihana International, Inc., Benihana National Corp., and Benihana Carlsbad Corp., (collectively referred to as “Defendants”).

RECITALS

WHEREAS, on or about June 8, 2020, Plaintiff Tobin Bell transmitted a letter to the California Labor and Workforce Development Agency (“LWDA”) asserting that Defendants failed to comply with various provisions of the California Labor Code (the “PAGA Notice”) giving rise to penalties pursuant to the California Labor Code Private Attorneys General Act (“PAGA”) as set forth in California Labor Code §2698 *et. seq.*, on behalf of all current and former employees of Defendants in California who were employed by Defendants at any time from October 13, 2019, through the date of approval of this settlement for asserted violations of California Labor Code subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of and subdivision (e) of Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.

WHEREAS, on October 13, 2020, Plaintiffs filed a Complaint in San Diego County Superior Court, entitled *Tobin Bell, et al. v. Benihana International, Inc., et al.*, San Diego County Superior Court, Case No. 37-2020-0036597-CU-OE-CTL, alleging PAGA violations for: (1) unpaid wages; (2) unpaid overtime compensation; (3) failure to maintain accurate payroll records; (4) failure to provide accurate itemized wage statements; (5) failure to provide meal and rest periods; (6) failure to timely pay final wages upon termination or discharge; and (7) failure to reimburse for work-related expenses (the “Complaint”).

WHEREAS, on December 3, 2021, Plaintiffs filed a First Amended Complaint alleging a violation for failure to reimburse for work-related expenses (the “First Amended Complaint”).

WHEREAS, the PAGA Notice, the Complaint, and the First Amended Complaint will hereinafter be referred to jointly as the “Lawsuit,” and are attached hereto as **Exhibit A**.

WHEREAS, Defendants deny any liability or wrongdoing of any kind associated with the claims alleged in the Lawsuit and those released as part of the Settlement.

WHEREAS, Defendants further deny that, for any purpose other than settling the Lawsuit, the Lawsuit is appropriate for representative treatment. Defendants maintain, among other things, that they have complied with federal and California law in all respects. Nothing in this Settlement Agreement shall be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendants.

WHEREAS, as part of this Settlement, Plaintiff Bell will amend the PAGA letter sent to the LWDA on June 8, 2020, to add Plaintiff Aguari.

NOW THEREFORE IN CONSIDERATION of the promises and warranties set forth below, and intending to be legally bound and acknowledging the sufficiency of the consideration and undertakings set forth below, Plaintiffs Andrea Aguari and Tobin Bell, individually and as representatives of the State of California, and Defendants agree that the Lawsuit shall be, and is, finally and fully compromised and settled on the following terms and conditions:

1. **Definition of PAGA Employees.** The PAGA Employees are defined as: All current and former employees of Defendants employed in California at any time from October 13, 2019, through the date the settlement is approved by the Court (“PAGA Settlement Approval”).

2. **Definition of PAGA Period.** The PAGA Period is defined as the period from October 13, 2019, through the date of PAGA Settlement Approval.

3. **PAGA Counsel.** The Parties agree that Settlement PAGA Counsel shall be Jacob N. Whitehead.

4. **Non-Certification of Claims.** The Parties are not certifying any PAGA claims. The PAGA Employees have no right to opt out of the Settlement.

5. **Approval of PAGA Settlement and Stipulation And Dismissal Of Action As Condition Precedent.** In conjunction with this Agreement, the Parties are filing with the Court a Stipulation for Approval of PAGA Settlement and Dismissal of Action (“PAGA Settlement and Stipulation”) by which the Parties resolve, settle and discharge the Lawsuit on an individual basis with prejudice and dismissing the representative claims with prejudice subject to Court approval. This Agreement is contingent upon execution by the Parties and approval by the Court of the PAGA Settlement and Stipulation. The Court’s unconditional approval of the PAGA Settlement and Stipulation and dismissal of the Lawsuit as set forth above is an express condition precedent to Defendants and Plaintiffs’ obligations under this Agreement (including, but not limited to, all payment obligations). The Parties will cooperate in good faith to obtain approval of the Agreement. If the Agreement is not unconditionally approved by the Court after these efforts, then : (1) this Agreement shall be null and void; (2) neither the Settlement nor any of the

related negotiations or proceedings shall be of any force or effect; and (3) all Parties to the Settlement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court.

6. **Release of PAGA Claims.** Upon approval of the settlement by the Court, the claims released by the PAGA Employees will include all claims pleaded in the Lawsuit and any PAGA letter sent to the LWDA by Plaintiffs during or prior to the Lawsuit, and which could have been alleged under the same or similar facts, allegations and/or claims pleaded in the Lawsuit, against the Released Parties (as defined below), for work performed during the PAGA Period, including the following:

(a) The Claims set forth in the First Amended Complaint, specifically any alleged Violation of the California Private Attorneys General Act of 2004 (Labor Code § 2698, et seq.) for failure to reimburse necessary work-related expenses, which is predicated on the same or similar facts and/or claims alleged in any PAGA letter sent to the LWDA by Plaintiffs during or prior to the Lawsuit relating to the failure of any or all Defendants to reimburse necessary work-related expenses, as well as any claims that could have been pled which relate to such claims or arise from the same or similar facts concerning the Plaintiffs, including any expenses associated with use of cell phones, use or purchase of computer devices or related equipment, purchase of applications, internet service, use of personal vehicle, as well as any claims under the California Labor Code and California Industrial Welfare Commission Wage Orders that were alleged or which could have been alleged under the same or similar facts; and

(b) With respect to the Released Claims only, this release also includes such claims whether known or unknown, whether anticipated or unanticipated, including such claims that PAGA Employees did not know or suspect to exist in their favor that accrued on or before the date of PAGA Settlement Approval.

(c) The claims set forth in subparagraphs (a)-(b) hereinabove shall be collectively referred to as the “Released Claims.”

7. **The Released Parties.** Plaintiffs individually and on behalf of themselves only freely, knowingly and voluntarily release and forever discharge Defendants and any of their past, present and future direct or indirect parents, subsidiaries, predecessors, successors and affiliates, including but not limited to Benihana Carlsbad Corp., Benihana Downey Corp., Benihana Encino Corp., Benihana International Inc., Benihana Marina Corp., Benihana National Corp., Benihana of Puente Hills Corp., Benihana Ontario Corp., Benihana Santa Anita Corp., Benihana Sunrise Corporation, RA Sushi Chino Hills Corp., RA Sushi Corona Corp., RA Sushi Tustin Corp., as well as each of its past, present and future officers, directors, employees, partners, members, shareholders and agents, attorneys, insurers, reinsurers, and any individual or entity which could be jointly liable with Defendants (“Released Parties”).

8. **Release of Claims as to Plaintiffs.** In addition, as to the claims of Plaintiffs only, the Released Claims further include, without limitation, any and all claims pled in the Lawsuit or that could have been pled in the Lawsuit based upon the alleged claims or the same or similar facts alleged in the Complaint, the First Amended Complaint or which is predicated on the same or

similar facts and/or claims alleged in any PAGA letter sent to the LWDA by Plaintiffs during or prior to the Lawsuit. Plaintiffs shall be deemed to have, and by operation of the Judgment shall have, expressly waived and relinquished to the fullest extent permitted by law the provisions, rights, and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law that purports to limit the scope of a general release. Plaintiffs, for themselves, have read Section 1542 of the Civil Code of the State of California, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH 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.

Plaintiffs understand that Section 1542 gives the right not to release existing claims of which they are not now aware, unless Plaintiffs voluntarily chooses to waive this right. Having been so apprised, Plaintiffs nevertheless voluntarily waives the rights described in Section 1542, and elect to assume all risks for claims that now exist in their favor, known or unknown. The release of the claims of Plaintiffs as set forth in this Paragraph is a condition precedent to enforcement of this the Settlement Agreement.

9. Settlement Payment/Consideration.

(a) Defendants agree to pay Fifty-Six Thousand Eight Hundred Seventy-Five Dollars (\$56,875.00) (the "Gross Settlement Amount") to resolve the claims of the PAGA Employees. The Gross Settlement Amount will include all payments to be made to the Labor and Workforce Development Agency ("LWDA"), the PAGA Employees, attorneys' fees, costs approved by the Court, and the enhancement award to Plaintiffs Andrea Aguari and Tobin Bell ("Plaintiffs"). In no event shall Defendants be liable for the payment of any amounts exceeding the Gross Settlement Amount.

(b) The Gross Settlement Amount less proposed attorneys' fees, costs, Award to Plaintiffs, and PAGA payment to the LWDA, shall constitute the "Net Settlement Amount." The Net Settlement Amount will be distributed to all PAGA Employees. There will be no claims process and no reversion.

10. Attorneys' Fees and Expenses, and Enhancement Awards.

Settlement PAGA Counsel may petition the Court for attorneys' fees not to exceed 40% from the Gross Settlement Amount, plus reasonable costs/expenses not to exceed Ten Thousand Dollars (\$10,000.00), subject to approval by the Court. Attorneys' fees paid pursuant to this Settlement Agreement shall be inclusive of all fees in this matter. Defendants agree not to object to Settlement PAGA Counsel's fees up to 40% from the Gross Settlement Amount and reasonable costs/expenses approved by the Court not to exceed Ten Thousand Dollars (\$10,000.00), which shall also be included in the Gross Settlement Amount. Any reduction by the Court of Settlement

PAGA Counsel's claimed attorneys' fees and/or reasonable costs/expenses shall not be sufficient grounds to void the Settlement.

(a) The Gross Settlement Amount after payment of PAGA Counsel's claimed attorneys' fees and/or reasonable costs/expenses and Awards shall be the Net Settlement Amount. Seventy five percent of the Net Settlement Amount shall be paid 75% to the LWDA as a PAGA payment, and with the remaining 25% of the Net Settlement Amount distributed to the PAGA Employees (the "Net PAGA Payment"). The allocation of the Net PAGA Payment to the PAGA Employees shall be allocated pro rata on a per pay period basis equally to all PAGA Employees. The PAGA Employees shall release their PAGA claims in their entirety and may not opt out of or object to the PAGA release.

(b) The Parties agree that the PAGA payment distributed to each PAGA Employees will be treated entirely as civil penalties and will be reported as such to each PAGA Employees on an IRS Form 1099 misc., if applicable.

(c) Defendants agree not to object to an award to the Plaintiffs from the Gross Settlement Amount. Subject to the Court's approval, the amount of the award will not exceed Five Thousand Dollars and No Cents (\$5,000.00) for each Plaintiff (the "Award"). The Award is meant to be consideration for the release of Claims by each Plaintiff's individual wage and hour claims.

11. **Allocation of Net Settlement Amount.** Within thirty (30) calendar days of the Effective Date (as defined below), Defendants shall distribute the monies identified in section 10, subsections (a) and (c) of this Agreement, 75% of the Net Settlement Amount to the LWDA, and the portion to the PAGA Employees (*i.e.*, 25% of the Net Settlement Amount) as follows:

(a) Each PAGA Employee working at least one regular hour during a pay period shall receive one (1) share for that pay period. The total number of shares shall be added up for each PAGA Employee and divided by the total number of shares across all PAGA Employees to get the percentage share for that PAGA Employee of the Net PAGA Payment to the PAGA Employees. The number resulting from taking the percentage share for an individual PAGA Employee times the 25% of the Net Settlement Amount to the PAGA Employees, rounded to the nearest cent, shall be the amount that each PAGA Employee is eligible to receive. Defendants will use payroll data for the PAGA Employees during the PAGA Period to facilitate this calculation.

(b) Upon the funding of the Gross Settlement Amount, all PAGA Employees shall be deemed to have released their PAGA claims in their entirety.

12. **No Settlement Administrator.** The parties will not use a Settlement Administrator; instead, Defendants will administer payment to the LWDA and the PAGA Employees.

(a) Within thirty (30) calendar days from the Effective Date, Defendants shall: (i) run the names of all former PAGA Employees through the National Change of Address (“NCOA”) database to determine any updated addresses for PAGA Employees; (ii) update the addresses of any PAGA Employees for whom an updated address was found through the NCOA search; and (iii) mail the Settlement Packet (comprised of the Notice of Settlement Award and individual PAGA Payment to the respective PAGA Employee) to each PAGA Employee at his or her last known address or at the updated address found through the NCOA search and retain proof of mailing. Defendant will arrange delivery of the individual PAGA Payment to any currently employed PAGA Employee based upon their internal records.

(b) A PAGA Employee must cash his or her Individual Settlement Payment check within one hundred eighty (180) calendar days after it is mailed to him or her. If a check is returned to Defendants, Defendants will make all reasonable efforts to re-mail it to the PAGA Employee at his or her correct address. If any PAGA Employee’s Individual Settlement Payment check is not cashed within one hundred twenty (120) days of its initial issuance to the PAGA Employee, Defendants will send the PAGA Employee a postcard, dated one hundred twenty (120) days from the initial mailing, informing him or her that, unless the check is cashed within sixty (60) days of the date of this postcard, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed. If the check remains uncashed by the expiration of the 60-day period after this interim notice, Defendants will keep an accounting of such funds, including the identification of the PAGA Employee. Defendants will then transmit said funds to the State of California State Controller’s Office Unclaimed Property Fund, in the PAGA Employee’s name to be held as unclaimed property for the PAGA Employee. In such event, the PAGA Employee will nevertheless remain bound by the Settlement Agreement and the releases contained herein.

13. Subject to the obligation(s) of mutual full cooperation set forth herein, either Plaintiffs or Defendants may terminate this Settlement if after submitting the settlement for approval to the Court, any Court declines to enter the approval order, or judgment in substantially the form submitted by the Parties, or if the Stipulation of Settlement as agreed does not become final because of appellate court action. The terminating Party shall give to the other Party (through its/their counsel) written notice of its decision to terminate no later than fourteen (14) calendar days after receiving notice that one of the enumerated events has occurred. Termination shall have the following effects:

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

(b) In the event the Settlement Agreement is terminated, Defendants shall have no obligation to make any payments to any Party, PAGA Employee or attorney.

(c) The approval order and judgment shall be vacated.

(d) The Stipulation of Settlement and all negotiations, statements and proceedings relating thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be restored to their respective positions prior to the Settlement.

(e) Except as otherwise discoverable, neither this Settlement Agreement nor any ancillary documents, actions, statements or filings in furtherance of settlement (including all matters associated with the mediation) shall be admissible or offered into evidence in the Lawsuit or any other action for any purpose whatsoever.

14. **Effective Date.** The Effective Date of the Settlement shall mean the later of the following events: five (5) calendar days after the period for filing any appeal, writ, or other appellate proceeding opposing Approval has elapsed without any appeal, writ, or other appellate proceeding having been filed, i.e., sixty-five (65) days from the date the court grants approval and enters judgment; or, if any appeal, writ, or other appellate proceeding opposing Approval has been filed, five (5) business days after any appeal, writ, or other appellate proceedings opposing the Settlement has finally and conclusively dismissed with no right to pursue further remedies or relief. Thirty (30) calendar days after the Effective Date, Defendants will prepare a PAGA Employee list. Subsequently, within five (5) business days, Defendants will make all payments set out in this Settlement Agreement.

15. **LWDA Notification.** Plaintiffs will timely provide the notifications and submission to the LWDA as required by Labor Code section 2699(l).

16. **Taxes; Indemnification.** Plaintiffs acknowledge and agree that Defendants have not made any representations regarding the tax consequences of any payment made pursuant to this Agreement. Plaintiffs agree that they are responsible for payment of any and all taxes on the payments made pursuant to this Agreement. Plaintiffs further agree to indemnify, hold harmless and defend Defendants against any and all claims, demands, or liabilities that may be asserted by any governmental agency (including but not limited to any local, state or federal taxing authority or agency) against Defendants for any federal, state or local taxes or penalties that may be payable as a result of any payment made pursuant to this Agreement. In addition, Plaintiffs agree to pay any and all interest or penalties charged to or assessed against Defendants based on any payment made pursuant to this Agreement.

17. **No Admission Of Liability.** This PAGA Settlement Agreement shall not be construed as an admission by Defendants or the Releasees of liability or of any violation of the rights of Smith or any person, or of any violation of any law, statute, duty or order whatsoever. Defendants and the Releasees do not admit that they ever violated any provision of the California Labor Code, including, but not limited to, those sections for which Plaintiffs seek relief, including under the PAGA, or of any other law. Defendants and the Releasees specifically disclaim any liability to Smith or any other person, including any allegedly aggrieved employees, for any violation of any contract, law, statute, duty, order, or any other basis. This PAGA Settlement shall not be used or offered as evidence to establish liability against Defendants or the Releasees in any subsequent action or proceeding; provided, however, this shall not prevent the PAGA Settlement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize the PAGA Settlement.

18. **Severance.** If any provision of this Agreement is held to be invalid by a court of competent jurisdiction, that provision shall be deemed severed and deleted from this Agreement, and neither that provision nor its severance and deletion shall affect the validity of the remaining provisions. Notwithstanding the foregoing, no portion of any release contained herein may be deemed severed or deleted from this Agreement, except upon waiver in writing by the applicable all Releasees. If such release is found to be invalid, this entire Agreement shall be deemed null and void.

19. **Choice of Law.** This PAGA Settlement Agreement is to be interpreted pursuant to the laws of California, except where the application of federal law applies.

20. **Counterparts/Facsimile Signatures.** This PAGA Settlement Agreement may be executed in counterparts, and signatures exchanged by facsimile or other electronic means (e.g., PDF) shall be effective for all purposes hereunder to the same extent as original signatures, all of which when taken together shall constitute the Agreement. Any Party who delivers a facsimile or PDF signature page agrees to later deliver an original signature page to any Party who requests it.

21. **Duties of the Parties Prior to Approval.** Promptly upon execution of this Settlement, Plaintiffs shall apply to the Court for approval of the proposed Settlement. Plaintiffs shall apply to the Court for the entry of an order approving this Settlement as required by Labor Code section 2699(l). The PAGA Settlement and Stipulation will request Court approval of the following: (1) the terms of this Agreement, (2) the amount of fees and costs to Plaintiffs' counsel, and (3) final Judgment. In conjunction with the PAGA Settlement and Stipulation, Plaintiffs shall submit a proposed Final Judgment requesting the entry of judgment.

22. **Nondisclosure and Nonpublication.** Plaintiffs agree not to publicize the Agreement, the fact of the Agreement, its terms or contents, and the negotiations underlying the Agreement, in any manner or form, directly or indirectly, to any person or entity, beyond filing the Agreement with the Court and submitting a copy to the LWDA.

23. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

24. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof. Any representation, promise or agreement not specifically included in this Agreement shall not be binding upon or enforceable against either Party. This is a fully integrated agreement. No other promises or agreements shall be binding or shall modify this Agreement unless in writing and signed by the Parties.

25. **Cooperation.** Each Party, on behalf of themselves, and their respective business entities, heirs, executors, and assigns, agrees that they will abide by this Agreement and will do all such acts, and prepare, execute, and deliver all such documents, as may be reasonably required to carry out the stated objectives of this Agreement.

Having read, understood, and agreed to the foregoing terms and conditions, the Parties hereby voluntarily execute this PAGA Settlement Agreement by placing their signatures below.

1/23/2023

Dated



Andrea Aguari

1/23/2023

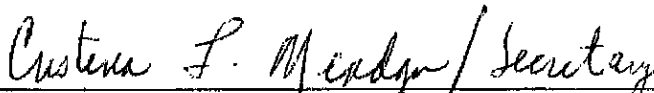
Dated



Tobin Bell

2/9/2023

Dated

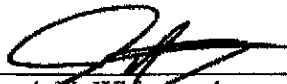


Cristina L. Mendez / Secretary
Benihana International, Inc., Benihana National Corp.,
and Benihana Carlsbad Corp.,

Approved as to form:

01/24/2023

Dated



Jacob N. Whitehead
Counsel for Plaintiffs Andrea Aguari and Tobin Bell

3/17/2023

Dated



Elizabeth Staggs-Wilson
Counsel for Defendants Benihana International, Inc.,
Benihana National Corp., and Benihana Carlsbad
Corp.,