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Attorneys for Plaintiff, JORGE GARCIA MORALES,
on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

JORGE GARCIA MORALES, on behalf of
himself and all others similarly situated,

Plaintiffs,

v.

BALDY’S RESTAURANT GROUP, LLC, a
California limited liability company, doing
business as LITTLE FATTY; DAVID KUO,
an individual; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 20STCV36535

[Assigned to the Hon. Kenneth R. Freeman in
Dept. 14]

**FIRST AMENDED JOINT STIPULATION
RE: CLASS ACTION AND
REPRESENTATIVE ACTION
SETTLEMENT**

ACTION FILED: September 23, 2020

TRIAL DATE: None set

This First Amended Joint Stipulation re: Class Action and Representative Action
Settlement (“Settlement” or “Agreement” or “Settlement Agreement”) is made by and between
plaintiff JORGE GARCIA MORALES (“Plaintiff”) individually and on behalf of the Settlement
Class, as defined below, on the one hand; and defendants Baldy’s Restaurant Group, LLC, doing

business as Little Fatty (“Defendant Baldy”), and David Kuo (“Defendant Kuo” and collectively with Defendant Baldy, “Defendants”), on the other hand, in the lawsuit entitled *Jorge Garcia Morales v. Baldy’s Restaurant Group, LLC, et. al.*, filed in Los Angeles County Superior Court, Case No. 20STCV36535 (the “Action”). Plaintiff and Defendants shall be, at times, collectively referred to as the “Parties”. This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge and settle the claims as set forth herein, based upon and subject to the terms and conditions of this Agreement.

1. DEFINITIONS

A. “Action” means *Jorge Garcia Morales v. Baldy’s Restaurant Group, LLC, et. al.*, filed in Los Angeles County Superior Court, Case No. 20STCV36535.

B. “Aggrieved Employees” means Class Members working for Defendants during the PAGA Period as non-exempt, hourly-paid employees.

C. “Class Counsel” means: David D. Bibiyan of Bibiyan Law Group, P.C. The term “Class Counsel” shall be used synonymously with the term “Plaintiff’s Counsel.”

D. “Class Period” means the period from September 23, 2016 through April 9, 2021.

E. “Court” means the Superior Court of the State of California for the County of Los Angeles.

F. “Final Approval Date” means the later of: (1) the date the Court signs an Order granting final approval of this Settlement (“Final Approval”) and Judgment; (2) if there is an objector, 60 days from the date the Final Approval and Judgment; or (3) to the extent any appeals have been filed, the date on which they have been resolved or exhausted.

G. “Defendants” means Baldy’s Restaurant Group, LLC and David Kuo.

H. “Employer Taxes” means employer-funded taxes and contributions imposed on the wage portions of the Individual Settlement Payments under the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, and any similar state and federal taxes and contributions required of employers, such as for unemployment insurance.

I. “General Release” means the broader release of claims by Plaintiff, which is in addition to his limited release of claims as a Participating Class Member.

1 **J. “Gross Settlement Amount”** means a non-reversionary fund in the sum of One
2 Hundred Fifty Dollars and Zero Cents (\$150,000.00),¹ which shall be paid by Defendants, and
3 from which all payments for the Individual Settlement Payments to Participating Class Members,
4 Individual PAGA Payments to Aggrieved Employees and the Court-approved amounts for
5 attorneys’ fees and reimbursement of litigation costs and expenses to Class Counsel, Settlement
6 Administration Costs, a Service Award to Plaintiff, and the LWDA Payment for resolution of
7 Plaintiff’s cause of action for civil penalties under the Labor Code Private Attorneys’ General
8 Act, codified at Labor Code Section 2698, *et seq.* (“PAGA”), interest and certain taxes shall be
9 paid. It expressly excludes Employer Taxes, which shall be paid by Defendants separate and
10 apart from the Gross Settlement Amount.

11 **K. “Individual PAGA Payment”** means a payment made to an Aggrieved
12 Employee of his or her share of the PAGA Payment, which may be in addition to his or her
13 Individual Settlement Share.

14 **L. “Individual Settlement Payment”** means a payment to a Participating Class
15 Member of his or her net share of the Net Settlement Amount, excluding any PAGA Payment to
16 which he or she may be entitled if he or she is also an Aggrieved Employee.

17 **M. “Individual Settlement Share”** means the gross amount of the Net Settlement
18 Amount that a Settlement Class Member is eligible to receive based on the number of Weekly
19 Pay Periods that he or she worked as a Settlement Class Member during the Class Period if he or
20 she does not submit a timely and valid Request for Exclusion, excluding any PAGA Payment to
21 which he or she may be entitled if he or she is also an Aggrieved Employee.

22 **N. “LWDA Payment”** means the payment to the State of California Labor and
23 Workforce Development Agency (“LWDA”) for its seventy-five percent (75%) share of the total
24 amount allocated toward penalties under the PAGA all of which is to be paid from the Gross
25 Settlement Amount. The Parties have agreed that Ten Thousand Dollars and Zero Cents
26 (\$10,000.00) shall be allocated toward PAGA penalties, of which Seven Thousand Five Hundred
27

28 ¹ As the same may be increased in accordance with Paragraph 17, below.

Dollars and Zero Cents (\$7,500.00) will be paid to the LWDA (*i.e.*, the LWDA Payment) and Two Thousand, Five Hundred Dollars and Zero Cents (\$2,500.00) will be paid to Aggrieved Employees on a *pro rata* basis based on the Workweeks worked in the PAGA Period, as further set out herein.

O. “Net Settlement Amount” means the portion of the Gross Settlement Amount that is available for distribution to Participating Class Members after deductions for the Court-approved allocations for Settlement Administration Costs, a Service Award to Plaintiff, an award of attorneys’ fees, reimbursement of litigation costs and expenses to Class Counsel, and the LWDA Payment. It excludes the PAGA Payment.

P. “Operative Complaint” or “Complaint” means the First Amended Class Action Complaint that was filed with the Court on February 25, 2021.

Q. “PAGA Payment” is the \$2,500 payment payable to Aggrieved Employees, which would be in addition to their Individual Settlement Share so long as they do not opt out of the Settlement.

R. “PAGA Period” means the period from July 24, 2019 through April 9, 2021.

S. “Participating Class Members” means all Settlement Class Members who do not submit a timely and valid Request for Exclusion.

T. “Participating Individual Settlement Share” means the gross amount of the Net Settlement Amount that a Participating Class Member is eligible to receive based on the number of Workweeks that he or she worked as a Settlement Class Member during the Class Period once all opt-outs have been factored in, excluding any Individual PAGA Payment to which he or she may be entitled if he or she is also an Aggrieved Employee.

U. “Parties” shall refer to Plaintiff and Defendants collectively.

V. “Plaintiff”, “Named Plaintiff” or “Class Representative” shall refer to Jorge Garcia Morales.

W. “Preliminary Approval Date” means the date on which the Court enters an Order granting preliminary approval of the Settlement.

1 **X. “Released Parties”** shall mean Defendants and each of their past, present, and
2 future respective subsidiaries, dba’s, affiliates, parents, insurers and reinsurers, and company-
3 sponsored employee benefit plans of any nature and their successors and predecessors in interest,
4 including all of their officers, directors, shareholders, employees, agents, principals, heirs,
5 representatives, accountants, auditors, consultants, attorneys, administrators, fiduciaries,
6 trustees, and agents.

7 **Y. “Response Deadline”** means the deadline for Settlement Class Members to mail
8 any Requests for Exclusion, objections, or Workweek Disputes to the Settlement Administrator,
9 which is forty-five (45) calendar days from the date that the Class Notice is first mailed in English
10 and Spanish by the Settlement Administrator, unless a Class Member’s notice is re-mailed. In
11 such an instance, the Class Member shall have fifteen (15) days from the re-mailing, or forty-
12 five (45) days from the date of the initial mailing, whichever is later, in which to postmark a
13 Request for Exclusion, Workweek Dispute or Objection. The date of the postmark shall be the
14 exclusive means for determining whether a Request for Exclusion, objection, or Workweek
15 Dispute was submitted by the Response Deadline.

16 **Z. “Request for Exclusion”** means a written request to be excluded from the
17 Settlement Class pursuant to Section 9.C below.

18 **AA. “Service Award”** means monetary amounts to be paid to Plaintiff of up to Seven
19 Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00), which subject to Court approval,
20 will be paid out of the Gross Settlement Amount.

21 **BB. “Settlement Administration Costs”** means all costs incurred by the Settlement
22 Administrator in administration of the Settlement, including, but not limited to, translating the
23 Class Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English
24 and Spanish, calculating Individual Settlement Shares, Individual Settlement Payments, and
25 Individual PAGA Payments, as well as associated taxes and withholdings, providing
26 declarations, generating Individual Settlement Payment checks and related tax reporting forms,
27 doing administrative work related to unclaimed checks, transmitting payment to Class Counsel
28 for the Court-approved amounts for attorneys’ fees and reimbursement of litigation costs and

1 expenses, to Plaintiff for his Service Award, and to the LWDA for the LWDA Payment,
2 providing weekly reports of opt-outs, objections and related information, and any other actions
3 of the Settlement Administrator as set forth in this Agreement, all pursuant to the terms of this
4 Agreement. The Settlement Administration Costs are estimated not to exceed \$7,500.00. If the
5 actual amount of the Settlement Administration Costs is less than \$7,500.00, the difference
6 between \$7,500.00 and the actual Settlement Administration Costs shall be a part of the Net
7 Settlement Amount. If the Settlement Administration Costs exceed \$7,500.00, then such excess
8 will be paid solely from the Gross Settlement Amount and Defendant will not be responsible for
9 paying any additional funds in order to pay these additional costs.

10 **CC. “Settlement Administrator”** means the Third-Party Administrator mutually
11 agreed upon by the Parties that will be responsible for the administration of the Settlement
12 including, without limitation, translating the Class Notice in Spanish, the distribution of the
13 Individual Settlement Payments to be made by Defendants from the Gross Settlement Amount
14 and related matters under this Agreement.

15 **DD. “Settlement Class” or “Settlement Class Members”** means all current and
16 former non-exempt, hourly paid employees who worked in California for Defendants at any time
17 during the Class Period.

18 **EE. “Workweeks”** means the number of workweeks that a Settlement Class Member
19 was employed by Defendants in a non-exempt, hourly position during the Class Period, based on
20 hire dates, re-hire dates, and termination dates. If a Settlement Class Member disputes his/her
21 Individual Settlement Share, it shall be termed a “Workweek Dispute.”

22 **2. BACKGROUND**

23 **A.** On July 24, 2020, Plaintiff filed with the LWDA and served on Defendants a
24 notice under Labor Code section 2699.3 (the “PAGA Notice”) stating he intended to serve as a
25 proxy of the LWDA to recover civil penalties for aggrieved employees. The PAGA Notice
26 includes violations of law originally pled in the Action referenced below, plus a request for
27 penalties for failure to comply with Labor Code sections 204, 246, 432, 1174, 1198.5, and 2810.5.
28 A true and correct copy of the PAGA Notice is attached hereto as **Exhibit “A”**.

1 **B.** On September 23, 2020, Plaintiff filed a putative wage-and-hour class action and
2 representative action complaint against Defendants. Plaintiff alleges that during the Class Period,
3 with respect to Plaintiff and the Settlement Class Members, Defendants, *inter alia*, failed to pay
4 the Settlement Class Members' overtime wages and minimum wages for all hours worked and/or
5 recorded; failed to provide compliant meal and rest periods and associated premium payments;
6 failed to issue compliant and accurate itemized wage statements; failed to timely pay all wages
7 due and owing at the time of termination or resignation; failed to reimburse necessary work
8 expenses; and engaged unfair competition based on the alleged Labor Code Violations.

9 **C.** On February 25, 2021, after sixty-five (65) days passed without any
10 communication from the LWDA, Plaintiff amended the complaint in the Action to add among
11 other things, a cause of action under PAGA for civil penalties based on alleged violations of the
12 California Labor Code, on behalf of himself and all other PAGA Employees.

13 **D.** Thereafter, the Parties agreed to exchange informal discovery and attend an early
14 mediation, in which Plaintiff was provided with, among other things: (1) time and payroll records
15 for all 173 Class Members working for Defendant at the time of the exchange; (2) hire dates,
16 termination dates, final rates of pay, and contact information for those Class Members; (3) two
17 versions of an Employee Handbook and a Spanish language Employee Manual; and (4)
18 Plaintiff's personnel file.

19 **E.** On April 9, 2021, the Parties participated in a full-day mediation before Nikki
20 Tolt, Esq. a well-regarded mediator experienced in mediating complex labor and employment
21 matters. Thereafter, the Parties remained engaged in on-going discussions with the mediator that
22 saw the exchange of extensive documentation from Defendants regarding their financial
23 condition and ability to fund a class-wide litigation and/or pay a class-wide judgment. After a
24 review by Kenneth Creal – a third party forensic accountant selected by Plaintiff – of the
25 documents and information provided by Defendants, and further aid of mediator Nikki Tolt, the
26 Parties reached the Settlement to resolve the Action.

27 **F.** Class Counsel has conducted significant investigation of the law and facts relating
28 to the claims asserted in the Action and the PAGA Notice and has concluded that that the

1 Settlement set forth herein is fair, reasonable, adequate, and in the best interests of the Settlement
2 Class, taking into account the sharply contested issues involved, the expense and time necessary
3 to litigate the Action through trial and any appeals, the risks and costs of further litigation of the
4 Action, the risk of an adverse outcome, the uncertainties of complex litigation, the information
5 learned through informal discovery regarding Plaintiff's allegations, and the substantial benefits
6 to be received by the Settlement Class Members.

7 **G.** Defendants have concluded that, because of the substantial expense of defending
8 against the Action, the length of time necessary to resolve the issues presented herein, the
9 inconvenience involved, and the concomitant disruption to its business operations, it is in its best
10 interest to accept the terms of this Agreement. Defendants deny each of the allegations and
11 claims asserted against it in the Action and the PAGA Notice. However, Defendants nevertheless
12 desire to settle the Action for the purpose of avoiding the burden, expense and uncertainty of
13 continuing litigation and for the purpose of putting to rest the controversies engendered by the
14 Action.

15 **H.** This Agreement is intended to and does effectuate the full, final, and complete
16 resolution of all Class Released Claims of Plaintiff and Participating Class Members, and all
17 PAGA Released Claims of Plaintiff and, to the extent permitted by law, of the State of California
18 and Aggrieved Employees.

19 **3. JURISDICTION**

20 The Court has jurisdiction over the Parties and the subject matter of the Action. The
21 Action includes claims that, if proven, would authorize the Court to grant relief pursuant to the
22 applicable statutes. After the Court has granted Final Approval of the Settlement and entered
23 judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment
24 pursuant to California Rule of Court, rule 3.769, subdivision (h).

25 **4. STIPULATION OF CLASS CERTIFICATION**

26 The Parties stipulate to the certification of the Settlement Class under this Agreement for
27 purposes of settlement only.

28 **5. MOTION FOR PRELIMINARY APPROVAL**

1 Plaintiff will move for an order granting preliminary approval of the Settlement,
2 approving and directing the mailing of the proposed Notice of Class Action Settlement (“Class
3 Notice”) attached hereto as **Exhibit “B”**, conditionally certifying the Settlement Class for
4 settlement purposes only, and approving the deadlines proposed by the Parties for the submission
5 of Requests for Exclusion, Workweek Disputes, and objections, the papers in support of Final
6 Approval of the Settlement, and any responses to Objections or opposition papers to the Motion
7 for Final Approval.

8 **6. STATEMENT OF NO ADMISSION**

9 Defendants deny any wrongdoing of any sort and further deny any liability to Plaintiff
10 and the Settlement Class with respect to any claims or allegations asserted in the Action and the
11 PAGA Notice. This Agreement shall not be deemed an admission by Defendants of any claims
12 or allegations asserted in the Action or the PAGA Notice. Except as set forth elsewhere herein,
13 in the event that this Agreement is not approved by the Court, or any appellate court, is
14 terminated, or otherwise fails to be enforceable, Plaintiff will not be deemed to have waived,
15 limited or affected in any way any claims, rights or remedies, or defenses in the Action or the
16 PAGA Notice, and Defendants will not be deemed to have waived, limited, or affected in any
17 way any of its objections or defenses in the Action and the PAGA Notice. The Parties shall be
18 restored to their respective positions in the Action prior to the entry of this Settlement.

19 **7. RELEASE OF CLAIMS**

20 **A. Release by All Participating Class Members.**

21 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
22 of Judgment, and payment by Defendants to the Third-Party Administrator selected of the full
23 Gross Settlement Amount and Employers’ Taxes necessary to effectuate the Settlement, Plaintiff
24 and all Participating Class Members release all claims against the Released Parties asserted in
25 the Complaint filed in the Action, or any and all claims that may be asserted against the Released
26 Parties based on the factual allegations in the First Amended Complaint filed on February 25,
27 2021, as follows: For the duration of the Class Period, the release includes: (a) all claims for
28 failure to pay overtime wages; (b) all claims for failure to pay minimum wages; (c) all claims for

1 failure to provide compliant meal and rest periods and associated premium pay; (d) all claims for
2 the failure to timely pay wages upon termination or resignation; (f) all claims for non-compliant
3 wage statements; (g) all claims for failure to reimburse costs as required under Labor Code §
4 2802; and (h) all claims asserted through California Business & Professions Code § 17200 *et seq.*
5 arising out of the Labor Code violations referenced in the Complaint (the “Class Released
6 Claims”). For Aggrieved Employees, the release includes, for the duration of the PAGA Period,
7 all claims released during the Class Period, as well as all asserted PAGA claims for penalties
8 arising out of Labor Code Sections 210, 226.3, 558, 1174.5, 1197.1 and 2699 based on the factual
9 allegations and Labor Code sections alleged to have been violated in both the PAGA Notice and
10 the Operative Complaint filed on February 25, 2021, which include, without limitation, alleged
11 violations of Labor Code sections 204, 246, 432, 1174, 1198.5, and 2810.5 (the “PAGA Released
12 Claims”).

13 **B. General Release.**

14 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
15 of Judgment, and payment by Defendants to the Third-Party Administrator selected of the full
16 Gross Settlement Amount and Employers’ Taxes necessary to effectuate the Settlement, in
17 addition to the Released Claims, Plaintiff makes the additional following General Release:
18 Plaintiff releases the Released Parties from of all claims, demands, rights, liabilities and causes
19 of action of every nature and description whatsoever, known or unknown, asserted or that might
20 have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule,
21 law or regulation arising out of, relating to, or in connection with any act or omission of the
22 Released Parties through the date of full execution of this Agreement in connection with
23 Plaintiff’s employment or the termination thereof, except for any and all claims in connection
24 with Plaintiff’s individual wrongful termination allegations against Defendants. With respect to
25 the General Release, except for any and all claims in connection with Plaintiff’s individual
26 wrongful termination allegations against Defendants, Plaintiff stipulates and agrees that, through
27 the Final Approval Date, Plaintiff shall be deemed to have, and by operation of the Final
28 Judgment shall have, expressly waived and relinquished, to the fullest extent permitted by law,

1 the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other
2 similar provision under federal or state law, which provides:

3 A general release does not extend to claims which the creditor
4 does not know or suspect to exist in his or her favor at the time of
5 executing the release, which if known by him or her must have
6 materially affected his or her settlement with the debtor or
7 released party.

8 The release expressly excludes Plaintiff's claims under the Fair Employment and Housing
9 Act, the California Family Rights Act, discrimination, failure to provide reasonable
10 accommodation, failure to engage in a good faith interactive process, retaliation, harassment,
11 wrongful termination in violation of public policy, intentional infliction of emotional distress,
12 negligent infliction of emotional distress, violation of Labor Code section 98.6, violation of
13 Labor Code section 1102.5, violation of Labor Code section 132a, and related claims which shall
14 not be affected by this Agreement.

15 **8. SETTLEMENT ADMINISTRATOR**

16 **A.** Plaintiff and Defendants, through their respective counsel, have selected Phoenix
17 Settlement Administrators to administer the Settlement, which includes but is not limited to
18 translating the Class Notice to Spanish, distributing and responding to inquiries about the Class
19 Notice and calculating all amounts to be paid from the Gross Settlement Amount. Charges and
20 expenses of the Settlement Administrator, currently estimated to be \$7,500.00, will be paid from
21 the Gross Settlement Amount. If the actual amount of the Settlement Administration Costs is
22 less than \$7,500.00, the difference between \$7,500.00 and the actual Settlement Administration
23 Costs shall be a part of the Net Settlement Amount. If the Settlement Administration Costs exceed
24 \$7,500.00, then such excess will be paid solely from the Gross Settlement Amount and
25 Defendants will not be responsible for paying any additional funds in order to pay these
26 additional costs.

27 **9. NOTICE, WORKWEEK DISPUTE, OBJECTION, AND EXCLUSION**
28 **PROCESS**

A. Notice to the Settlement Class Members.

1 (1) Within seven (7) calendar days after the Preliminary Approval Date,
2 Defendants' Counsel shall provide the Settlement Administrator with information with respect
3 to each Settlement Class Member, including his or her: (1) name, last known address(es) and last
4 known telephone number(s) currently in Defendants' possession, custody, or control; (2) Social
5 Security Number(s) in Defendants' possession, custody, or control; and (3) the hire dates and
6 termination or resignation dates (if applicable) for each Settlement Class Member ("Class List"),
7 which shall be made available to Class Counsel upon request. The Settlement Administrator
8 shall perform an address search using the United States Postal Service National Change of
9 Address ("NCOA") database and update the addresses contained on the Class List with the
10 newly-found addresses, if any. Within seven (7) calendar days of receiving the Class List from
11 Defendants, the Settlement Administrator shall mail the Class Notice in English and Spanish to
12 the Settlement Class Members via first-class regular U.S. Mail using the most current mailing
13 address information available. The Settlement Administrator shall maintain a list with names
14 and all addresses to which notice was given, and digital copies of all the Settlement
15 Administrator's records evidencing the giving of notice to any Settlement Class Member, for at
16 least four (4) years from the Final Approval Date.

17 (2) The Class Notice will set forth:

- 18 (a) the Settlement Class Member's estimated Individual
19 Settlement Payment and Individual PAGA Payment,
20 and the basis for each;
- 21 (b) the information required by California Rule of Court,
22 rule 3.766, subdivision (d);
- 23 (c) the material terms of the Settlement;
- 24 (d) the proposed Settlement Administration Costs;
- 25 (e) the definition of the Settlement Class;
- 26 (f) a statement that the Court has preliminarily approved
27 the Settlement;

- 1 (g) how the Settlement Class Member can obtain
2 additional information, including contact information
3 for Class Counsel;
- 4 (h) information regarding opt-out and objection
5 procedures;
- 6 (i) the date and location of the Final Approval Hearing;
7 and
- 8 (j) that the Settlement Class Member must notify the
9 Settlement Administrator no later than the Response
10 Deadline if the Settlement Class Member disputes the
11 accuracy of the number of Workweeks as set forth on
12 his or her Class Notice (“Workweek Dispute”). If a
13 Settlement Class Member fails to timely dispute the
14 number of Workweeks attributed to him or her in
15 conformity with the instructions in the Class Notice,
16 then he or she shall be deemed to have waived any
17 objection to its accuracy and any claim to any
18 additional settlement payment based on different data.

19 (3) If a Class Notice from the initial notice mailing is returned as
20 undeliverable, the Settlement Administrator will attempt to obtain a current address for the
21 Settlement Class Member to whom the returned Class Notice had been mailed, within five (5)
22 calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class
23 Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator
24 is successful in obtaining a new address, it will promptly re-mail the Class Notice to the
25 Settlement Class Member. Further, any Class Notices that are returned to the Settlement
26 Administrator with a forwarding address before the Response Deadline shall be promptly re-
27 mailed to the forwarding address affixed thereto.

28

1 (4) No later than seven (7) calendar days from the Response Deadline, the
2 Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the
3 completion of the notice process, including the number of attempts to obtain valid mailing
4 addresses for and re-sending of any returned Class Notices, as well as the identities, number of,
5 and copies of all Requests for Exclusion and objections/comments received by the Settlement
6 Administrator.

7 **B. Objections.**

8 Only Participating Class Members may object or comment regarding the Settlement. In
9 order for any Settlement Class Member to object to this Settlement in writing, or any term of it,
10 he or she must do so by mailing a written objection to the Settlement Administrator at the address
11 or phone number provided on the Class Notice no later than the Response Deadline. The
12 Settlement Administrator shall email a copy of the objection forthwith to Class Counsel and
13 Defendants' counsel and attach each objection, if any, to the declaration that Class Counsel files
14 with the Court in support of the Motion for Final Approval. The objection should set forth in
15 writing: (1) the objector's name and address, and (2) the reason(s) for the objection, along with
16 whatever legal authority, if any, the objector asserts in support of the Objection. If a Settlement
17 Class Member objects to the Settlement, the Settlement Class Member will remain a member of
18 the Settlement Class and if the Court approves this Agreement, the Settlement Class Member
19 will be bound by the terms of the Settlement in the same way and to the same extent as a
20 Settlement Class Member who does not object. The date of mailing of the Class Notice to the
21 objecting Settlement Class Member shall be conclusively determined according to the records of
22 the Settlement Administrator. Settlement Class Members need not object in writing to be heard
23 at the Final Approval Hearing; they may object or comment in person at the hearing at their own
24 expense. Class Counsel and Defendants' Counsel may respond to any objection lodged with the
25 Court up to five (5) court days before the Final Approval Hearing.

26 **C. Requesting Exclusion.**

27 Any Settlement Class Member may request exclusion from (i.e., "opt out" of) the
28 Settlement by mailing a written request to be excluded from the Settlement ("Request for

Exclusion”) to the Settlement Administrator, postmarked on or before the Response Deadline. To be valid, a Request for Exclusion must include the Class Member’s name, social security number and signature and the following statement or something to its effect: “Please exclude me from the Settlement Class in the *Jorge Garcia Morales v. Baldy’s Restaurant Group, LLC, et. al.* matter” or a statement of similar meaning. The Settlement Administrator shall immediately provide copies of all Requests for Exclusion to Class Counsel and Defendants’ Counsel and shall report the Requests for Exclusions that it receives, to the Court, in its declaration to be provided in advance of the Final Approval Hearing. Any Settlement Class Member who requests exclusion using this procedure will not be entitled to receive any payment from the Settlement and will not be bound by the Settlement Agreement or have any right to object to, appeal, or comment on the Settlement. Any Settlement Class Member who does not opt out of the Settlement by submitting a timely and valid Request for Exclusion will be bound by all terms of the Settlement, including those pertaining to the Released Claims, as well as any Judgment that may be entered by the Court if Final Approval of the Settlement is granted. A Settlement Class Member cannot submit both a Request for Exclusion and an objection. If a Settlement Class Member submits an objection and a Request for Exclusion, the Request for Exclusion will control and the Objection will be void. Settlement Class Members who worked during the PAGA Period that submit a valid Request for Exclusion will still be deemed Aggrieved Employees, will still receive their Individual PAGA Payment, and will be bound by the release encompassed in the PAGA Released Claims.

D. Disputes Regarding Settlement Class Members’ Workweek Data.

Each Settlement Class Member may dispute the number of Workweeks attributed to him or her on his or her Class Notice (“Workweek Dispute”). Any such disputes must be mailed to the Settlement Administrator by the Settlement Class Member, postmarked on or before the Response Deadline. The Settlement Administrator shall immediately provide copies of all disputes to Class Counsel and counsel for Defendants and shall immediately attempt to resolve all such disputes directly with relevant Settlement Class Member(s) with the assistance of

Defendants and Class Counsel. If the dispute cannot be resolved in this manner, the Court shall adjudicate the dispute.

10. INDIVIDUAL SETTLEMENT PAYMENTS AND INDIVIDUAL PAGA PAYMENTS TO PARTICIPATING CLASS MEMBERS

Individual Settlement Payments will be calculated and distributed to Participating Class Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class Members' respective number of Workweeks during the Class Period. Individual PAGA Payments to Aggrieved Employees will be calculated and distributed to Aggrieved Employees from the PAGA Payment on a *pro rata* basis based on Aggrieved Employees' respective number of Workweeks during the PAGA Period. Specific calculations of the Individual Settlement Shares and Individual PAGA Payments to Aggrieved Employees will be made as follows:

A. The Settlement Administrator will determine the total number of Workweeks worked by each Settlement Class Member during the Class Period ("Class Member's Workweeks"), as well as the aggregate number of Workweeks worked by all Settlement Class Members during the Class Period ("Class Workweeks"). Additionally, the Settlement Administrator will determine the total number of Workweeks worked by each Aggrieved Employee during the PAGA Period ("Aggrieved Employee's Workweeks"), as well as the aggregate number of Workweeks worked by all Aggrieved Employees during the PAGA Period ("PAGA Workweeks").

B. To determine each Settlement Class Member's Individual Settlement Share, the Settlement Administrator will use the following formula: Individual Settlement Share = (Settlement Class Member's Workweeks ÷ Class Workweeks) × Net Settlement Amount.

C. To determine each Participating Class Member's Participating Individual Settlement Share, the Settlement Administrator will determine the aggregate number of Workweeks worked by all Participating Class Members during the Class Period ("Participating Class Workweeks") and use the following formula: Individual Settlement Share =

(Participating Class Member's Workweeks ÷ Participating Class Workweeks) × Net Settlement Amount.

D. The net amount of the Participating Individual Settlement Share is to be paid out to Participating Class Members by way of check and is referred to as "Individual Settlement Payment(s)".

E. To determine each Aggrieved Employee's Individual PAGA Payment, the Settlement Administrator will use the following formula: Aggrieved Employee's Individual PAGA Payment = ([Aggrieved Employee's Workweeks ÷ PAGA Workweeks] x \$2,500.00) (the "PAGA Payment").

F. Individual Settlement Payments and Individual PAGA Payments shall be paid to Participating Class Members and/or Aggrieved Employees by way of check. When a Participating Class Member is also an Aggrieved Employee, one check may be issued that aggregates both the Individual Settlement Payment and the Individual PAGA Payment.

11. DISTRIBUTION OF PAYMENTS

A. Distribution of Individual Settlement Payments.

Participating Class Members will receive an Individual Settlement Payment and Aggrieved Employees will receive an Individual PAGA Payment. Individual Settlement Payment and Individual PAGA Payment checks shall remain valid and negotiable for one hundred and eighty (180) calendar days after the date of their issuance. Within seven (7) calendar days after expiration of the 180-day period, checks for such payments shall be canceled and funds associated with such checks shall be transmitted to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384.

B. Funding of Settlement.

Defendants shall, within seven (7) calendar days of executing this Agreement, pay the Gross Settlement Amount of \$150,000 (unless the same is escalated pursuant to Paragraph 17 below) to the Settlement Administrator, a pursuant to Internal Revenue Code section 1.468B-1

1 for deposit in an interest-bearing qualified settlement account (“QSA”) with an FDIC insured
2 banking institution, for distribution in accordance with this Agreement and the Court’s Orders
3 and subject to the conditions described herein. Defendants shall, within seven (7) calendar days
4 of the Settlement Administrator notifying Defendants of the amount of Defendants’ share of taxes
5 owed on the wages portion of the settlement (“Employers’ Taxes”), make payment of said
6 Employers’ Taxes to the Settlement Administrator for deposit into an interest-bearing QSA with
7 an FDIC insured banking institution, for distribution in accordance with this Agreement and the
8 Court’s Orders subject to the conditions described herein.

9 Payments from the QSA shall be made for (1) the Service Award to Plaintiff as specified
10 in this Agreement and approved by the Court; (2) the Attorneys’ Fees and Cost Award to be paid
11 to Class Counsel, as specified in this Agreement and approved by the Court; (3) the Settlement
12 Administrator Costs, as specified in this Agreement and approved by the Court; and (4) the
13 LWDA Payment, as specified in this Agreement. \$2,500 shall be allocated to payment to
14 Aggrieved Employees of Individual PAGA Payments as set forth herein. The balance and any
15 accrued interest thereon remaining shall constitute the Net Settlement Amount from which
16 Individual Settlement Payments shall be made to Participating Class Members, less applicable
17 taxes and withholdings. All interest accrued shall be for the benefit of Participating Class
18 Members and distributed on a *pro rata* basis.

19 **C. Time for Distribution.**

20 Within seven (7) calendar days after payment of the full Gross Settlement Amount by
21 Defendants, as well as Employer Taxes, or as soon thereafter as practicable, the Settlement
22 Administrator shall distribute all payments due under the Settlement, including the Individual
23 Settlement Payments to Participating Class Members and Individual PAGA Payments to
24 Aggrieved Employees, as well as the Court-approved payments for the Service Award to
25 Plaintiff, attorneys’ fees and litigation costs and expenses to Class Counsel, Administration Costs
26 to the Settlement Administrator, and the LWDA Payment to the LWDA.

27 **12. ATTORNEYS’ FEES AND LITIGATION COSTS**

1 Class Counsel shall apply for, and Defendants shall not oppose, an award of attorneys'
2 fees of up to 35% of the Gross Settlement Amount, or, unless escalated pursuant to Paragraph 17
3 of this Agreement, amounts to Fifty-Two Thousand, Five Hundred Dollars and Zero Cents
4 (\$52,500.00). Class Counsel shall further apply for, and Defendants shall not oppose, an
5 application or motion by Class Counsel for reimbursement of actual costs associated with Class
6 Counsel's prosecution of this matter as set forth by declaration testimony in an amount up to
7 Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00). Awards of attorneys' fees and
8 costs shall be paid out of the Gross Settlement Amount, for all past and future attorneys' fees and
9 costs necessary to prosecute, settle, and obtain Final Approval of the settlement in the Class and
10 PAGA Action. The "future" aspect of the amounts stated herein includes, without limitation, all
11 time and expenses expended by Class Counsel (including any appeals therein). There will be no
12 additional charge of any kind to either the Settlement Class Members or request for additional
13 consideration from Defendants for such work unless, in the event of a material breach of this
14 Agreement by Defendants, Plaintiff is required to move the Court for enforcement of this
15 Agreement. Should the Court approve attorneys' fees and/or litigation costs and expenses in
16 amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall
17 be a part of the Net Settlement Amount.

18 **13. SERVICE AWARD TO PLAINTIFF**

19 Named Plaintiff shall seek, and Defendants shall not oppose, a Service Award in an
20 amount not to exceed Seven Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00) for
21 participation in and assistance with the Class Action. Any Service Award awarded to Plaintiff
22 shall be paid from the Gross Settlement Amount and shall be reported on an IRS Form 1099. If
23 the Court approves the Service Award to Plaintiff in less than the amounts sought herein, then
24 the unapproved portion(s) shall be a part of the Net Settlement Amount.

25 **14. TAXATION AND ALLOCATION**

26 A. Each Individual Settlement Share shall be allocated as follows: 20% as wages (to
27 be reported on an IRS Form W2); and 80% as interest and penalties (to be reported on an IRS
28 Form 1099). Each Individual PAGA Payment shall be allocated entirely as penalties. The Parties

1 agree that the employees' share of taxes and withholdings with respect to the wage-portion of the
2 Individual Settlement Share will be withheld from the Individual Settlement Share in order to
3 yield the Individual Settlement Payment. The amount of federal income tax withholding will be
4 based upon a flat withholding rate for supplemental wage payments in accordance with Treasury
5 Regulation § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also
6 be made pursuant to applicable state and/or local withholding codes or regulations.

7 **B.** Forms W-2 and/or Forms 1099 will be distributed by the Settlement
8 Administrator at times and in the manner required by the Internal Revenue Code of 1986 (the
9 "Code") and consistent with this Agreement. If the Code, the regulations promulgated
10 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes
11 set forth in this Section may be modified in a manner to bring Defendants into compliance with
12 any such changes.

13 **C.** All Employer Taxes shall be paid by Defendants separate, apart and above from
14 the Gross Settlement Amount. Defendants shall remain liable to pay the employer's share of
15 payroll taxes as described above.

16 **D.** Neither Counsel for Plaintiff nor Defendants intend anything contained in this
17 Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement
18 be relied upon as such within the meaning of United States Treasury Department Circular 230
19 (31 C.F.R. Part 10, as amended) or otherwise.

20 **15. PRIVATE ATTORNEYS' GENERAL ACT ALLOCATION**

21 The Parties agree to allocate Ten Thousand Dollars and Zero Cents (\$10,000) of the Gross
22 Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five percent (75%)
23 of the amount allocated toward PAGA (\$7,500.00) will be paid to the LWDA (*i.e.*, the LWDA
24 Payment), and twenty-five percent (25%) (\$2,500.00) will be distributed to Aggrieved
25 Employees (*i.e.*, the PAGA Payment) on a *pro rata* basis, based upon their respective
26 Workweeks.

27 **16. COURT APPROVAL**

28

1 This Agreement is contingent upon an order by the Court granting Final Approval of the
2 Settlement, and that the LWDA does not intervene and object to the Settlement. In the event it
3 becomes impossible to secure approval of the Settlement by the Court and the LWDA, the Parties
4 shall be restored to their respective positions in the Class and PAGA Action prior to entry of this
5 Settlement. If this Settlement Agreement is voided, not approved by the Court or approval is
6 reversed on appeal, it shall have no force or effect and no Party shall be bound by its terms except
7 to the extent: (a) the Court reserves any authority to issue any appropriate orders when denying
8 approval; and/or (b) there are any terms and conditions in this Settlement Agreement specifically
9 stated to survive the Settlement Agreement being voided or not approved, and which control in
10 such an event.

11 **17. INCREASE IN WEEKLY PAY PERIODS**

12 Defendants represent that there are no more than 8,673 Workweeks worked during the
13 Class Period by Class Members. In the event the number of Workweeks increases by more
14 than 5%, or 433 Workweeks, then the Gross Settlement Amount shall be increased
15 proportionally by the Workweeks in excess of 8,673 workweeks multiplied by the Workweek
16 Value. The Parties agree that the Workweek Value shall be calculated by dividing the Gross
17 Settlement Amount (\$150,000.00) by 8,673 which amounts to a Workweek Value of \$17.30.
18 Thus, for example, should there be 10,000 Workweeks in the Class Period, then the Gross
19 Settlement Amount shall be increased by \$22,957.10. ((10,000 Workweeks – 8,673
20 Workweeks x \$17.30/Workweek.)

21 **18. NOTICE OF JUDGMENT**

22 In addition to any duties set out herein, the Settlement Administrator shall provide
23 notice of the Final Judgment entered in the Action by posting the same on its website for a
24 period of no less than four (4) years.

25 **19. MISCELLANEOUS PROVISIONS**

26 **E. Interpretation of the Agreement.**

27 This Agreement constitutes the entire agreement between Plaintiff and Defendants with
28 respect to its subject matter. Except as expressly provided herein, this Agreement has not been

1 executed in reliance upon any other written or oral representations or terms, and no such extrinsic
2 oral or written representations or terms shall modify, vary or contradict its terms. In entering
3 into this Agreement, the Parties agree that this Agreement is to be construed according to its
4 terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be
5 interpreted and enforced under the laws of the State of California, both in its procedural and
6 substantive aspects, without regard to its conflict of law provisions. Any claim arising out of or
7 relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively
8 in the Superior Court of the State of California for the County of Los Angeles, and Plaintiff and
9 Defendants hereby consent to the personal jurisdiction of the Court in the Action over it solely
10 in connection therewith. The foregoing is only limited to disputes concerning this Agreement.
11 Plaintiff Jorge Garcia Morales, on behalf of himself and on behalf of the Settlement Class, and
12 Defendants participated in the negotiation and drafting of this Agreement and had available to
13 them the advice and assistance of independent counsel. As such, neither Plaintiff nor Defendants
14 may claim that any ambiguity in this Agreement should be construed against the other. The
15 Agreement may be modified only by a writing signed by counsel for the Parties and approved by
16 the Court.

17 **F. Further Cooperation.**

18 Plaintiff, Defendants, and their respective attorneys shall proceed diligently to prepare
19 and execute all documents, to seek the necessary approvals from the Court, and to do all things
20 reasonably necessary to consummate the Settlement as expeditiously as possible.

21 **G. Counterparts.**

22 The Agreement may be executed in one or more actual or non-original counterparts, all
23 of which will be considered one and the same instrument and all of which will be considered
24 duplicate originals.

25 **D. Authority.**

26 Each individual signing below warrants that he or she has the authority to execute this
27 Agreement on behalf of the party for whom or which that individual signs.

28 **E. No Third-Party Beneficiaries.**

1 Plaintiff, Participating Class Members, Class Counsel, and Defendants are direct
2 beneficiaries of this Agreement, but there are no third-party beneficiaries.

3 **F. Deadlines Falling on Weekends or Holidays.**

4 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,
5 or legal holiday, that deadline shall be continued until the following business day.

6 **G. Severability.**

7 In the event that one or more of the provisions contained in this Agreement shall for any
8 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
9 unenforceability shall in no way effect any other provision if Defendants' Counsel and Class
10 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed
11 as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.
12

13 **IT IS SO AGREED:**

14 Dated: June 22, 2023



JORGE García (Jun 22, 2023 16:25 PDT)

JORGE GARCIA MORALES
Plaintiff and Class Representative

15
16
17 Dated: June __, 2023

BALDY'S RESTAURANT GROUP, LLC
Defendant
By:
Its:

18
19
20
21 Dated: June __, 2023

DAVID KUO
Defendant

1 **AGREED AS TO FORM:**

2
3 Dated: June 23, 2023

Vedang J. Patel

DAVID D. BIBIYAN
VEDANG PATEL
Counsel for Jorge Garcia Morales

4
5
6
7 Dated: June ____, 2023

JESSE M. CARYL
**Counsel for Defendants Baldy's Restaurant,
LLC and David Kuo**

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2 beneficiaries of this Agreement, but there are no third-party beneficiaries.

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5 or legal holiday, that deadline shall be continued until the following business day.

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8 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
9 unenforceability shall in no way effect any other provision if Defendants' Counsel and Class
10 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed
11 as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.
12

13 **IT IS SO AGREED:**

14 Dated: June __, 2023

15 _____
16 JORGE GARCIA MORALES
17 Plaintiff and Class Representative

18 Dated: June 20, 2023

19 _____
20 BALDY'S RESTAURANT GROUP, LLC
21 Defendant
22 By: David Kuo
23 Its: president

24 Dated: June 20, 2023

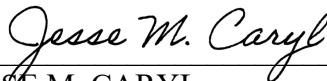
25 _____
26 DAVID KUO
27 Defendant
28

1 **AGREED AS TO FORM:**

2
3 Dated: June ____, 2023

4 _____
5 DAVID D. BIBIYAN
6 VEDANG PATEL
7 **Counsel for Jorge Garcia Morales**

8 Dated: June 19, 2023

9 
10 _____
11 JESSE M. CARYL
12 **Counsel for Defendants Baldy's Restaurant,**
13 **LLC and David Kuo**