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Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

SPENCER SUMISAKI, DAVIAN
MONTGOMERY, individually, and on behalf
of other members of the general public
similarly situated; NADIA MORALES,
individually, and on behalf of other members
of the general public similarly situated and on
behalf of other aggrieved employees pursuant
to the California Private Attorneys General
Act; NINA WILLIAMS, individually, on
behalf of other aggrieved employees pursuant
to the California Private Attorneys General
Act,

Plaintiffs,

v.

BERKELEY BOWL PRODUCE, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: RG19014520

Honorable Evelio Grillo
Department 21

CLASS ACTION

**DECLARATION OF EDWIN AIWAZIAN
IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

[Plaintiffs' Motion for Preliminary Approval
of Class Action Settlement; Declarations of
Proposed Class Representatives (Davian
Montgomery, Nadia Morales, and Nina
Williams); and [Proposed] Order filed
concurrently herewith]

Reservation No. 768154232963
Date: January 26, 2022
Time: 10:00 a.m.
Department: 21

Complaint Filed: April 10, 2019
FAC Filed: July 17, 2019
SAC Filed: November 20, 2020
Trial Date: None Set

DECLARATION OF EDWIN AIWAZIAN

I, Edwin Aiwarzian, hereby declare as follows:

1. I am an attorney licensed to practice law in the State of California. I am a member of Lawyers *for* Justice, PC, attorneys of record for Plaintiffs Davian Montgomery, Nadia Morales, and Nina Williams (together, “Plaintiffs” or “Class Representatives”). The facts set forth in this declaration are within my personal knowledge or based on information and belief, and if called as a witness, I could and would competently testify thereto.

EDUCATION

2. In May of 2004, I graduated from *Pepperdine University School of Law* with a Juris Doctor degree. I have extensive formal training in dispute resolution and negotiation from the Straus Institute for Dispute Resolution as part of its Masters in Dispute Resolution degree program. In addition, I have previously served as a *pro bono* mediator for the Los Angeles Superior Court. In October of 2000, I obtained a Litigation Paralegal Certificate from the *UCLA Extension Program*. During the summer of 2000, I studied Legal Writing at *Harvard University*. In April of 1999, I obtained a Bachelor of Arts degree in Communication with a concentration in Natural Sciences from *Pepperdine University*.

JUDICIAL EXTERNSHIPS

3. From approximately September 2002 to approximately December 2002, I served as a Judicial Extern to the Honorable Kim McLane Wardlaw of the *United States Court of Appeals for the Ninth Circuit*. From approximately June 2002 to approximately August 2002, I served as a Judicial Extern to the Honorable Earl Johnson, Jr. of the *California Court of Appeal for the Second Appellate District*.

LITIGATION AND CLASS ACTION EXPERIENCE

4. In December of 2004, I obtained a license to practice law from the California State Bar. From approximately December 2004 to approximately August 2008, I was employed by the law firm of *Girardi & Keese*.

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1 5. At *Girardi & Keese*, my practice focused on class actions and other complex cases
2 involving toxic torts and products liability. In addition, I gained substantial experience on cases
3 involving insurance bad faith, premises liability, and medical negligence. While employed by
4 *Girardi & Keese*, I argued approximately 100 motions, took or defended approximately 150
5 depositions, and prepared dozens of expert witnesses for deposition or trial.

6 6. Since its inception, in or around October of 2008, *Lawyers for Justice, PC* has almost
7 exclusively focused on the prosecution of consumer and employment class actions, involving
8 wage-and-hour claims, race discrimination, unfair business practices or consumer fraud.
9 Currently, we are the attorneys of record in over a dozen employment-related putative class actions
10 in both state and federal courts in the State of California. Our firm has successfully litigated cases
11 involving the executive, administrative, and other overtime exemptions to the State of California
12 and federal overtime compensation requirements. During this relatively short time, in association
13 with other law firms, we have recovered millions of dollars on behalf of thousands of individuals
14 in California.

15 **EXAMPLES OF CLASS ACTION RESULTS**

16 7. What follows are just a few examples of the type of results we have achieved on
17 behalf of our clients:

18 a) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
19 and-hour class and representative action against a major property management company involving
20 allegations of misclassification of various “manager” positions. On September 20, 2010, the court
21 granted final approval of the class and representative action settlement. The Los Angeles County
22 Superior Court Case Number is BC400414.

23 b) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
24 and-hour class action against a national retailer involving allegations of misclassification of the
25 “Assistant Store Manager” position. On October 28, 2010, the court granted final approval of the
26 class action settlement. The Los Angeles County Superior Court Case Number is BC413498.

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1 c) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
2 and-hour class and representative action against a national property management company
3 involving allegations of misclassification of the “Property Manager” position. On May 23, 2012,
4 the court granted final approval of the class and representative action settlement. The Los Angeles
5 County Superior Court Case Number is BC430918.

6 d) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
7 and-hour class action against a national retailer involving allegations of misclassification of the
8 “Store Manager” position. On June 10, 2011, the court granted plaintiffs’ motion for class
9 certification. On August 26, 2013, the court granted final approval of the class action settlement.
10 The Los Angeles County Superior Court Case Number is BC424012.

11 e) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
12 and-hour class and representative action against a bank, involving allegations of misclassification
13 of the “Assistant Branch Manager” position. On August 27, 2013, the court granted final approval
14 of the class and representative action settlement. The Kern County Superior Court Case Number
15 is S-1500-CV-273194-LHB.

16 f) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
17 and-hour class and representative action against a national wholesale distributor of plumbing and
18 builder supplies, involving allegations of misclassification of multiple salaried “manager”
19 positions. On May 22, 2014, the court granted final approval of the class and representative action
20 settlement. The Sacramento County Superior Court Case Number is 34-2012-00136285.

21 g) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
22 and-hour class action involving allegations of misclassification of the “Operations Manager”
23 position. On September 16, 2014, the court granted plaintiffs’ motion for class certification. The
24 Los Angeles County Superior Court Case Number is BC478769.

25 h) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
26 and-hour class and representative action against a national retailer of household items, on behalf
27 of hourly-paid or non-exempt employees. On May 27, 2015, the court granted final approval of
28 the class and representative action settlement. The San Francisco County Superior Court Case

Number is CGC-13-532344.

i) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-hour class action involving allegations of misclassification of the salaried residential “Property Manager” position. On September 17, 2015, the court granted plaintiffs’ motion for class certification. The Los Angeles County Superior Court Case Number is BC474784.

j) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-hour class and representative action against a national retailer of upscale hardware and home furnishings, on behalf of non-exempt employees. On April 28, 2016, the court granted final approval of the class and representative action settlement. The Los Angeles County Superior Court Case Number is JCCP4794.

k) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-hour class and representative action against a national retailer of apparel and fashion accessories, on behalf of non-exempt employees. On August 5, 2016, the court granted final approval of the class and representative action settlement. The Los Angeles County Superior Court Case Number is BC488069.

l) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-hour class action against a national retailer of apparel, accessories, and home products, involving allegations of misclassification of the “Department Manager” position. On August 12, 2016, the court granted plaintiffs’ motion for class certification in part and certified a class. The Alameda County Superior Court Case Number is RG13680477.

m) Our firm represented the plaintiff in a representative action under the Private Attorneys General Act, against a real estate and property management company, on behalf of non-exempt employees. On November 4, 2016, the Court granted approval of the settlement. The Orange County Superior Court Case Number is 30-2015-00775439-CU-OE-CXC.

n) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-hour class action against a full-service bank, on behalf of non-exempt employees. On November 18, 2016, the court granted final approval of the class action settlement. The San Francisco County Superior Court Case Number is CJC-13-004839.

1 o) Our firm represented the plaintiffs in a wage-and-hour class and
2 representative action against a foodservice distributor, on behalf of non-exempt employees. On
3 January 26, 2017, the court granted final approval of the class and representative action settlement.
4 The San Bernardino County Superior Court Case Number is CIVDS1507260.

5 p) Our firm, on behalf of the plaintiff and respondent in a PAGA representative
6 action, successfully opposed in the trial court, and briefed and argued an appeal with respect to the
7 employer's motion to compel arbitration, which resulted in a published opinion by the California
8 Court of Appeal in favor of employees. *Roberto Betancourt v. Prudential Overall Supply*, 9
9 Cal.App.5th 439 (Cal. App. 4th Dist., Mar. 7, 2017), review denied, cert. denied (U.S. Supreme
10 Court Docket No. 17-254).

11 q) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
12 and-hour class and representative action against a consumer packaging company, on behalf of non-
13 exempt employees. On March 10, 2017, the court granted final approval of the class and
14 representative action settlement. The Los Angeles County Superior Court Case Number is
15 BC590429.

16 r) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
17 and-hour class action and representative action against a manufacturer of food service industry
18 supplies on behalf of non-exempt employees. On April 14, 2017, the court granted final approval
19 of the class and representative action settlement. The Orange County Superior Court Case Number
20 is 30-2015-00810013-CU-OE-CXC.

21 s) Our firm represented the plaintiff in a wage-and-hour class and
22 representative action against a property management company, on behalf of non-exempt
23 employees. On June 14, 2017, the court granted final approval of the class and representative
24 action settlement. The Los Angeles County Superior Court Case Number is BC586234.

25 t) Our firm represented the plaintiffs in a wage-and-hour class action and
26 representative action against a food company on behalf of non-exempt employees. On June 30,
27 2017, the court granted final approval of the class and representative action settlement. The
28 Sacramento County Superior Court Case Number is 34-2015-00175871.

1 u) Our firm represented the plaintiffs in a wage-and-hour class action and
2 representative action against a chocolate company on behalf of non-exempt employees. On July
3 19, 2017, the court granted final approval of the class and representative action settlement. The
4 Alameda County Superior Court Case Number is RG15764300.

5 v) Our firm, in association with co-counsel, represented the plaintiff in a wage-
6 and-hour class action against a container manufacturer, on behalf of non-exempt employees. On
7 October 15, 2018, the court granted the plaintiff's motion for class certification. The Tulare County
8 Superior Court Case Number is VCU264528.

9 w) Our firm represented the plaintiff in a wage-and-hour class action against a
10 parking company on behalf of non-exempt employees. On September 3, 2019, the court granted
11 the plaintiff's motion for class certification and certified a class. The Santa Clara County Superior
12 Court Case Number is 16CV292208 and the Judicial Council Coordination Proceeding Number is
13 JCCP 4886.

14 x) Our firm, in association with other counsel, on behalf of the plaintiff and
15 respondent in a PAGA representative action, successfully opposed in the trial court, and briefed
16 and argued an appeal with respect to the employer's motion to compel arbitration, resulting in a
17 notable decision from the California Supreme Court clarifying the law and finding, in part, that
18 employer arbitration agreements are unenforceable where they block a PAGA claim from
19 proceeding, *ZB, N.A. v. Superior Court*, 8 Cal.5th175 (2019).

20 y) Our firm represented the plaintiffs in a wage-and-hour class and
21 representative action against a bank on behalf of non-exempt employees. On September 27, 2019,
22 the court granted the plaintiffs' motion for class certification in part and certified a class. The
23 Alameda County Superior Court Case Number is RG15757606 and the Judicial Council
24 Coordination Proceeding Number is JCCP 4921.

25 z) Our firm represented the plaintiffs in a wage-and-hour class action and
26 representative action against a manufacturer of plastic containers on behalf of non-exempt
27 employees. On October 31, 2017, the court granted final approval of the class and representative
28 action settlement. The Los Angeles County Superior Court Case Number is BC577233.

1 aa) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
2 and-hour class action and representative action against a property management company on behalf
3 of hourly-paid and non-exempt employees. On January 4, 2018, the court entered an order granting
4 final approval of the class and representative action settlement. The Los Angeles County Superior
5 Court Case Number is JCCP 4819.

6 bb) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
7 and-hour class action and representative action against a global provider of flexible office space
8 solutions. On February 15, 2018, the court entered an order granting final approval of the class
9 and representative action settlement. The Los Angeles County Superior Court Case Number is
10 BC498401.

11 cc) Our firm represented the plaintiffs in a wage-and-hour class and
12 representative action against a behavioral health service provider on behalf of non-exempt
13 employees. On November 13, 2018, the court granted final approval of the class and
14 representative action settlement. The Alameda County Superior Court Case Number is
15 RG16811450.

16 dd) Our firm, in association with co-counsel, represented the plaintiff in a
17 representative action under the Private Attorneys General Act, against a global provider of
18 products and services to the energy industry, on behalf of hourly-paid and non-exempt employees.
19 On November 19, 2018, the Court granted approval of the settlement. The Kern County Superior
20 Court Case Number is S-1500-CV-280215-SDC.

21 ee) Our firm represented the plaintiffs in a wage-and-hour class and
22 representative action against a national retailer of apparel and fashion accessories, on behalf of
23 non-exempt employees. On October 9, 2019, the court granted the plaintiffs' motion for class
24 certification in part and certified a class. The Sacramento County Superior Court Case Number is
25 34-2015-00175330-CU-OE-GDS.

26 ff) Our firm represented the plaintiff in a wage-and-hour class and
27 representative action against a medical equipment supplier on behalf of non-exempt employees.
28 On February 13, 2020, the court granted the plaintiff's motion for class certification and certified

1 a class. The San Bernardino County Superior Court Case Number is CIVDS1505744.

2 gg) Our firm, in association with other counsel, represented the plaintiff in a
3 wage-and-hour class and PAGA representative action against a large national drug testing
4 laboratory on behalf of non-exempt employees. On February 21, 2020, the court granted the
5 plaintiff's motion for class certification and certified a class. The San Diego County Superior
6 Court Case Number is 37-2018-00019611-CU-OE-CTL.

7 hh) Our firm represented the plaintiffs in a wage-and-hour class and
8 representative action against a national retailer of sportswear, footwear, and camping equipment
9 on behalf of non-exempt employees. On March 16, 2020, the court granted in part the plaintiff's
10 motion for class certification and certified a class. The Riverside County Superior Court Case
11 Number is RICJCCP4930.

12 ii) Our firm represents the plaintiff in a wage-and-hour class action against a nutritional
13 products manufacturer on behalf of non-exempt production line employees. On December 13,
14 2021, the court granted the plaintiff's motion for class certification in part and certified a
15 class. The Solano County Superior Court Case Number is FCS051001.

16 PRELIMINARY APPROVAL

17 8. Marked and attached hereto as "**EXHIBIT 1**" is the Class Action and PAGA
18 Settlement Agreement and Stipulation ("Settlement," "Agreement," or "Settlement Agreement")
19 entered into by and between Plaintiffs Davian Montgomery, Nadia Morales, and Nina Williams,
20 on the one hand, and Defendant Berkeley Bowl Produce, Inc. ("Defendant"), on the other hand
21 (collectively, the "Parties"). The Parties and their counsel have approved the proposed Notice of
22 Class Action and PAGA Settlement ("Class Notice"), which is attached to the Settlement
23 Agreement as "Exhibit A" and respectfully request that the Court approve it as well.

24 9. Based on information provided by Defendant, as of November 29, 2021, the Class
25 is estimated to consist of approximately two thousand and fifty-four (2,054) individuals.

26 10. The effectiveness of Lawyers for Justice, PC ("Class Counsel") in prosecuting this
27 matter has translated into tangible monetary benefits for the Class Members, State of California,
28 and PAGA Members in the following respects: (1) the Class Members, State of California, and

1 PAGA Members recover over a reasonably short period of time as opposed to waiting additional
2 years for the same, or possibly worse, result; (2) a guaranteed result that compares favorably with
3 other similar class action settlements of this type given the strengths and weaknesses of the case;
4 and (3) significant savings in Class Counsel's fees and/or costs that would have only increased
5 significantly had the case progressed through certification, trial, and/or appeals.

6 11. Class Counsel has actively litigated the case for over two years since former plaintiff
7 Spencer Sumisaki commenced the above-captioned action on April 10, 2019. The Parties have
8 engaged in extensive settlement negotiations and participated in a formal, full-day mediation on
9 July 21, 2021, conducted by Jeffrey A. Ross, Esq., a well-respected mediator experienced in
10 mediating complex labor and employment matters. Prior to and during the mediation and
11 settlement discussions, the Parties exchanged extensive information and engaged in discussions
12 regarding their evaluations of the case and various aspects of the case, including but not limited
13 to, the risks and delays of further litigation, the risks to the Parties of proceeding with class
14 certification and/or representative adjudication, the law relating to off-the-clock theory, meal and
15 rest periods, PAGA representative actions, and wage-and-hour enforcement, as well as the
16 evidence produced and analyzed, and the possibility of appeals, among other things. During all
17 settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial
18 position. Arriving at a settlement that was acceptable to all Parties was not easy. Defendant and
19 its counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiffs
20 and Class Counsel believed that they would be able to obtain class certification and prevail at trial.
21 After conducting investigations, formal and informal discovery, and exchange of information,
22 extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have
23 agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiffs'
24 principal claims, as well as the costs and risks to both sides that would attend further litigation.
25 The Settlement is a fair, reasonable, and adequate resolution of the Settled Claims of Plaintiffs and
26 Settlement Class Members and the Settled PAGA Claims of the State of California, with respect
27 to Plaintiffs and PAGA Members, against the Released Parties.

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1 12. The Parties used the pre-mediation time to investigate the veracity, strength, and
2 scope of the claims, and Class Counsel was preparing the action for class certification and trial.
3 Prior to engaging in mediation, Plaintiffs conducted significant investigation and formal and
4 informal discovery regarding the facts of the case, including and not limited to, the exchange,
5 review, and analysis of thousands of pages of documents and data obtained from Defendant and
6 other sources. Class Counsel propounded multiple sets of formal written discovery requests onto
7 Defendant, reviewed Defendant's responses thereto, noticed the depositions of Defendant's
8 person(s) most knowledgeable designees (regarding organizational structure, job duties, wage and
9 hour practices, and affirmative defenses) and a percipient witness, reviewed Defendant's
10 objections to notices of depositions, worked with Plaintiff Montgomery to provide responses to
11 multiple sets of discovery requests, worked with Plaintiffs to prepare and provide responses to
12 requests for production of documents accompanying Defendant's notices of their depositions and
13 objections to the notices of deposition, prepared for and defended the depositions of Plaintiffs, and
14 prepared for and took the deposition for Defendant's Human Resources Director. Parties also
15 engaged in a *Belaire-West* privacy notice and opt-out process with a neutral third-party, Simpluris,
16 Inc. (the same third-party proposed as the Settlement Administrator), and after the process was
17 completed, the class contact information was produced to Class Counsel in April 2020. The
18 volume of data and documents that Class Counsel reviewed and analyzed included and was not
19 limited to: Plaintiffs and other Class Members' employment records, a detailed sampling of Class
20 Members' time and pay data, multiple iterations of Defendant's Employee Handbook, company
21 policy acknowledgements, job descriptions, new hire checklists, and Defendant's operations and
22 employment practices, policies, procedures, and forms (including but not limited to those
23 regarding Worker's Compensation Form, Employee Handbook Acknowledgement Form, Time &
24 Attendance Policy Acknowledgement Form, California Meal Period Waiver, Missed Punch Form,
25 Employee Counseling Notice, Timecard Exception Log, Time Clock Procedures, Work Schedules,
26 Attendance and Punctuality, Rest Breaks and Meal Periods, Employee Classification, Change to
27 Classification, Overtime and Payday, Performance Reviews, New Hire Audit, Attendance
28 Records, Counseling Notices, Unpaid Suspension, and Dress, Appearance and Personal Hygiene),

1 among other information and documents. Class Counsel interviewed Plaintiffs and other Class
2 Members to gather facts and to identify potential witnesses. Counsel for the Parties also met and
3 conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery,
4 *Belaire-West* process, and the production of documents and data prior to the mediation. Class
5 Counsel also drafted pleadings and the mediation brief and prepared for and attended court
6 proceedings, mediation, and settlement negotiations, among other tasks.

7 13. Counsel for the Parties have also invested time researching and investigating the
8 applicable law, which is constantly evolving as it relates to certification, representative PAGA
9 claims, off-the-clock theory, meal and rest periods, wage-and-hour enforcement, Plaintiffs' claims
10 and damages, and Defendant's defenses thereto, as well as facts discovered. Based on our analysis,
11 I submit that the result achieved in this litigation is fair, adequate, and reasonable.

12 14. The Settlement provides for a Maximum Settlement Amount of Three Million
13 Dollars and no cents (\$3,000,000.00). The Net Distribution Fund is the Maximum Settlement
14 Amount less the following amounts subject to approval by the Court: Attorneys' Fees and
15 Attorneys' Costs to Class Counsel, Service Payments to Plaintiffs, Settlement Administration
16 Costs to Settlement Administrator, and PAGA Allocation to the Labor and Workforce
17 Development Agency ("LWDA Payment") and PAGA Members. Assuming that the amounts
18 allocated under the Settlement toward these payments are awarded by the Court, and assuming
19 that the Maximum Settlement Amount remains at \$3,000,000, the Net Distribution Fund that will
20 be available for distribution to Settlement Class Members is currently estimated to be one million
21 seven hundred forty-five thousand dollars and no cents (\$1,745,000.00). The Maximum
22 Settlement Amount will be fully distributed in accordance with the terms of the Settlement and
23 there is no reversion to Defendant.

24 15. The Parties have agreed to retain Simpluris, Inc. ("Simpluris" or "Settlement
25 Administrator") to handle the notice and settlement administration process. The Parties
26 respectfully request that the Court appoint Simpluris to handle these procedures and serve as the
27 Settlement Administrator. Defendant will provide Simpluris with a list of Class Members that
28 Defendant will compile from its records, which will include each Class Member's full name, last

1 known address, Social Security Number, and the number of Qualifying Workweeks and, if
2 applicable, Qualifying PAGA Workweeks for each Class Member (“Class List”), and Simpluris
3 will calculate each Class Member’s estimated share of the Net Distribution Fund (“Individual
4 Settlement Payment”) and each PAGA Member’s estimated share of the Net PAGA Distribution
5 Amount (“Individual PAGA Payment”). Simpluris will also receive requests for exclusion from
6 the Class Settlement, objections to the Class Settlement, and disputes regarding Qualifying
7 Workweeks and/or Qualifying PAGA Workweeks; provide necessary reports and declarations;
8 calculate, subtract, and transmit necessary taxes and withholdings; prepare and submit
9 informational and other tax filings and documents; issue and transmit all payments provided for
10 by the Settlement, including and not limited to, mailing Individual Settlement Payment checks to
11 the Settlement Class Members and Individual PAGA Payment checks to the PAGA Members; and
12 perform any other usual and customary duties for administering a class action settlement.
13 Settlement Administration Costs are currently estimated not to exceed twenty-five thousand
14 dollars and no cents (\$25,000.00) and will be paid out of the Maximum Settlement Amount,
15 subject to approval of the Court.

16 16. Based on investigation and information discovered, Class Counsel believes that
17 there is sufficient evidence to support the allegations made in the lawsuit, including the allegations
18 that Defendant, with respect to Plaintiffs and the Class Members, *inter alia*, failed to properly pay
19 overtime and minimum wages and associated premium pay, failed to provide compliant meal and
20 rest periods and to pay associated premium pay, failed to timely pay wages during employment
21 and upon termination of employment, failed to provide compliant wage statements, failed to
22 maintain requisite payroll records, and failed to reimburse necessary business expenses, and
23 thereby engaged in unfair business practices and conduct giving rise to civil penalties recoverable
24 under the Private Attorneys General Act of 2004 (California Labor Code sections 2698, et seq.).
25 Plaintiffs also asserted that Class Members were expected to perform similar job duties and were
26 subject to the same or similar operations and employment policies, practices, and procedures.
27 Additionally, Plaintiffs asserted that Defendant’s recordkeeping practices with respect to Plaintiffs
28 and the Class Members were substantially the same during the time period at issue. As a result of

1 said alleged uniform practices, Plaintiffs claim that the Class Members, were not paid all of the
2 compensation that was owed to them by Defendant since April 10, 2015. Thus, in Class Counsel's
3 view, it is clear that the outcome of this litigation would be determined by Defendant's uniform
4 operations and employment practices, policies, and procedures that Plaintiffs allege applied across
5 Defendant's hourly-paid or non-exempt employees in California during the Class Period.

6 17. Class Counsel is aware of the defenses and position of Defendant, but believes that
7 Plaintiffs could potentially obtain class certification despite many obstacles. Plaintiffs have also
8 taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties
9 and delays inherent in such litigation, including those involved in class certification and/or
10 representative adjudication. Plaintiffs further recognize the burdens of proof necessary to establish
11 liability for the claims asserted in the lawsuit, Defendant's defenses, and the difficulties in
12 establishing entitlement to monetary recovery. Plaintiffs have also considered the Parties'
13 settlement discussions, as well as the evaluations of the mediator, who is experienced and well-
14 regarded in complex labor and employment matters.

15 18. Defendant, on the other hand, denied and continues to deny any liability and
16 wrongdoing of any kind associated with the claims alleged in the lawsuit, and further denies that
17 the lawsuit is appropriate for class treatment or representative adjudication for any purpose other
18 than this Settlement. Defendant believes that it would ultimately succeed in the matter. Both sides
19 have also had the opportunity to interview witnesses and review documents and information
20 relating to Plaintiffs' and Class Members' employment with Defendant, and Defendant's
21 operations and employment policies, practices, and procedures. The Parties also reviewed and
22 analyzed thousands of pages of documents and data, including but not limited to a detailed
23 sampling of Class Members' time and pay information, to determine the potential value and
24 strength of the claims. The available information enabled Class Counsel to estimate the potential
25 claims of the Class and prepare damages/valuation models. Accordingly, the Parties have
26 conducted adequate investigation and discovery to be sufficiently informed of the nature and
27 extent of the class and PAGA claims, and to enable both sides to fully evaluate the Settlement for
28 its fairness, adequacy, and reasonableness. The Parties have agreed that the matter is well-suited

1 for settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs and
2 risks to both sides that would attend further litigation. The Settlement takes into account the
3 strengths and weaknesses of each side's position and the uncertainty of how the case might have
4 concluded at certification, trial, and/or appeals.

5 19. The Settlement Agreement provides for Class Counsel to apply for attorneys' fees
6 in an amount of up to thirty-eight percent (38%) of the Maximum Settlement Amount (i.e., one
7 million one hundred forty thousand dollars and no cents (\$1,140,000.00) if the Maximum
8 Settlement Amount is \$3,000,000.00) and expenses and costs in an amount not to exceed one
9 hundred twenty thousand dollars and no cents (\$120,000.00), which will be paid out of the
10 Maximum Settlement Amount, subject to approval by the Court. It should be noted that Class
11 Counsel has borne all of the risks and costs of litigation and will not receive any compensation
12 until recovery is obtained.

13 20. The Settlement Agreement provides for payment of up to ten thousand dollars and
14 no cents (\$10,000.00) each to Plaintiffs as Service Payments (for a combined total of \$30,000), to
15 be paid out of the Maximum Settlement Amount subject to approval by the Court. Plaintiffs spent
16 considerable time and effort to produce relevant documents and past employment records and to
17 provide the facts and evidence necessary to attempt to prove the allegations. For example, all
18 three Plaintiffs prepared for and appeared for deposition, all three Plaintiffs objected to and
19 provided response to requests for production of documents propounded by Defendant in
20 connection with their depositions, and Plaintiff Montgomery provided response to additional
21 formal written discovery requests propounded by Defendant. Plaintiffs were available whenever
22 Class Counsel needed them and actively tried to obtain information that would benefit the Class.
23 Accordingly, it is appropriate and just for Plaintiffs to each receive a Service Payment, in addition
24 to their Individual Settlement Payments and/or Individual PAGA Payments, for their services on
25 behalf of the Class.

26 21. Class Counsel submits that the Settlement is fair, reasonable, and adequate, and is
27 in the best interest of the Class, State of California, and PAGA Members. Class Counsel further
28 submits that the Settlement is within an acceptable range of recovery for this type of litigation

1 given the strengths and weaknesses of the case, the inherent costs and risks of further litigation,
2 and the costs and risks associated with class certification, representative adjudication, trial, and/or
3 appeals.

4 I declare under penalty of perjury under the laws of the State of California that the
5 foregoing is true and correct.

6 Executed on this 5th day of January 2022, at Glendale, California.

7
8 
9 Edwin Aiwasian

EXHIBIT 1

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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

SPENCER SUMISAKI, DAVIAN
MONTGOMERY, individually, and on behalf of
other members of the general public similarly
situated; NADIA MORALES, individually, and
on behalf of other members of the general public
similarly situated and on behalf of other
aggrieved employees pursuant to the California
Private Attorneys General Act; NINA
WILLIAMS, individually, on behalf of other
aggrieved employees pursuant to the California
Private Attorneys General Act,

Plaintiffs,

v.

BERKELEY BOWL PRODUCE, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

CASE NO. RG19014520

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT AND
STIPULATION**

1 This Class Action and PAGA Settlement Agreement and Stipulation is entered into between
2 BERKELEY BOWL PRODUCE, INC. (“Defendant”) and Plaintiffs DAVIAN MONTGOMERY
3 (“Plaintiff Montgomery”), NADIA MORALES (“Plaintiff Morales”), and NINA WILLIAMS
4 (“Plaintiff Williams”) (collectively referred to as “Plaintiffs”).

5 **DEFINITIONS**

6 1. Action. “Action” means the class action lawsuit entitled *Spencer Sumisaki,*
7 *et al. v. Berkeley Bowl Produce, Inc., et al.*, filed in the Superior Court of California, Alameda
8 County, as case number RG19014520.

9 2. Agreement. “Agreement” or “Settlement Agreement” shall refer to the
10 instant Class Action Settlement Agreement and Stipulation.

11 3. Attorneys’ Fees. “Attorneys’ Fees” refers to the amount to be awarded to
12 Class Counsel (as defined below) for the work it has performed in furtherance of the Action which
13 shall not exceed thirty-eight percent (38%) of the Maximum Settlement Amount, which is One
14 Million One Hundred and Forty Thousand Dollars (\$1,140,000.00) if the Maximum Settlement
15 Amount is Three Million Dollars (\$3,000,000.00).

16 4. Attorneys’ Costs. “Attorneys’ Costs” refers to the amount to be reimbursed
17 for Class Counsel’s litigation costs and expenses, which shall not exceed One Hundred Twenty
18 Thousand Dollars (\$125,000.00).

19 5. Class Counsel. “Class Counsel” shall mean Edwin Aiwazian, Arby
20 Aiwazian, Joanna Ghosh, and Melissa LeBlanc of Lawyers *for* Justice, PC and/or any successor(s)
21 thereof.

22 6. Class Members, and the Class. “Class Members” (individually, “Class
23 Member”) are all current and former hourly-paid or non-exempt employees who worked for
24 Defendant within the State of California at any time during the Class Period (as defined below).

25 7. Class Notice. “Class Notice” means the Notice of Class Action and PAGA
26 Settlement mutually agreed upon by the Parties and approved by the Court to be sent to the Class
27 Members and PAGA Members (as defined below) following preliminary approval that includes the
28 scope of release language for Settled Claims (as defined below) and Settled PAGA Claims (as

defined below), notifies Class Members and PAGA Members of the Settlement (as defined below), explains the Class Members' options, including how Class Members may opt out or object to the Settlement, and explains the facts and methods based on which the Class Members' and PAGA Members' estimated settlement payments are calculated, substantially in the form attached hereto as **Exhibit A**.

8. **Class Period**. "Class Period" means April 10, 2015 to the date of the Preliminary Approval Order (as defined below).

9. **Class Settlement**. "Class Settlement" refers to the settlement and resolution of the Settled Claims.

10. **Complaint**. "Complaint" refers to the Second Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq., filed in the Action on November 20, 2020.

11. **Court**. "Court" refers to the Superior Court of California, Alameda County, or other court, that will approve the Agreement.

12. **Day**. "Day" or "days" refers to a calendar day(s) unless otherwise stated. If any designated date or deadline falls on a weekend or holiday, the designated date or deadline will occur on the next business day.

13. **Defendant**. "Defendant" means Berkeley Bowl Produce, Inc.

14. **Effective Date**. "Effective Date" of this Agreement means the first business day following the last of the following occurrences: (i) sixty (60) calendar days following the date the Court enters of the Final Approval Order and Judgment; and (ii) if an appeal is taken from the Final Approval Order and Judgment, then the date of final resolution of that appeal (including any requests for rehearing and/or petitions for *certiorari*), resulting in final and complete judicial approval of the Settlement in its entirety, with no further challenge to the Settlement being possible.

15. **Final Approval Order and Judgment**. "Final Approval Order and Judgment" means the order and judgment entered and filed by the Court, in substantially the form attached hereto as **Exhibit C**, that: (1) ultimately approves this Agreement; (2) awards and orders the payment of all required amounts pursuant to the terms of this Agreement (approved Attorneys'

1 Fees and Attorney's Costs, Individual Settlement Payments to Class Members and Individual
2 PAGA Payments to PAGA Members, *etc.* (as defined below), and (3) enters judgment in the Action
3 pursuant to California Rules of Court, 3.769, et seq.. The Final Approval Order and Judgment will
4 constitute a binding and final resolution, have full *res judicata* effect, and discharge Defendant and
5 Released Parties (as defined below) from liability for any and all claims by the Named Plaintiffs
6 (as defined below), all Settlement Class Members (as defined below) as to all Settled Claims, and
7 the State of California as to all Settled PAGA Claims as set forth in this Agreement.

8 16. Final Approval Hearing. "Final Approval Hearing" means the hearing at
9 which the Court shall consider the motion for final approval of this Settlement and determine
10 whether to fully and finally approve the fairness and reasonableness of this Settlement and
11 Agreement, and enter the Final Approval Order and Judgment.

12 17. Last Known Address. "Last Known Address" means the most recently
13 recorded mailing address for a Class Member and/or PAGA Member contained in Defendant's
14 payroll records.

15 18. Maximum Settlement Amount. "Maximum Settlement Amount" means a
16 maximum total payment of Three Million Dollars and Zero Cents (\$3,000,000.00), payable by
17 Defendant under this Agreement. The Maximum Settlement Amount includes all: (1) Individual
18 Settlement Payments to Settlement Class Members and Individual PAGA Payments to PAGA
19 Members; (2) Attorneys' Fees; (3) Attorney's Costs; (4) Settlement Administration Costs (as
20 defined below); (4) LWDA's portion of the PAGA Allocation (i.e., the LWDA Payment); and (5)
21 Service Payments (as defined below) to the Named Plaintiffs. In no event shall Defendant be
22 required to pay any amounts above the Maximum Settlement Amount to effectuate this Agreement,
23 other than its share of payroll taxes in connection with the wages portion of the Settlement (which
24 it will pay in addition to the Maximum Settlement Amount). The Settlement Administrator will
25 withhold the employees' share of taxes on settlement payments, as provided below, and Class
26 Members and PAGA Members shall remain responsible for paying any additional taxes due on any
27 payments they are issued under the settlement.
28

1 19. Named Plaintiffs. “Named Plaintiffs” collectively mean Plaintiff
2 Montgomery, Plaintiff Morales, and Plaintiff Williams.

3 20. Net Distribution Fund. “Net Distribution Fund” means the amount available
4 for distribution to Settlement Class Members, which is the Maximum Settlement Amount, less the
5 amount that the Court approves for: (1) the PAGA Allocation; (2) Attorneys’ Fees; (3) Attorneys’
6 Costs; (4) Settlement Administration Costs; and (5) Service Payments. Each Settlement Class
7 Member will be entitled to a *pro rata* share of the Net Distribution Fund (referred to as “Individual
8 Settlement Payment”) based on the number of Workweeks credited to each Settlement Class
9 Member during the Class Period.

10 21. Objection. “Objection” means an objection to the Class Settlement that a
11 Settlement Class Member submits in writing to the Settlement Administrator. Each “Objection”
12 must (1) contain the full name, address, and telephone number of the Settlement Class Member
13 objecting and the case name and number of the Action; (2) be signed by the Settlement Class
14 Member; (3) be postmarked or fax stamped on or before the Response Deadline (as defined below)
15 and returned to the Settlement Administrator at the specified address or fax number; and (4) give
16 the legal and factual basis for objection to the Class Settlement. If a Class Member submits both
17 an Objection and an Opt Out Request, he or she will be excluded from the Class Settlement and the
18 Objection will not be considered.

19 22. Opt Out Request. “Opt Out Request” means a request by a Class Member
20 to be excluded from the Class Settlement. Each “Opt Out Request” must (1) contain the full name,
21 address, and telephone number of the Class Member requesting exclusion from the Class Settlement
22 and the case name and number of the Action; (2) be signed by the Class Member; (3) be postmarked
23 or fax stamped on or before the Response Deadline and returned to the Settlement Administrator at
24 the specified address or fax number; and (4) contain a statement substantially similar to:

25 “I WISH TO BE EXCLUDED FROM THE SETTLEMENT OF CLASS CLAIMS
26 IN THE *SPENCER SUMISAKI V. BERKELEY BOWL PRODUCE, INC.*
27 LAWSUIT, AND UNDERSTAND THAT IF I ASK TO BE EXCLUDED, I WILL
28 NOT RECEIVE AN INDIVIDUAL SETTLEMENT PAYMENT. I

1 UNDERSTAND THAT, NEVERTHELESS, SETTLED PAGA CLAIMS WILL
2 BE RELEASED AND SETTLED.”

3 23. Parties. “Parties” shall mean Named Plaintiffs and Defendant.

4 24. PAGA Allocation. “PAGA Allocation” refers to the amount of Four
5 Hundred and Thirty Thousand Dollars (\$430,000.00) which is allocated to the settlement of the
6 Settled PAGA Claims, which will be distributed 75% to the Labor and Workforce Development
7 Agency (“LWDA Payment”) and 25% to PAGA Members on a *pro rata* basis (“Individual PAGA
8 Payment(s)” refer to PAGA Members’ *pro rata* share of 25% of the PAGA Allocation).

9 25. PAGA Members. “PAGA Members” means all Class Members who are
10 employed or have been employed by Defendant in the State of California during the PAGA Period.

11 26. PAGA Period. “PAGA Period” means the period from August 27, 2019
12 through the date of the Preliminary Approval Order.

13 27. PAGA Settlement. “PAGA Settlement” refers to the settlement and
14 resolution of the Settled PAGA Claims.

15 28. Preliminary Approval Order. “Preliminary Approval Order” is the Order
16 entered and filed by the Court that preliminarily approves the terms and conditions of this
17 Agreement, including approval of the Parties’ Agreement that specifies the content of notice and
18 manner in which notice will be provided to the Class and responded to by the Class, substantially
19 in the form attached hereto as **Exhibit B**.

20 29. Released Parties. “Released Parties” include Defendant and each of its
21 officers, directors, members, partners, owners, shareholders, employees, former employees, agents,
22 servants, attorneys, assigns, affiliates, independent contractors, volunteers, predecessors,
23 successors, parent companies and organizations, insurers, and any and all other persons, firms and
24 corporations in which Defendant may have an interest.

25 30. Response Deadline. The “Response Deadline” means the day that is forty-
26 five (45) days after the date the Class Notice is mailed to Class Members via First-Class U.S. Mail
27 and is the deadline to submit an Opt Out Request (as defined herein), Objection (as defined herein),
28 and/or Workweeks Dispute (as defined below).

1 31. Service Payments. “Service Payments” refers to the amount of Ten
2 Thousand Dollars (\$10,000.00) to each of the Named Plaintiffs (for a combined total of \$30,000)
3 in exchange for their service in furtherance of the Action.

4 32. Settlement. “Settlement” shall refer to the agreement of the Parties to settle
5 the claims as set forth and embodied in this Agreement.

6 33. Settlement Administrator. “Settlement Administrator” shall mean
7 Simpluris, Inc. a neutral third-party administrator as mutually chosen by the Parties and approved
8 by the Court.

9 34. Settlement Administration Costs. “Settlement Administration Costs” refers
10 to the amount to be paid to the Settlement Administrator for the costs of administering this
11 Settlement, not to exceed Twenty-Five Thousand Dollars (\$25,000).

12 35. Settled Claims. “Settled Claims” are all claims, charges, complaints, liens,
13 demands, causes of action, obligations, damages and liabilities, whether known or unknown, that
14 arise during the Class Period that each Class Member had, now has, or may hereafter claim to have
15 against the Released Parties and that were asserted in the Complaint, or that could have been
16 asserted in the Complaint based on any of the facts or allegations in the Complaint, regardless of
17 whether such claims arise under federal, state and/or local law, statute, ordinance, regulation,
18 common law, or other source of law. The Settled Claims specifically include, but are not limited to
19 claims for violation of the California Labor Code and Industrial Welfare Commission Wage Orders,
20 including and not limited to, for violations of California Labor Code §§ 201, 202, 203, 204, 226(a),
21 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and Industrial
22 Welfare Commission Wage Order Nos. 4-2001, 5-2001, 7-2001, 8-2001, and 17-2001, and
23 California Business & Professions Code §§ 17200, for failure to pay overtime wages, failure to
24 provide compliant meal periods and associated premiums, failure to provide compliant rest periods
25 and associated premiums, failure to pay minimum wages), failure to timely pay final wages, failure
26 to timely pay wages during employment, failure to provide compliant wage statements, failure to
27 keep requisite payroll records), failure to reimburse business expenses, and unfair business
28 practices.

1 36. Settled PAGA Claims. “Settled PAGA Claims” means claims, charges,
2 complaints, liens, demands, causes of action, obligations, and liabilities, whether known or
3 unknown, that arise during the PAGA Period, under the Private Attorneys General Act (“PAGA”)
4 seeking civil penalties for any of the alleged violations of the California Labor Code and/or
5 Industrial Welfare Commission Wage Orders that were asserted in the Complaint or PAGA
6 Notices, or that could have been asserted in the Complaint or PAGA Notices based on any facts or
7 allegations therein, including, but not limited to, violations of California Labor Code §§ 201, 202,
8 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802,
9 and Industrial Welfare Commission Wage Order Nos. 4-2001, 5-2001, 7-2001, 8-2001, and 17-
10 2001 for failure to pay overtime wages, failure to provide compliant meal periods and associated
11 premiums, failure to provide compliant rest periods and associated premiums, failure to pay
12 minimum wages, failure to timely pay final wages, failure to timely pay wages during employment,
13 failure to provide compliant wage statements, failure to keep requisite payroll records), and failure
14 to reimburse business expenses.

15 37. Settlement Class/Settlement Class Member(s). “Settlement Class” or
16 “Settlement Class Member(s)” means all Class Members who have not submitted a timely and valid
17 Opt Out Request.

18 38. Settlement Proceeds Distribution Deadline. “Settlement Proceeds
19 Distribution Deadline” means a date that is fourteen (14) days after the Maximum Settlement
20 Amount has been deposited by Defendant.

21 39. Updated Address. “Updated Address” means a mailing address that was
22 updated by a reasonable address verification measure of the Settlement Administrator or by an
23 updated mailing address provided by the United States Postal Service for a Class Member or PAGA
24 Member.

25 40. Workweek. “Workweek” shall mean any calendar week (i.e. a week
26 beginning on Sunday and ending on Saturday) in which a Class Member or PAGA Member
27 performed work for Defendant at least one day.

RECITALS

41. The Class Action Complaint for Damages was filed on April 10, 2019 in the Superior Court of California, County of Alameda, commencing the Action. The Class Action Complaint for Damages alleged the following causes of action: (1) Violation of California Labor Code §§ 510 and 1198 (failure to pay overtime wages); (2) Violation of California Labor Code §§ 226.7 and 512(a) (failure to provide compliant meal periods and associated premiums); (3) Violation of California Labor Code § 226.7 (failure to provide compliant rest periods and associated premiums); (4) Violation of California Labor Code §§1194, 1197, and 1197.1 (failure to pay minimum wages); (5) Violation of California Labor Code §§ 201 and 202 (failure to timely pay final wages); (6) Violation of California Labor Code § 204 (failure to timely pay wages during employment); (7) Violation of California Labor Code § 226(a) (failure to provide compliant wage statements); (8) Violation of California Labor Code § 1174(d) (failure to keep requisite payroll records); (9) Violation of California Labor Code §§ 2800 and 2802 (failure to reimburse business expenses); and (10) Violation of California Business & Professions Code §§ 17200, *et seq.*

42. The First Amended Class Action Complaint for Damages was filed on July 17, 2019 in the Action, which added Davian Montgomery as a named plaintiff and alleged the following causes of action: (1) Violation of California Labor Code §§ 510 and 1198 (failure to pay overtime wages); (2) Violation of California Labor Code §§ 226.7 and 512(a) (failure to provide compliant meal periods and associated premiums); (3) Violation of California Labor Code § 226.7 (failure to provide compliant rest periods and associated premiums); (4) Violation of California Labor Code §§1194, 1197, and 1197.1 (failure to pay minimum wages); (5) Violation of California Labor Code §§ 201 and 202 (failure to timely pay final wages); (6) Violation of California Labor Code § 226(a) (failure to provide compliant wage statements); (7) Violation of California Labor Code §§ 2800 and 2802 (failure to reimburse business expenses); and (8) Violation of California Business & Professions Code §§ 17200, *et seq.* The causes of action in the First Amended Class Action Complaint for Damages were premised on several alleged violations of the California Labor Code and Industrial Welfare Commission Wage Orders, including, *inter alia*: (1) failure to pay overtime wages; (2) failure to provide meal periods; (3) failure to provide rest periods; (4) failure

1 to provide minimum wages; (5) failure to timely pay wages upon termination; (6) failure to timely
2 pay wages during employment; (7) failure to provide complete and accurate wage statements; (8)
3 failure to maintain complete and accurate payroll records; and (9) failure to reimburse for necessary
4 business related expenses and costs.

5 43. Plaintiffs contend that on August 27, 2020, Plaintiff Nina Williams and
6 Plaintiff Nadia Morales each provided the Labor and Workforce Development Agency of their
7 intent to pursue civil penalties against Defendant under the Private Attorneys General Act for
8 alleged violations of the California Labor Code and applicable Industrial Welfare Commission
9 Wage Orders, including, *inter alia*, California Labor Code §§ 201, 202, 203, 204, 226(a), 226.7,
10 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and Industrial Welfare
11 Commission Wage Order Nos. 4-2001, 5-2001, 7-2001, 8-2001, and 17-2001 (the “PAGA
12 Notices”).

13 44. On August 27, 2020, Plaintiff Montgomery and former plaintiff Spencer
14 Sumisaki filed a Request for Dismissal of Plaintiff Spencer Sumisaki’s Individual Claims in this
15 Action Without Prejudice. On September 15, 2020, the Court issued an Order, granting the
16 dismissal of former plaintiff Spencer Sumisaki’s individual claims without prejudice.

17 45. The Second Amended Class Action Complaint for Damages & Enforcement
18 Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq., was filed on
19 November 20, 2020 in the Action, which added Nadia Morales and Nina Williams as named
20 plaintiffs and alleged the following causes of action: (1) Violation of California Labor Code §§ 510
21 and 1198 (failure to pay overtime wages); (2) Violation of California Labor Code §§ 226.7 and
22 512(a) (failure to provide compliant meal periods and associated premiums); (3) Violation of
23 California Labor Code § 226.7 (failure to provide compliant rest periods and associated premiums);
24 (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (failure to pay minimum wages);
25 (5) Violation of California Labor Code §§ 201 and 202 (failure to timely pay final wages); (6)
26 Violation of California Labor Code § 226(a) (failure to provide compliant wage statements); (7)
27 Violation of California Labor Code §§ 2800 and 2802 (failure to reimburse business expenses); (8)
28 Violation of California Business & Professions Code §§ 17200, *et seq.*; and (9) Violation of

1 California Labor Code § 2698, *et seq.* (California Labor Code Private Attorneys General Act of
2 2004). The causes of action in the operative Complaint are premised on several alleged violations
3 of the California Labor Code and Industrial Welfare Commission Wage Orders, including, *inter*
4 *alia*: (1) failure to pay overtime wages; (2) failure to provide meal periods; (3) failure to provide
5 rest periods; (4) failure to provide minimum wages; (5) failure to timely pay wages upon
6 termination; (6) failure to timely pay wages during employment; (7) failure to provide complete
7 and accurate wage statements; (8) failure to maintain complete and accurate payroll records; and
8 (9) failure to reimburse for necessary business related expenses and costs.

9 46. Defendant filed an answer, and denied all allegations and claims asserted in
10 the Complaint on December 22, 2020.

11 47. Defendant and Class Counsel, on behalf of the Named Plaintiffs and Class
12 Members, attended mediation with Jeffrey Ross, Esq. on July 21, 2021. Through further settlement
13 discussions, and following a mediator's proposal, the Parties reached the Agreement herein. The
14 Parties agree that the terms and conditions of this Agreement are the result of lengthy, intensive
15 arms-length negotiations between the Parties supervised by an experienced employment law
16 mediator. The Parties agree that the Agreement is entered into in good faith as to each Class
17 Member and PAGA Member, and that the Settlement is fair, reasonable and adequate as to each
18 Class Member and PAGA Member.

19 **TERMS AND CONDITIONS OF SETTLEMENT**

20 NOW THEREFORE, in consideration of the recitals listed above and the promises and
21 warranties set forth below, and intending to be legally bound and acknowledging the sufficiency of
22 the consideration and undertakings set forth herein, the Named Plaintiffs, individually on behalf of
23 themselves and on behalf of the Class Members and the State of California pursuant to the Private
24 Attorneys General Act, on the one hand, and Defendant, on the other hand, agree that the Action
25 shall be, and is finally and fully compromised and settled on the following terms and conditions.

26 48. Non-Admission of Liability. The Parties enter into this Agreement to
27 resolve the Action and to avoid the burden, expense, and risk of continued litigation. In entering
28 into this Agreement, Defendant does not admit, and specifically denies, that it has: violated any

1 federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any
2 statute or any other applicable laws, regulations, or legal requirements; breached any contract; or
3 engaged in any other culpable, wrongful or unlawful conduct with respect to its employees or any
4 other person or entity. Neither this Agreement, nor any of its terms or provisions, nor any of the
5 negotiations connected with it or proceedings, payouts, or other events associated with it, shall be
6 construed as an admission or concession by Defendant of any such violation(s) or failure(s) to
7 comply with any applicable law by Defendant or any Released Parties. Except as necessary in a
8 proceeding to approve, interpret, or enforce the terms of this Agreement, this Agreement and its
9 terms and provisions shall not be offered as evidence in any action or proceeding to establish any
10 admission on the part of Defendant regarding, or to establish the existence of any condition
11 constituting a violation of, or noncompliance with, federal, state, local or other applicable law. The
12 Parties intend this Settlement to be contingent upon the Court's granting preliminary and final
13 approval of this Agreement; and in the event final approval of this Agreement is not obtained, the
14 Parties do not waive, and instead expressly reserve, their respective rights to prosecute and defend
15 the Action as if this Agreement never existed. In the event that final approval of this Agreement is
16 denied by the Court, fails to become effective, or is reversed, withdrawn, or modified by the Court
17 or any other court with jurisdiction over the Action, the Agreement shall become null and void *ab*
18 *initio* and shall have no bearing on, and shall not be admissible in connection with, further
19 proceedings in the Action.

20 49. Stipulation for Class Certification. The Parties stipulate to the certification
21 of the Class for purposes of this Settlement only. If, however, the Settlement does not become final
22 for any reason, the Parties' Agreement shall become null and void *ab initio* and shall have no
23 bearing on, and shall not be admissible in connection with, whether class certification would be
24 appropriate in any other context in the Action.

25 50. Release of Settled Claims. As of the Effective Date and full funding of the
26 Maximum Settlement Amount, Named Plaintiffs and all Settlement Class Members shall be
27 deemed to have fully, finally, and forever released, settled, compromised, relinquished, and
28

1 discharged any and all Settled Claims against any and all Released Parties. The Settlement includes
2 a release of all Settled Claims during the Class Period by Settlement Class Members.

3 a. The Parties agree for settlement purposes only that, because the Class
4 Members are so numerous, it is impossible or impracticable to have each Class Member execute
5 this Agreement. Accordingly, the Class Notice will advise all Class Members of the binding nature
6 of the Class Settlement as to Settlement Class Members and the binding nature of the PAGA
7 Settlement as to the State of California and all PAGA Members, and such notice shall have the
8 same force and effect as if the Agreement were executed by each Class Member.

9 b. The Parties agree that this is a settlement of disputed claims not
10 involving undisputed wages, and that Labor Code Section 206.5 is therefore inapplicable.

11 c. Parties agree that This General Release shall not affect or bar
12 Settlement Class Members' ability to seek enforcement of this Agreement.

13 51. Release of Settled PAGA Claims. As of the Effective Date and full funding
14 of the Maximum Settlement Amount, the State of California, with respect to Named Plaintiffs and
15 all PAGA Members, shall be deemed to have fully, finally, and forever released, settled,
16 compromised, relinquished, and discharged any and all of the Released Parties of and from any and
17 all Settled PAGA Claims. The Parties agree that it is their intent that the terms set forth in this
18 Agreement will release any further attempt, by lawsuit, administrative claim or action, arbitration,
19 demand, or other action of any kind, by each and every PAGA Member to obtain any recovery
20 based on the Settled PAGA Claims.

21 52. Individual Release of Claims for Named Plaintiffs. As of the Effective
22 Date and full funding of the Maximum Settlement Amount, in addition to all other releases set forth
23 in this Agreement, and except as to claims specifically excluded, the Named Plaintiffs make the
24 additional following general release of all claims, known or unknown. The Named Plaintiffs
25 release the Released Parties from all claims, demands, rights, liabilities, and causes of action of
26 every nature and description whatsoever, known or unknown, asserted or that might have been
27 asserted, whether in tort, contract, or for violation of any state or federal statute, rule, or regulation
28 arising out of, relating to, or in connection with any act or omission by or on the part of any of the

1 Released Parties committed or omitted through the execution of this Agreement. The Named
2 Plaintiffs also specifically agree and acknowledge that they are waiving all claims under Title VII
3 of the Civil Rights Act of 1964, the Equal Pay Act, the Americans with Disabilities Act, the
4 California Fair Employment and Housing Act, the Family and Medical Leave Act, the Employee
5 Retirement Income Security Act, the California Labor Code, California Government Code, and
6 California Business and Professions Code. (The release set forth in this Paragraph shall be referred
7 to as the “General Release”). The Named Plaintiffs agree not to sue or otherwise make a claim
8 against any of the Released Parties that is in any way related to the General Release to the maximum
9 extent permitted by law. The General Release includes any unknown claims the Named Plaintiffs
10 do not know or suspect to exist in their favor at the time of the General Release, which, if known
11 by either, might have affected his respective settlement with, and release of, the Released Parties
12 by the Named Plaintiffs or might have affected their decisions not to object to this Settlement or
13 the General Release. With respect to the General Release, the Named Plaintiffs stipulate and agree
14 that they shall be deemed to have, and by operation of the Final Approval Order and Judgment shall
15 have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions,
16 rights and benefits of Section 1542 of the California Civil Code, which states:

17 **A general release does not extend to claims that the creditor or releasing party does**
18 **not know or suspect to exist in his or her favor at the time of executing the release and**
19 **that, if known by him or her, would have materially affected his or her settlement with**
20 **the debtor or released party.**

21 This General Release shall not affect or bar Named Plaintiffs’ ability to seek enforcement
22 of this Agreement. This General Release shall not affect or bar any claims that the Named Plaintiffs
23 may have for Unemployment Insurance, claims under the National Labor Relations Act, and the
24 right to receive benefits under any retirement plan or to elect COBRA continuation of health
25 insurance benefits. Nor shall the General Release preclude the Named Plaintiffs from filing a
26 charge with any applicable administrative agency. The Named Plaintiffs understand and agree,
27 however, that by way of the General Release, they individually release any right to recover
28 monetary damages in an action brought by an administrative agency.

1 53. Calculation of Settlement Payments. Subject to final Court approval and the
2 conditions specified in this Agreement, and in consideration of the mutual covenants and promises
3 set forth herein, Defendant agrees to make a payment or payments as set forth herein totaling an
4 amount of, but not to exceed the Maximum Settlement Amount plus Employer Payroll Taxes. The
5 Maximum Settlement Amount shall be apportioned as follows:

6 a. Attorneys' Fees. Class Counsel will apply to the Court for an award
7 of attorneys' fees of no more than thirty-eight percent (38%) of the Maximum Settlement Amount,
8 which is One Million One Hundred and Forty Thousand Dollars (\$1,140,000.00) if the Maximum
9 Settlement Amount is Three Million Dollars (\$3,000,000.00) (i.e., Attorneys' Fees). The
10 Attorneys' Fees shall be paid from and be deducted from the Maximum Settlement Amount subject
11 to Court Approval, and Defendant will not oppose such application. In the event the Court approves
12 an amount of attorneys' fees that is less than the amount provided herein, the unawarded amount
13 shall become part of the Net Distribution Fund for distribution to Settlement Class Members. Any
14 reduction by the Court shall not constitute grounds for revocation or cancellation of this Agreement
15 by Named Plaintiffs. The Settlement Administrator may purchase an annuity to utilize US
16 treasuries and bonds or other attorney fee deferral vehicles for Class Counsel. Any expenses
17 associated with such a purchase will be borne solely by Class Counsel and not paid from the
18 Maximum Settlement Amount.

19 b. Attorneys' Costs. Class Counsel shall request approval of an amount
20 not to exceed One Hundred Twenty Thousand Dollars (\$120,000) for reimbursement of litigation
21 costs and expenses incurred in the Action (i.e., Attorneys' Costs), which will be paid and deducted
22 from the Maximum Settlement Amount subject to Court approval. Defendant will not oppose such
23 application. Any unawarded Attorneys' Costs shall become part of the Net Distribution Fund for
24 distribution to Settlement Class Members. Any reduction by the Court shall not constitute grounds
25 for revocation or cancellation of this Agreement by Named Plaintiffs. Attorneys' Fees as specified
26 in the preceding paragraph and Attorneys' Costs as specified in this paragraph shall cover all
27 claimed and unclaimed Attorneys' Fees, Attorneys' Costs, and other amounts payable or awardable
28 against Defendant for Class Counsel's work, effort, or involvement in the Action and in carrying

1 out the Agreement and includes any and all work, effort, or involvement to carry out the terms of
2 the Agreement and as may be potentially or actually necessary or advisable to defend the
3 Agreement and/or Settlement through appeal, or collateral attack or in any other forum or
4 proceeding. These specified Attorneys' Fees and Attorneys' Costs shall be the sole payment for
5 attorneys' fees and costs and, otherwise, the Parties and Class Members and their counsel shall bear
6 their own fees and costs in connection with the Action.

7 c. Settlement Administration Costs. Class Counsel will also apply to
8 the Court for approval of costs of settlement administration in an amount estimated to be up to
9 Twenty-Five Thousand Dollars (\$25,000), which the Parties agree will be paid and deducted from
10 the Maximum Settlement Amount (i.e., Settlement Administration Costs) subject to Court
11 approval. Defendant will not oppose such application. Any unawarded amount shall become part
12 of the Net Distribution Fund for distribution to Settlement Class Members. Class Counsel will
13 specify the amount sought for such costs, up to the foregoing maximum, in Named Plaintiffs'
14 motion for final approval of the Settlement.

15 d. Named Plaintiffs' Service Payments. Class Counsel will apply to the
16 Court for approval of an enhancement award in an amount not to exceed Ten Thousand Dollars
17 (\$10,000.00) each to Plaintiff Montgomery, Plaintiff Morales, and Plaintiff Williams to be paid and
18 deducted from the Maximum Settlement Amount, subject to Court approval, for their services in
19 this litigation and in consideration for a General Release of all claims by Plaintiff Montgomery,
20 Plaintiff Morales, and Plaintiff Williams (i.e., the Service Payments). Defendant will not oppose
21 such applications. Any unawarded amount shall become part of the Net Distribution Fund for
22 distribution to Settlement Class Members. Any reduction by the Court shall not constitute grounds
23 for revocation or cancellation of this Agreement by Named Plaintiffs.

24 e. Employer Payroll Taxes. Defendant agrees to pay its share of
25 payroll taxes and contributions in connection with the portion of the settlement allocated towards
26 wages (which it will pay in addition to the Maximum Settlement Amount) ("Employer Payroll
27 Taxes").
28

1 f. PAGA Allocation and Payments. Pursuant to California Labor Code
2 Section 2698, *et seq.*, the Parties designate Four Hundred and Thirty Thousand Dollars
3 (\$430,000.00) of the Maximum Settlement Amount to resolve the Settled PAGA Claims (i.e., the
4 PAGA Allocation). Pursuant to the California Labor Code, seventy-five percent (75%) of the
5 PAGA Allocation, which is Three Hundred and Twenty-Two Thousand Five Hundred Dollars
6 (\$322,500.00), will be paid to the LWDA (i.e., the LWDA Payment). The remaining twenty-five
7 percent (25%) of the PAGA Allocation, which is One Hundred and Seven Thousand Five Hundred
8 Dollars (\$107,500.00) (“Net PAGA Distribution Amount”), shall be paid to PAGA Members on a
9 *pro rata* basis based on the number of Workweeks worked by the PAGA Member during the PAGA
10 Period as follows:

11 i. The Settlement Administrator will use the number of
12 Workweeks worked by PAGA Members during the PAGA Period (“Qualifying PAGA
13 Workweek(s)”) as reflected in the Class List to be provided by Defendant to the Settlement
14 Administrator;

15 ii. Each of the PAGA Members is eligible to receive a *pro rata*
16 share of the Net PAGA Distribution Amount based on his or her share of the total number of
17 Qualifying PAGA Workweeks worked.

18 iii. The value of a single Qualifying PAGA Workweek shall be
19 determined by dividing the Net PAGA Distribution Amount by the total number of Qualifying
20 PAGA Workweeks by all PAGA Members. Each PAGA Member shall receive an Individual
21 PAGA Payment equal to his or her Qualifying PAGA Workweeks multiplied by the value of a
22 single Qualifying PAGA Workweek.

23 g. Net Distribution Fund and Individual Settlement Payments to
24 Settlement Class Members. Individual Settlement Payments to the Settlement Class Members will
25 be calculated as follows:

26 i. The Settlement Administrator will use the number of
27 Workweeks worked by Class Members during the Class Period (“Qualifying Workweek(s)”) as
28 reflected in the Class List to be provided by Defendant to the Settlement Administrator;

1 ii. Each of the Class Members is eligible to receive a *pro rata*
2 share of the Net Distribution Fund based on his or her share of the total number of Qualifying
3 Workweeks worked.

4 iii. The value of a single Qualifying Workweeks shall be
5 determined by dividing the Net Distribution Fund by the total number Qualifying Workweeks by
6 all Settlement Class Members. Each Settlement Class Member shall receive a gross Individual
7 Settlement Payment equal to his or her Qualifying Workweeks multiplied by the value of a single
8 Qualifying Workweek.

9 h. The Parties agree that under no circumstances shall Defendant be
10 obligated to pay any amounts under this Agreement to any Class Member other than the Individual
11 Settlement Payment to Settlement Class Members and Individual PAGA Payment to PAGA
12 Members that is provided for under this Agreement.

13 i. The Parties acknowledge and agree that the formula used to calculate
14 Individual Settlement Payments and Individual PAGA Payments does not imply that all of the
15 elements of damages covered by the release are not being taken into account.

16 54. No Credit Toward Benefit Plans. The Individual Settlement Payments made
17 to Settlement Class Members and Individual PAGA Payments made to PAGA Members under this
18 Agreement shall not be utilized to calculate any additional benefits under any benefit plans to which
19 any Settlement Class Members or PAGA Members may be eligible, including, but not limited to:
20 profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave
21 plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Agreement
22 will not affect any rights, contributions, or amounts to which any Settlement Class Members and/or
23 PAGA Members may be entitled under any benefit plans.

24 55. Taxation of Settlement Proceeds.

25 a. The Parties agree that the Individual Settlement Payments shall be
26 allocated as follows: twenty-five percent (25%) will be allocated to wages ("wages portion") and
27 seventy-five percent (75%) will be allocated to penalties, interest, and non-wage damages ("non-
28 wages portion"). The wages portion of each Individual Settlement Payment shall be reported on

1 an IRS Form W-2 and subject to applicable employee state and federal tax withholdings. The non-
2 wages portion of each Individual Settlement Payments will be reported on an IRS Form 1099 (if
3 required).

4 b. The Individual PAGA Payments to PAGA Members will be
5 designated one hundred percent (100%) as penalties and will be report on an IRS Form 1099 (if
6 required).

7 c. The Settlement Administrator shall calculate, withhold from the
8 Individual Settlement Payments, and remit to applicable governmental agencies sufficient amounts,
9 if any, as may be owed by Settlement Class Members for applicable employee taxes. The
10 Settlement Administrator will issue appropriate tax forms, as required, to each such Settlement
11 Class Member and PAGA Member consistent with the above allocations.

12 d. All Parties represent that they have not received, and shall not rely
13 on, advice or representations from other Parties or their agents regarding the tax treatment of
14 payments under federal, state, or local law. In this regard, Defendant makes no representations
15 regarding the taxability of the Individual Settlement Payments, Individual PAGA Payments, or any
16 other payments made under this Agreement.

17 e. Class Counsel will be issued an IRS Form 1099 for the Attorneys'
18 Fees and Attorneys' Costs awarded by the Court.

19 f. The Named Plaintiffs will be issued IRS Form 1099s for any Service
20 Payments approved by the Court. The Service Payments payable to the Named Plaintiffs shall be
21 in addition to the Individual Settlement Payments and, if applicable, Individual PAGA Payments
22 that they will receive.

23 56. Provisional Approval of Settlement. Named Plaintiffs shall file a motion in
24 the Action and take all other necessary steps to request that the Court enter the Preliminary
25 Approval Order based on an agreed-upon Settlement schedule, subject to Court approval, including:

26 a. Seeking class certification on the terms set forth in this Agreement
27 solely for purposes of Settlement;
28

1 b. Preliminarily approving the proposed Settlement and this
2 Agreement, including the payments to the Settlement Class Members, Class Counsel, the Named
3 Plaintiffs, PAGA Members, the Settlement Administrator, and the LWDA;

4 c. Preliminarily approving the appointment of the Named Plaintiffs as
5 representatives of the Class for settlement purposes;

6 d. Preliminarily approving the appointment of counsel for Named
7 Plaintiffs as Class Counsel;

8 e. Appointing and approving the Settlement Administrator, to comply
9 with the duties and obligations as required by this Agreement;

10 f. Approving the form of the Class Notice mutually agreed upon by the
11 Parties;

12 g. Scheduling the Final Approval Hearing for consideration of whether
13 to grant final approval of this Agreement;

14 h. Approving the procedure to submit an Opt Out Request, Objection,
15 or Workweeks Dispute;

16 Defendant shall not oppose Class Counsel's motion for preliminary approval and
17 final approval of the Settlement so long as the motions and supporting papers are consistent with
18 the terms of this Agreement. Class Counsel shall provide Defendant with two business (2) days to
19 review and provide comments on the motions for preliminary and final approval of the Settlement
20 before the motions and supporting papers are filed with the Court. Failure of the Court to grant
21 preliminary approval will be grounds for the Parties to terminate the Settlement and the terms of
22 the Agreement. A request by the Court for supplemental briefing, or a preliminary denial pending
23 additional briefing, shall not be deemed a denial of preliminary approval or final approval. To the
24 extent the Court requests further or supplemental briefing, the Parties will work in good faith to
25 address the Court's concerns and questions.

26 57. Notice Procedure.

27 a. *Class and PAGA Member Data.* Within fifteen (15) calendar days
28 after notice of entry of the Preliminary Approval Order, Defendant shall provide to the Settlement

1 Administrator a data file that identifies for each individual, his/her full name, last-known address,
2 Social Security number, and the number of Qualifying Workweeks and, if applicable, Qualifying
3 PAGA Workweeks for each Class Member (collectively referred to as the “Class List”). The
4 Settlement Administrator will keep the Class List confidential and shall not provide it to anyone,
5 including Class Counsel, absent express written approval from Defendant, and shall use it only for
6 the purposes described herein, take adequate safeguards to protect confidential or private
7 information, and return or certify the destruction of the information upon completion of the
8 Settlement Administration process.

9 b. *Settlement Administrator Duties.* Prior to mailing the Class Notice,
10 the Settlement Administrator will update the addresses for the Class Members and PAGA Members
11 using skip trace. To the extent this process yields a different address from the one supplied by
12 Defendant, that Updated Address shall replace the address supplied by Defendant (i.e., Last Known
13 Address) and be treated as the new Last Known Address for purposes of this Agreement and for
14 subsequent mailings in particular.

15 c. *Notice Process.* Within fourteen (14) calendar days following
16 receipt of the Class List, the Settlement Administrator shall prepare and mail the approved Class
17 Notice. The Settlement Administrator shall deliver the Class Notice by First-Class U.S. Mail to
18 each Class Member and PAGA Member’s Last Known Address or Updated Address (if applicable).

19 d. *Opt Out Request.* Any Class Member may exclude himself or herself
20 from the Class Settlement. Any such Opt Out Request must be submitted to the Settlement
21 Administrator in writing on or before the Response Deadline. Opt Out Requests do not apply to
22 the PAGA Settlement; PAGA Members will be bound to the PAGA Settlement (i.e., the settlement
23 and release of Settled PAGA Claims) irrespective of whether they exclude themselves from the
24 Class Settlement.

25 e. *Objections.* Any Settlement Class Member may object to the
26 Class Settlement by submitting an Objection to the Settlement Administrator on or before the
27 Response Deadline. The Parties shall be permitted to file responses to any Objections prior to the
28 Final Approval Hearing and/or to respond to or address the Objection at the Final Approval

1 Hearing. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage
2 Settlement Class Members to submit any Objections to the Settlement or appeal from the Final
3 Approval Order and Judgment. Class Counsel shall not represent any Settlement Class Members
4 with respect to any such Objections. Within two (2) business days after receipt of an Objection,
5 the Settlement Administrator shall serve the Objection on the Parties, and at least sixteen (16) court
6 days before the Final Approval Hearing, the Settlement Administrator shall submit all Objections
7 received by the Settlement Administrator to the Court.

8 58. *Workweeks Disputes.* Class Members will have the right to challenge the
9 number of Qualifying Workweeks and/or Qualifying PAGA Workweeks allocated to them. Class
10 Members shall have until the Response Deadline to submit to the Settlement Administrator their
11 dispute in writing (“Workweek Dispute”) at the address indicated on the Class Notice. Each
12 Workweeks Dispute must: (1) contain the full name, address, and telephone number of the Class
13 Member and the case name and number of the Action; (2) be signed by the Class Member; (3) be
14 postmarked or fax stamped on or before the Response Deadline and returned to the Settlement
15 Administrator at the specified address or fax number; (4) clearly state the number of Qualified
16 Workweeks and/or Qualified PAGA Workweeks he or she believes is correct; and (5) attach any
17 documents the Class Member has to support his or her position that they be credited with the
18 contended number of Qualified Workweeks and/or Qualified PAGA Workweeks. The Settlement
19 Administrator will inform Class Counsel and Defendant’s Counsel in writing of any timely
20 submitted Workweeks Disputes. Defendant shall have the right to respond to any Dispute
21 submitted by any Class Members within seven (7) calendar days of the being informed of a timely
22 submitted Workweeks Dispute, and shall cooperate in providing the Settlement Administrator will
23 information to determine all such Workweeks Disputes. The Settlement Administrator will
24 determine all such Workweeks Disputes following Defendant’s opportunity to respond. Subject to
25 Court approval, Workweeks Disputes will be resolved without hearing by the Settlement
26 Administrator, who will make a decision based on Defendant’s records and any documents or other
27 information presented by the Class Member and/or PAGA Member making the Workweeks
28 Dispute, Class Counsel, or Defendant.

- 1 f. *Settlement Administrator Follow-up efforts.*
- 2 i. If a Class Notice is returned by the Post Office as
- 3 undeliverable, but with a forwarding address, on or before the Response Deadline, then, the
- 4 Settlement Administrator shall re-mail it by First-Class U.S. mail. If a Class Member personally
- 5 provides an updated address to the Settlement Administrator on or before the Response Deadline,
- 6 then, the Settlement Administrator shall re-mail said Class Member's Class Notice by First-Class
- 7 U.S. to the updated address provided by the Class Member. If a Class Notice is returned by the
- 8 Post Office as undeliverable, without a forwarding address, on or before the Response Deadline,
- 9 then, the Settlement Administrator shall conduct a search of the National Change of Address
- 10 database and, if an alternate address that is likely to be more current is located, proceed to re-mail
- 11 the Class Notice by First-Class U.S. mail to the alternate address.
- 12 g. *Documenting Communications.* The Settlement Administrator shall
- 13 date stamp documents it receives, including Opt Out Requests, Objections, Workweeks Disputes,
- 14 and any correspondences and documents from Class Members and PAGA Members.
- 15 h. *Settlement Administrator Declaration.* At least twenty (20) court
- 16 days before the Final Approval Hearing, the Settlement Administrator shall prepare, subject to the
- 17 Parties' input and approval, a declaration setting forth the due diligence and proof of mailing of the
- 18 Class Notice, the results of the Settlement Administrator's mailings, including tracing and re-
- 19 mailing efforts, and the Class Members' and PAGA Members' responses to those mailing, and
- 20 provide additional information deemed necessary to approve the settlement.
- 21 i. *Settlement Administrator Written Reports.* Each week after initially
- 22 mailing the Class Notices and prior to the Response Deadline, the Settlement Administrator shall
- 23 provide the Parties with a report listing the number of Class Members that submitted Opt Out
- 24 Requests, Objections, and/or Workweeks Disputes. Within seven (7) calendar days after the
- 25 Response Deadline, the Settlement Administrator will provide a final report listing the number of
- 26 Class Members who submitted Opt Out Requests, Objections, and/or Workweeks Disputes.
- 27 j. *Settlement Administrator Calculations of Individual Settlement*
- 28 *Payments.* Within seven (7) calendar days after resolving all Workweeks Disputes made by

1 Settlement Class Members, and following entry of the Final Approval Order and Judgment, the
2 Settlement Administrator shall provide to the Parties a report showing its calculation of all amounts
3 that must be funded by Defendant under the Settlement, including and not limited to, calculations
4 of the Individual Settlement Payments to be made to Settlement Class Members and Individual
5 PAGA Payments to be made to PAGA Members. After receiving the Settlement Administrator's
6 report, Class Counsel and Defendant's counsel shall review the same to determine if the calculation
7 of payments is consistent with this Agreement and the Court's orders, and shall notify the
8 Settlement Administrator if either counsel does not believe the calculation is consistent with the
9 Agreement and/or the Court's orders. After receipt of comments from counsel, the Settlement
10 Administrator shall finalize its calculations of payments, at least five (5) days prior to the
11 distribution of such payments, and shall provide Class Counsel and Defendant's Counsel with a
12 final report listing the amount of all payments to be made to each Settlement Class Member from
13 the Net Distribution Fund and listing the amount of all payments to be made to each PAGA Member
14 from the Net PAGA Distribution Amount. The Settlement Administrator will also provide
15 information that is requested and approved by both Parties regarding its duties and other aspects of
16 the Settlement, and that is necessary to carry out the terms of the Settlement.

17 59. Requirements for Recovery of Individual Settlement Payments.

18 a. *Class Members.* No claim form is necessary to participate in the
19 Class Settlement. Unless a Class Member submits a valid and timely Opt Out Request, that Class
20 Member will be a Settlement Class Member, bound by the Final Approval Order and Judgment and
21 Class Settlement, and will receive a payment from the Net Distribution Fund (i.e., an Individual
22 Settlement Payment).

23 b. *PAGA Members.* All PAGA Members shall be bound by the PAGA
24 Settlement, and will be issued payment from the Net PAGA Distribution Amount (i.e., and
25 Individual PAGA payment).

26 c. *Late Submissions.* The Settlement Administrator shall not accept as
27 timely any Opt Out Request, Objection, or Workweeks Dispute postmarked after the Response
28 Deadline. It shall be presumed that, if an Opt Out Request, Objection, or Workweeks Dispute is

1 not postmarked or fax stamped on or before the Response Deadline, the Class Member did not
2 return the Opt Out Request, Objection, or Workweeks Dispute in a timely manner.

3 d. *Opt-Out Procedure.* A Class Member will not be entitled to opt out
4 of the Class Settlement established by this Agreement unless he or she submits to the Settlement
5 Administrator a timely and valid Opt Out Request.

6 i. The Settlement Administrator shall not have the authority to
7 extend the deadline for Class Members to submit an Opt Out Request absent agreement by both
8 Parties.

9 ii. Class Members shall be permitted to rescind in writing their
10 Opt Out Request by submitting a written rescission statement to the Settlement Administrator no
11 later than the day before the Final Approval Hearing.

12 iii. If more than ten percent (10%) of the Class Members timely
13 opt out of the Class Settlement, Defendant shall have the sole and absolute discretion to withdraw
14 from this Agreement within seven (7) calendar days after the Response Deadline and written notice
15 from the Settlement Administrator of the final opt out rate. Defendant shall provide written notice
16 of such withdrawal to Class Counsel. In the event that Defendant elects to so withdraw, the
17 withdrawal shall have the same effect as a termination of this Agreement for failure to satisfy a
18 condition of Settlement, and the Agreement shall become null and void and have no further force
19 or effect, and Defendant will be responsible for any and all Settlement Administration Costs
20 incurred thus far.

21 60. Final Approval Hearing and Final Approval Order and Judgment.

22 a. *Entry of Final Judgment.* At the Final Approval Hearing, Named
23 Plaintiffs will request, and Defendant will concur in said request, that the Court enter a jointly-
24 agreed upon Final Approval Order and Judgment.

25 b. *Motion.* Named Plaintiffs will draft and file a motion for final
26 approval in conformity with any requirements from the Court and will take any other actions
27 necessary to request the entry of a Final Approval Order and Judgment in accordance with this
28 Agreement. In conjunction with the motion for final approval and requesting an award of

1 Attorneys' Fees, Attorneys' Costs, and Service Payments, Class Counsel shall file a declaration
2 from the Settlement Administrator confirming that the Class Notice was mailed to all Class
3 Members as required by this Agreement, as well as any additional information Class Counsel, with
4 the input and approval of Defendant, deems appropriate to provide to the Court.

5 c. Order. The Parties shall take all reasonable efforts to secure entry of
6 the Final Approval Order and Judgment. If the Court denies final approval of the Settlement, this
7 Agreement shall be void *ab initio*, and Defendant shall have no obligation to make any payments
8 under the Agreement besides any Settlement Administration Costs incurred thus far. A request by
9 the Court for supplemental briefing, or a preliminary denial pending additional briefing, shall not
10 be deemed a denial of final approval of the Settlement. To the extent the Court requests further or
11 supplemental briefing, the Parties will work in good faith to address the Court's concerns and
12 questions. The Named Plaintiffs will submit a proposed Final Approval Order and Judgment
13 substantially similar to the form attached hereto as **Exhibit C**. Said Final Approval Order and
14 Judgment shall contain the following provisions:

15 i. Wherein the Court enters judgment, finding that this
16 Agreement and Settlement is fair, just, equitable, reasonable, adequate, and in the best interests of
17 the Class and was reached as a result of intensive, serious, and non-collusive arms-length
18 negotiations and was achieved with the aid of an experienced mediator and in good faith as to each
19 Class Member;

20 ii. Affirming that each side will bear its own costs and fees
21 (including attorneys' fees), except as provided by the Agreement, and that Defendant shall not be
22 required to pay any amounts other than as set forth in the Agreement;

23 iii. Confirming the certification of the Class for purposes of
24 Settlement only;

25 iv. Finding that the Settlement Administration process as carried
26 out afforded adequate protections to Class Members, provided the best notice practicable, and
27 satisfied the requirements of law and due process;

28 v. Ruling on any Objections to the Settlement;

vi. Approving the settlement of Settled PAGA Claims consistent with the Settlement;

vii. Retaining Court jurisdiction after entry of judgment to oversee administration and enforcement of the terms of the Agreement; and

viii. Requiring the Parties to carry out the provisions of this Agreement.

61. Notice to the Labor and Workforce Development Agency. Class Counsel is responsible for complying with all requirements of the PAGA governing notice to the LWDA of settlement and/or judgment. Specifically, Class Counsel will provide a copy of the this Agreement to the LWDA at the same time that it is submitted to the Court and will further provide a copy of the Court's Preliminary Approval Order and Final Approval Order and Judgment to the LWDA within ten (10) calendar days after entry of said judgment or order as required by Labor Code sections 2699(l)(2)-(3).

62. Payment of Settlement. Defendant will deposit the Maximum Settlement Amount plus Employer Payroll Taxes into an account established by the Settlement Administrator within fourteen (14) business days of the Effective Date.

a. The Parties agree that the Maximum Settlement Amount will qualify as a settlement fund pursuant to the requirements of Section 468(B)(g) of the Internal Revenue Code of 1986, as amended, and Section 1.468B-1 *et seq.* of the income tax regulations. Furthermore, the Settlement Administrator is hereby designated as the "administrator" of the qualified settlement funds for purposes of Section 1.468B-2(k) of the income tax regulations. As such, all employee taxes imposed on the gross income of that settlement fund and any tax-related expenses arising from any income tax returns or other reporting documents that may be required by the Internal Revenue Service or any state or local taxing body will be paid from the Net Distribution Fund by the Settlement Administrator.

b. The Settlement Administrator shall be deemed to have timely distributed Individual Settlement Payments and Individual PAGA Payments if it places said payments in the mail (First-Class U.S.). If, within forty-five (45) days of the initial mailing of the

1 payment(s), the Settlement Administrator receives notice from Settlement Class Members or
2 PAGA Members that they have not received their settlement check due to changes of address or
3 other circumstances, the Settlement Administrator shall make reasonable efforts to ensure the initial
4 payment is cancelled and re-issue the payment to the Settlement Class Member or PAGA Member.
5 The Settlement Administrator shall only undertake one re-issuance of a payment upon request of a
6 Settlement Class Member.

7 c. The distribution of Attorneys' Fees, Attorneys' Costs, LWDA
8 Payment, and the Service Payments shall occur no later than the Settlement Proceeds Distribution
9 Deadline. Under no circumstances shall the foregoing payments be made prior to the distribution
10 of payments to Settlement Class Members and PAGA Members.

11 63. Individual Settlement Payment and Individual PAGA Payment checks will
12 be valid for ninety (90) days after mailing by the Settlement Administrator.

13 64. After the ninety (90) day check validity period, settlement checks will
14 become cancelled and funds associated with the cancelled checks will be transmitted to Katherine
15 and George Alexander Community Law Center, a jointly-selected non-profit organization in
16 compliance with California Code of Civil Procedure section 384. Settlement Class Members and
17 PAGA Members who fail to deposit or negotiate their check(s) in a timely fashion shall,
18 nevertheless, remain subject to the terms of the Agreement and the Final Approval Order and
19 Judgment.

20 65. Upon completion of administration of the Settlement, the Settlement
21 Administrator shall provide written certification of such completion to the Court, Class Counsel,
22 and Defendant's Counsel.

23 66. Binding Effect of Agreement on Settlement Class Members and PAGA
24 Members. Subject to final Court approval, all Settlement Class Members, the State of California,
25 and PAGA Members shall be bound by this Agreement and Final Approval Order and Judgment
26 shall be entered in the Action.

27 67. Automatic Voiding of Agreement if Settlement Not Finalized. If for any
28 reason the Effective Date does not occur, the Settlement shall be null and void and the orders and

1 judgment to be entered pursuant to this Agreement shall be vacated; and the Parties will be returned
2 to the status quo prior to entering this Agreement with respect to the Action, as if the Parties had
3 never entered into this Agreement. In addition, in such event, the Agreement and all negotiations,
4 court orders and proceedings relating thereto shall be without prejudice to the rights of any and all
5 Parties hereto, and evidence relating to the Agreement and all negotiations shall not be admissible
6 or discoverable in the Action or otherwise in any other proceeding.

7 68. Publicity, Confidentiality and Non-Disparagement.

8 a. No public comment, communications to media, or any form of
9 advertising or public announcement (including social media) regarding the Action shall be made
10 by Named Plaintiffs or Class Counsel at any time.

11 b. Class Counsel agrees not to solicit any Class Members to exclude
12 themselves from the terms of this Agreement, and further agrees not to initiate, contact ,or have
13 any communications with Class Members during the settlement approval process. Nothing will
14 prevent Class Counsel from responding to inquiries from Class Members. Defendant agrees that it
15 shall not discourage any Class Members from participating in the settlement and shall refer any
16 questions to the Settlement Administrator.

17 c. Prior to the motion for preliminary approval and submission of this
18 Agreement to the Court, Class Counsel shall not discuss the terms of the Agreement with any person
19 other than the Named Plaintiffs, Defendant's Counsel, and the Settlement Administrator, and that
20 they will not discuss the negotiations leading to Agreement with any person other than the Named
21 Plaintiffs and Defendant's Counsel. Class Counsel will, however, undertake any and all
22 submissions of information and/or materials relating to the Action and this Settlement to the LWDA
23 to the extent required under the PAGA statute (e.g., submitting this Agreement to the LWDA at the
24 same time as submitting it to the Court for preliminary approval).

25 d. Named Plaintiffs acknowledge that they have not, and will not,
26 discuss the terms of the Settlement with any persons other than Class Counsel, their spouse, their
27 tax preparer/accountant, and any other legal representative of Named Plaintiffs, prior to filing the
28 motion for preliminary approval and submission of this Agreement to the Court. Named Plaintiffs

1 further acknowledge that at no time will they disclose details of the negotiations leading to this
2 Settlement, including information learned during or after mediation.

3 e. To the extent permitted by applicable law and in order to implement
4 the Settlement, Named Plaintiffs agree that they will not make any defamatory or disparaging
5 statements about Defendant or any Released Party. However, Named Plaintiffs are not precluded
6 from submitting, and are contemplated to submit, declarations in support of certification of the
7 Class for purposes of this Settlement and to support their receipt of Service Payments.

8 f. To the extent documents produced, formally or informally, by
9 Defendant during the court of the Action are confidential or otherwise subject to confidentiality,
10 Named Plaintiffs and Class Counsel agree to maintain the confidentiality of such materials.

11 g. Nothing in this provision will prohibit Class Counsel or the Named
12 Plaintiffs from seeking preliminary approval or final approval of the Settlement, or from making
13 any disclosures as required by law.

14 69. Pro Rata Adjustment to Maximum Settlement Amount Based on
15 Workweeks. Defendant provided to Class Counsel, among other things, a class list prior to the
16 mediation. This class list contained, among other things, relevant hire date, termination date, and
17 hourly rate data of Class Members for the period April 10, 2015 to June 30, 2021, and reflected an
18 estimated 173,738 total Workweeks worked by Class Members during that period. Using this class
19 list and estimated Workweek count, along with other information produced by Defendant
20 throughout the course of the Action and for purposes of mediation, Class Counsel estimated that
21 the Class Members worked 188,460 Workweeks for the period April 10, 2015 to July 19, 2021, and
22 the parties relied on this 188,460 Workweek count to negotiate this Settlement. Accordingly, if the
23 actual Workweeks for the Class Members for the period April 10, 2015 to July 19, 2021 exceed
24 Class Counsel's 188,460 estimate by more than 9,423 (5% of Class Counsel's 188,460 estimate for
25 that period), then the parties agree that the Maximum Settlement Amount shall be increased *pro*
26 *rata* to the extent the actual Workweek count for that period is greater than Class Counsel's
27 estimated Workweek count for that period.

1 70. Modification in Writing. Prior to the Court granting preliminary approval
2 this Agreement, this Agreement may be altered, amended, modified or waived, in whole or in part,
3 only in a writing signed by counsel for the Parties; after the Court has granted preliminary approval
4 of this Agreement, it may be altered, amended, modified or waived, in whole or in part, only in a
5 writing signed by counsel for the Parties, subject to approval by the Court. Any waiver of any
6 provision of this Agreement shall not constitute a waiver of any other provision of this Agreement
7 unless expressly so indicated.

8 71. Ongoing Cooperation. Named Plaintiffs and Defendant, and each of their
9 respective counsel, shall cooperate in good faith to execute all documents and perform all acts
10 necessary and proper to effectuate and implement the terms of this Agreement, including but not
11 limited to drafting and submitting the Motions for Preliminary and Final Approval, and defending
12 the Agreement and Final Judgment against objections and appeals. The Parties to this Agreement
13 shall use their best efforts, including all efforts contemplated by this Agreement and any other
14 efforts that may become necessary by order of the Court or otherwise, to effectuate this Agreement
15 and the terms set forth herein.

16 72. Parties' Authority. The signatories hereby represent that they are fully
17 authorized to enter into this Agreement and bind the Parties hereto to the terms and conditions
18 hereof.

19 73. No Prior Assignments. The Parties and their counsel represent, covenant,
20 and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or
21 purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim,
22 demand, action, cause of action, or rights herein released and discharged or herein establish and/or
23 created, except as set forth herein.

24 74. Binding on Successors. This Agreement shall be binding and shall inure to
25 the benefit of the Parties and their respective successors, assigns, executors, administrators, heirs
26 and legal representatives, including the Released Parties.

27 75. Integration/Entire Agreement. The Parties warrant that no promise or
28 inducement has been offered or made to any of the Parties except as set forth herein. This

1 Agreement constitutes the full, complete and entire understanding, agreement and arrangement
2 between Named Plaintiffs on behalf of themselves, Class Members, PAGA Members, and the State
3 of California pursuant to the Private Attorneys General Act, on the one hand, and Defendant and
4 Released Parties on the other hand, with respect to the Settlement of the Action and the Settled
5 Claims and Settled PAGA Claims against the Released Parties. This Agreement supersedes any
6 and all prior oral or written understandings, agreements and arrangements, express or implied,
7 between the Parties with respect to the Settlement of the Action and the Settled Claims and Settled
8 PAGA Claims against the Released Parties. The Parties explicitly recognize California Civil Code
9 Section 1625 and California Code of Civil Procedure Section 1856(a), which provide that a written
10 agreement is to be construed according to its terms, and may not be varied or contradicted by
11 extrinsic evidence, and agree that no such extrinsic oral or written representations or terms shall
12 modify, vary, or contradict the terms of this Agreement.

13 76. Execution in Counterparts. This Agreement may be signed in one or more
14 counterparts. A photographic, scanned, electronic, or facsimile copy of signatures shall be treated
15 as an original signature for all purposes. All executed copies of this Agreement, and photocopies
16 thereof (including facsimile or email copies of the signature pages), shall have the same force and
17 effect and shall be as legally binding and enforceable as the original.

18 77. Captions. The captions and section numbers in this Agreement are inserted
19 for the reader's convenience, and in no way define, limit, construe, or describe the scope or intent
20 of the provisions of this Agreement.

21 78. Governing Law. This Agreement shall be interpreted, construed, enforced,
22 and administered in accordance with the laws of the State of California, without regard to otherwise
23 applicable principles of conflicts of laws.

24 79. Mutual Preparation. The Parties have had a full opportunity to negotiate
25 the terms and conditions of this Agreement. Accordingly, this Agreement shall not be construed
26 more strictly against one Party than another merely by virtue of the fact that it may have been
27 prepared by counsel for one of the Parties, it being recognized that, because of the arms-length
28 negotiations between the Parties, all Parties have contributed to the preparation of this Agreement.

1 80. Resolution of Disputes. The Parties agree to refer any disputes related to
2 the drafting of the Agreement and attached documents to mediator, Jeffrey Ross, Esq.

3 81. Representation by Counsel. The Parties acknowledge that they have been
4 represented by counsel throughout all negotiations that preceded the execution of this Agreement,
5 and that this Agreement has been executed with the consent and advice of counsel.

6 **IT IS SO AGREED:**

7 Dated: 12/30/2021, 2021

8 Electronically Signed 2021-12-30 23:58:06 UTC - 208.3.194.139
9 Davian Montgomery
10 AssureSign® 8c9601ce1-a352-46d8-b3db-ae0e0189c596

DAVIAN MONTGOMERY

11 Dated: _____, 2021

12 _____
NADIA MORALES

13 Dated: _____, 2021

14 _____
NINA WILLIAMS

15 Dated: _____, 2021

16 _____
BERKELEY BOWL PRODUCE, INC.

17 **APPROVED AS TO FORM:**

18 Dated: _____, 2021

LAWYERS *for* JUSTICE, PC

19 _____
Edwin Aiwazian
20 Arby Aiwazian
21 Joanna Ghosh

22 Attorneys for Plaintiffs

1 80. Resolution of Disputes. The Parties agree to refer any disputes related to
2 the drafting of the Agreement and attached documents to mediator, Jeffrey Ross, Esq.

3 81. Representation by Counsel. The Parties acknowledge that they have been
4 represented by counsel throughout all negotiations that preceded the execution of this Agreement,
5 and that this Agreement has been executed with the consent and advice of counsel.

6 **IT IS SO AGREED:**

7
8 Dated: _____, 2021

9
10 _____
DAVIAN MONTGOMERY

11 Dated: 12/30/2021, 2021

12 Electronically Signed _____ 2021-12-31 00:05:28 UTC - 166.216.158.140
AssureSign® _____ ff302624-ce01-483f-8a08-ae0e0188e0c5

13
14 _____
NADIA MORALES

15 Dated: _____, 2021

16
17 _____
NINA WILLIAMS

18 Dated: _____, 2021

19
20 _____
BERKELEY BOWL PRODUCE, INC.

21 **APPROVED AS TO FORM:**

22 Dated: _____, 2021

LAWYERS *for* JUSTICE, PC

23 _____
Edwin Aiwazian
Arby Aiwazian
Joanna Ghosh

24
25 *Attorneys for Plaintiffs*

1 80. Resolution of Disputes. The Parties agree to refer any disputes related to
2 the drafting of the Agreement and attached documents to mediator, Jeffrey Ross, Esq.

3 81. Representation by Counsel. The Parties acknowledge that they have been
4 represented by counsel throughout all negotiations that preceded the execution of this Agreement,
5 and that this Agreement has been executed with the consent and advice of counsel.

6 **IT IS SO AGREED:**

7
8 Dated: _____, 2021

9
10 _____
DAVIAN MONTGOMERY

11 Dated: _____, 2021

12 _____
NADIA MORALES

13 Dated: 12/30/2021, 2021

14 Electronically Signed _____ 2021-12-31 00:10:08 UTC - 107.127.14.122
Nina Williams
AssureSign® _____ 1005a42d-87e6-4db6-bd84-ae0e018a7fc1

15 NINA WILLIAMS

16 Dated: _____, 2021

17 _____
18 BERKELEY BOWL PRODUCE, INC.

19 **APPROVED AS TO FORM:**

20 Dated: January 3, 2022, 2021

LAWYERS for JUSTICE, PC

21 
22 _____

Edwin Aiwazian

Arby Aiwazian

Joanna Ghosh

23
24
25 *Attorneys for Plaintiffs*

80. Resolution of Disputes. The Parties agree to refer any disputes related to the drafting of the Agreement and attached documents to mediator, Jeffrey Ross, Esq.

81. Representation by Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Agreement, and that this Agreement has been executed with the consent and advice of counsel.

IT IS SO AGREED:

Dated: _____, 2021

DAVIAN MONTGOMERY

Dated: _____, 2021

NADIA MORALES

Dated: _____, 2021

NINA WILLIAMS

Dated: 1/4/2022, 2021

Tom Mishima

BERKELEY BOWL PRODUCE, INC.

APPROVED AS TO FORM:

Dated: _____, 2021

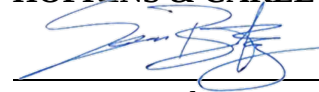
LAWYERS *for* JUSTICE, PC

Edwin Aiwazian
Arby Aiwazian
Joanna Ghosh

Attorneys for Plaintiffs

1 Dated: January 4, 2022

HOPKINS & CARLEY

2 

3 Ernest M. Malaspina

4 Jennifer S. Coleman

5 Sean Bothamley

6 *Attorneys for Defendant*

EXHIBIT A

NOTICE OF CLASS ACTION AND PAGA SETTLEMENT

Spencer Sumisaki, et al. v. Berkeley Bowl Produce, Inc.

Superior Court of California for the County of Alameda, Case No. RG19014520

PLEASE READ THIS NOTICE

A class and representative action under the Private Attorneys General Act, California Labor Code sections 2699, *et seq.* (“PAGA”) against Defendant Berkeley Bowl Produce, Inc. (“Berkeley Bowl”) has been preliminarily approved for settlement. In the lawsuit, plaintiffs Davian Montgomery, Nadia Morales, and Nina Williams (“Plaintiffs”) alleged that Berkeley Bowl failed to properly compensate Class Members for all hours worked, failed to provide Class Members with compliant meal and/or rest periods or compensation in lieu thereof, failed to provide accurate wage statements, failed to timely pay all wages owed during employment and upon termination, failed to maintain accurate payroll records, failed to reimburse Class Members for necessary business expenses, and violated section 17200, *et seq.* of California’s Business and Professions Code. Berkeley Bowl denies Plaintiffs’ allegations and contends that it complies with applicable law.

You have been identified by Berkeley Bowl’s records as a Class Member in the above-entitled action, and as such, you are subject to the terms of the Class Action and PAGA Settlement Agreement and Stipulation (“Settlement,” “Agreement,” or “Settlement Agreement”) preliminarily approved by the Court. Please read this notice carefully. It may affect your legal rights.

YOUR LEGAL RIGHTS AND OPTIONS WITH RESPECT TO THE SETTLEMENT	
Participate in the Class Settlement	If you want to be bound by the Class Settlement and be issued an Individual Settlement Payment, then you do not need to do anything.
Participate in the PAGA Settlement	If you are a PAGA Member (defined below), you will automatically be bound to the PAGA Settlement and be issued an Individual PAGA Payment.
Exclude Yourself from the Class Settlement	If you do not want to be bound by the Class Settlement, you must follow the instructions in Section 6 to exclude yourself from the Class Settlement. If you exclude yourself from the Class Settlement, you will not be issued an Individual Settlement Payment, and you will not release the Settled Claims against Released Parties defined in Section 4 below. If the Settlement is approved by the Court, and you are a PAGA Member, you will release the Settled PAGA Claims and be issued an Individual PAGA Payment even if you exclude yourself from the Class Settlement.
Object to the Class Settlement	If you want to object to the Class Settlement, you must follow the instructions in Section 7. If you object, you will still be bound by the terms of the Class Settlement, if approved by the Court.

1. WHY DID I GET THIS NOTICE?

You have received this Notice because Berkeley Bowl’s records reflect that you are a Class Member as defined above. This Notice provides you with information about: (1) the terms of the Settlement, including the claims that are being released; (2) the total monetary amount of the Settlement; (3) your estimated Individual Settlement

Payment, provided you remain a Settlement Class Member; (3) your estimated Individual PAGA Payment if you are eligible to receive one; and (4) where to find additional information regarding the case and the Settlement.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT.

2. WHAT IS THIS CASE ABOUT?

The Class Action Complaint for Damages was filed on April 10, 2019 in the Superior Court of California, County of Alameda, commencing the lawsuit entitled *Spencer Sumisaki, et al. v. Berkeley Bowl Produce, Inc.*, Case number RG19014520 (the “Action”).

On July 17, 2019, the First Amended Class Action Complaint for Damages was filed in the Action.

On August 27, 2020, Plaintiff Nina Williams and Plaintiff Nadia Morales each provided the Labor and Workforce Development Agency of their intent to pursue civil penalties against Defendant under the Private Attorneys General Act for alleged violations of the California Labor Code and applicable Industrial Welfare Commission Wage Orders, including, *inter alia*, California Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and Industrial Welfare Commission Wage Order Nos. 4-2001, 5-2001, 7-2001, 8-2001, and 17-2001 (the “PAGA Notices”).

On November 19, 2020, Second Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. was filed in the Action,

The Operative Complaint in the Action alleges Berkeley Bowl: (1) failed to pay properly overtime wages; (2) failed to provide compliant meal periods or compensation in lieu thereof; (3) failed to provide rest breaks or compensation in lieu thereof; (4) failed to pay minimum wage for all hours worked; (5) failed to timely pay all compensation due upon termination; (6) failed to timely pay all wages owed during employment; (7) failed to provide compliant wage statements; (8) failed to keep requisite payroll records; (9) failed to reimburse all necessary business expenses; (10) engaged in unfair business practices in violation of Business and Professions Code sections 17200, *et seq.*; and (11) owes civil penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”).

All persons who are employed or have been employed by Berkeley Bowl in the State of California as hourly-paid or non-exempt employees at any time during the period from April 10, 2015 to [insert preliminary approval date] (“Class Period”) are referred to as “**Class Members**” or the “**Class**.”

Class Members who are employed or have been employed by Defendant in the State of California during the time period from August 27, 2019 through [insert date of preliminary approval] (“PAGA Period”) are referred to as “**PAGA Members**.”

Berkeley Bowl denies any liability or wrongdoing of any kind. Berkeley Bowl contends, among other things, that it complied at all times with the California Labor Code, Industrial Welfare Commission Wage Orders, and the Business and Professions Code, and that its employees were correctly and timely paid all wages, and that meal periods and rest breaks are provided as required by applicable law.

The Court has not ruled on the merits of Plaintiffs’ claims. By preliminarily approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case on the merits. Rather, the Court has determined only that there is sufficient evidence to determine on a preliminary basis that the Settlement is fair, adequate, and reasonable and any final determination of those issues will be made at the Final Approval Hearing that is scheduled to take place on [date] at [time] (see Section [redacted] below for more information). Berkeley

Bowl reserves the right, if for any reason the Settlement fails, to contest any factual or legal allegations, including to contest whether the Action should proceed as a class or representative action.

3. THE SETTLEMENT TERMS AND CALCULATION OF PAYMENTS

Without admitting any wrongdoing, and to avoid the business disruptions caused by litigating the Action, Berkeley Bowl has agreed to pay a Maximum Settlement Amount of Three Million Dollars and Zero Cents (\$3,000,000.00) to settle the Action.

The following amounts will be paid from the Maximum Settlement Amount, subject to Court approval:

- Service Payments to Plaintiffs Davian Montgomery, Nadia Morales, and Nina Williams for their services as Class Representatives in the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00) each;
- Attorneys' fees not to exceed thirty-eight percent (38%) of the Maximum Settlement Amount, which is One Million One Hundred and Forty Thousand Dollars (\$1,140,000.00) if the Maximum Settlement Amount is Three Million Dollars (\$3,000,000.00) to Class Counsel ("Attorneys' Fees");
- Reimbursement of litigation costs and expenses in an amount up to One Hundred Twenty Thousand Dollars and Zero Cents (\$120,000.00) to Class Counsel ("Attorneys' Costs");
- The amount of Four Hundred Thirty Thousand Dollars and Zero Cents (\$430,000.00) allocated to the payment of civil penalties under PAGA (the "PAGA Allocation"), of which seventy-five percent (75%) (i.e., \$322,500.00) will be paid to the Labor and Workforce Development Agency ("LWDA Payment") and the remaining twenty-five percent (25%) (i.e., \$107,500.00) shall be paid to PAGA Members ("Net PAGA Distribution Amount");
- The costs associated with administration of the Settlement, estimated to be Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) ("Settlement Administration Costs").

The amount remaining from the Maximum Settlement Amount after deducting Service Payments, Attorneys' Fees, Attorneys' Costs, the LWDA Payment, and Settlement Administration Costs is called the "Net Distribution Fund."

The Net Distribution Fund will be allocated to all Class Members who do not submit a timely and valid Opt Out Request ("Settlement Class Members") on a *pro rata* basis, based on their number of Workweeks worked during the Class Period ("Qualifying Workweeks"). The Settlement Administrator will determine the value of a single Qualifying Workweek by dividing the Net Distribution Fund by the total number Qualifying Workweeks worked by all Settlement Class Members. Each Settlement Class Member is eligible to receive a *pro rata* share of the Net Distribution Fund ("Individual Settlement Payment") equal to his or her Qualifying Workweeks multiplied by the value of a single Qualifying Workweek.

The Net PAGA Distribution Amount will be allocated to PAGA Members on a *pro rata* basis, based on their number of Workweeks worked by PAGA Members during the PAGA Period ("Qualifying PAGA Workweeks"). The Settlement Administrator will determine the value of a single Qualifying PAGA Workweek by dividing the Net PAGA Distribution Amount by the total number Qualifying PAGA Workweeks worked by all PAGA Members. Each PAGA Member shall receive a PAGA Payment equal to his or her Qualifying PAGA Workweeks multiplied by the value of a single Qualifying PAGA Workweek.

You have been credited with [redacted] Qualifying Workweeks. Based on these Qualifying Workweeks, your gross Individual Settlement Payment, prior to any applicable withholdings, is estimated to be \$[redacted].

You [are / are not] considered to be a PAGA Member, and have been credited with [redacted] PAGA Qualifying Workweeks. Based on these PAGA Qualifying Workweeks, the PAGA Payment you will receive under the Settlement is estimated to be \$[redacted].

You may submit a written dispute to the number of Qualifying Workweeks and/or Qualifying PAGA Workweeks allocated to you (“Workweeks Dispute”) to the Settlement Administrator. Your Workweeks Dispute must: (1) contain your full name, address, and telephone number and the case name and number of the Action (i.e., *Spencer Sumisaki, et al. v. Berkeley Bowl Produce, Inc.*, Alameda County Superior Court, Case No. RG19014520); (2) be signed by you; (3) be postmarked or fax stamped on or before [Response Deadline] and returned to the Settlement Administrator at the address or fax number listed below; (4) clearly state the number of Qualified Workweeks and/or Qualified PAGA Workweeks you believe is correct; and (5) attach any documents you have to support your dispute.

[Settlement Administrator]

[mailing address]

[fax number]

Twenty-five percent (25%) of each Individual Settlement Payment will be allocated to wages (“wages portion”) and subject to all applicable employee state and federal tax withholdings; seventy-five percent (75%) of each Individual Settlement Payment will be considered penalties, interest, and non-wage damages (“non-wages portion”). The wages portion will be reported on an IRS form W-2, and the non-wages portion will be reported on an IRS form 1099 (if required).

One hundred percent (100%) of each Individual PAGA Payment will be allocated as penalties and be reported on an IRS form 1099 (if required).

In addition to the Maximum Settlement Amount, Berkeley Bowl will pay all employer payroll taxes and contributions in connection with the wages portion of the Settlement.

Class Members are responsible for paying taxes on any amounts received. This Notice is not tax advice and you should consult your tax advisor. Checks will be valid and negotiable for ninety (90) days; after that, checks will be cancelled and the funds associated with cancelled checks will be transmitted to the Katherine and George Alexander Community Law Center.

Settlement Class Members and PAGA Members who fail to deposit or negotiate their check(s) in a timely fashion shall, nevertheless, remain subject to the terms of the Agreement and the Final Approval Order and Judgment

4. WHAT AM I RELEASING UNDER THE CLASS SETTLEMENT?

If and when the Court grants final approval of the Settlement, as of the Effective Date and full funding of the Maximum Settlement Amount, all Class Members who do not submit a timely and valid Opt Out Request (i.e., Settlement Class Members) shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged any and all Settled Claims against any and all Released Parties.

“Released Parties” means Defendant and each of its officers, directors, members, partners, owners, shareholders, employees, former employees, agents, servants, attorneys, assigns, affiliates, independent contractors, volunteers, predecessors, successors, parent companies and organizations, insurers, and any and all other persons, firms and corporations in which Defendant may have an interest.

“Settled Claims” means all claims, charges, complaints, liens, demands, causes of action, obligations, damages and liabilities, whether known or unknown, that arise during the Class Period that each Class Member had, now has, or may hereafter claim to have against the Released Parties and that were asserted in the Complaint, or that could have been asserted in the Complaint based on any of the facts or allegations in the Complaint, regardless

of whether such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law. The Settled Claims specifically include, but are not limited to claims for violation of the California Labor Code and Industrial Welfare Commission Wage Orders, including and not limited to, for violations of California Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and Industrial Welfare Commission Wage Order Nos. 4-2001, 5-2001, 7-2001, 8-2001, and 17-2001, and California Business & Professions Code §§ 17200, for failure to pay overtime wages, failure to provide compliant meal periods and associated premiums, failure to provide compliant rest periods and associated premiums, failure to pay minimum wages, failure to timely pay final wages, failure to timely pay wages during employment, failure to provide compliant wage statements, failure to keep requisite payroll records, failure to reimburse business expenses, and unfair business practices.

5. WHAT AM I RELEASING UNDER THE PAGA SETTLEMENT?

As of the Effective Date and full funding of the Maximum Settlement Amount, the State of California, with respect to employment of Named Plaintiffs and all PAGA Members, shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged any and all of the Released Parties of and from any and all Settled PAGA Claims. The Settlement will release any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and every PAGA Member to obtain any recovery based on the Settled PAGA Claims.

“Settled PAGA Claims” means claims, charges, complaints, liens, demands, causes of action, obligations, and liabilities, whether known or unknown, that arise during the PAGA Period, under the Private Attorneys General Act (“PAGA”) seeking civil penalties for any of the alleged violations of the California Labor Code and/or Industrial Welfare Commission Wage Orders that were asserted in the Complaint or PAGA Notices, or that could have been asserted in the Complaint or PAGA Notices based on any facts or allegations therein, including, but not limited to, violations of California Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and Industrial Welfare Commission Wage Order Nos. 4-2001, 5-2001, 7-2001, 8-2001, and 17-2001 for failure to pay overtime wages, failure to provide compliant meal periods and associated premiums, failure to provide compliant rest periods and associated premiums, failure to pay minimum wages, failure to timely pay final wages, failure to timely pay wages during employment, failure to provide compliant wage statements, failure to keep requisite payroll records), and failure to reimburse business expenses.

Released Parties is defined in Section 4 of this Notice, above.

PAGA MEMBERS CANNOT OPT-OUT OR EXCLUDE THEMSELVES FROM THE PAGA SETTLEMENT OR THE RELEASE OF SETTLED PAGA CLAIMS, AND WILL BE ISSUED AN INDIVIDUAL PAGA PAYMENT EVEN IF THEY OPT-OUT OF THE CLASS SETTLEMENT.

6. WHAT IF I DON'T WANT TO PARTICIPATE IN THE CLASS SETTLEMENT?

As a Class Member, you have the right to request exclusion from the settlement and resolution of the Settled Claims (the “Class Settlement”), but, if you are a PAGA Member, you are not able to exclude yourself from the settlement and resolution of the Settled PAGA Claims (the “PAGA Settlement”).

To exclude yourself from the Class Settlement, you must submit a written request for exclusion to the Settlement Administrator (“Opt Out Request”) at the address or fax number listed in Section 3 of this Notice, above.

A valid and complete Opt Out Request must: (1) contain the full name, address, and telephone number of the Class Member requesting exclusion from the Class Settlement and the case name and number of the Action (i.e.,

Spencer Sumisaki, et al. v. Berkeley Bowl Produce, Inc., Alameda County Superior Court, Case No.: RG19014520); (2) be signed by the Class Member; (3) be postmarked or fax stamped on or before **[Response Deadline]** and returned to the Settlement Administrator at the specified address or fax number listed in Section 3 of this Notice, above; and (4) contain a statement substantially similar to:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT OF CLASS CLAIMS IN THE *SPENCER SUMISAKI V. BERKELEY BOWL PRODUCE, INC.* LAWSUIT AND UNDERSTAND THAT IF I ASK TO BE EXCLUDED, I WILL NOT RECEIVE AN INDIVIDUAL SETTLEMENT PAYMENT. I UNDERSTAND THAT, NEVERTHELESS, THE SETTLED PAGA CLAIMS WILL BE RELEASED AND SETTLED.”

It is your responsibility to ensure that the Settlement Administrator timely receives your Opt Out Request. Unless you timely request to be excluded from the Class Settlement, you will be bound by the judgment and Class Settlement upon final approval of the Settlement.

Class Members who request to be excluded from the Class Settlement will NOT be issued an Individual Settlement Payment, and will not release any of the Settled Claims. However, Class Members who are also PAGA Members will be issued their Individual PAGA Payment and bound to the PAGA Settlement regardless of whether they submit an Opt Out Request.

7. WHAT IF I WANT TO OBJECT TO THE CLASS SETTLEMENT?

Any Class Member who does not opt out of the Class Settlement may object to the Class Settlement. If the Court denies approval of the Settlement, no payments will be sent out and the Action will continue to be litigated in Court.

If you wish to object, you must submit your objection in writing to the Settlement Administrator (“Objection”). A valid and complete Objection must: (1) contain the full name, address, and telephone number of the objecting Settlement Class Member and the case name and number of the Action (i.e., *Spencer Sumisaki, et al. v. Berkeley Bowl Produce, Inc.*, Alameda County Superior Court, Case No. RG19014520); (2) be signed by the Settlement Class Member; (3) be postmarked or fax stamped on or before **[Response Deadline]** and returned to the Settlement Administrator at the specified address or fax number listed in Section 3 of this Notice, above; and (4) give the legal and factual basis for objection to the Class Settlement.

Submitting an objection will **not** exclude you from the Class Settlement. If the Court grants final approval of the Settlement, you will still be issued an Individual Settlement Payment and will be barred from pursuing the Settled Claims. **Do not submit both an Objection and Opt Out Request.** If you submit both an Objection and an Opt Out Request, you will be excluded from the Class Settlement and the Objection will not be considered.

8. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Final Approval Hearing is scheduled to take place on _____, at _____ a.m. in Department _____ of the Superior Court of the State of California, County of Alameda, located at _____. The hearing may be continued without further notice to Class Members. It is not necessary for you to appear at the Final Approval Hearing, although you may appear remotely if you wish to (please visit the Court’s website for more information regarding how you can appear remotely).

9. WHO ARE THE ATTORNEYS?

Attorneys for Plaintiffs and the Class are:

Edwin Aiwazian, Esq.
Arby Aiwazian, Esq.
Joanna Ghosh, Esq.
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020
Fax: (818) 265-1021

Attorneys for Berkeley Bowl are:

Ernest M. Malaspina, Esq.
Jennifer S. Coleman, Esq.
Sean Bothamley, Esq.
HOPKINS & CARLEY, ALC
70 South First Street
San Jose, CA 95113-2406
Tel: (408) 286-9800
Fax: (408) 998-4790

The Court has decided that the Attorneys for Plaintiffs and the Class are qualified to represent the Class (“Class Counsel”). Other than the Attorneys’ Fees and Attorneys’ Costs approved by the Court, which will be paid out of the Maximum Settlement Amount, you will not be charged for the services of Class Counsel. If you retain the services of your own attorney in connection with the Action, you will be responsible for paying for those services and related expenses.

.10. SHOULD I GET MY OWN LAWYER?

You do not need to get your own lawyer. If you want your own lawyer to speak for you or appear in Court, you have the right to hire one, but you will have to pay for that lawyer yourself.

11. FURTHER INFORMATION

The foregoing is only a summary of the Settlement. For the precise terms and conditions of the Settlement, please see the settlement agreement available at www._____.com, by contacting Class Counsel at the address or telephone number provided in Section _____, or by visiting the office of the Clerk of the Superior Court for the State of California County of Alameda, located at _____.

Please visit the Court’s website for the most up-to-date information regarding the impact of COVID-19 on the operations of the Court and any requirements that may apply for accessing Court facilities: [insert web URL](#)

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT.

EXHIBIT B

Edwin Aiwazian (SBN 232943)
Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

SPENCER SUMISAKI, DAVIAN
MONTGOMERY, individually, and on behalf
of other members of the general public
similarly situated; NADIA MORALES,
individually, and on behalf of other members
of the general public similarly situated and on
behalf of other aggrieved employees pursuant
to the California Private Attorneys General
Act; NINA WILLIAMS, individually, on
behalf of other aggrieved employees pursuant
to the California Private Attorneys General
Act,

Plaintiffs,

v.

BERKELEY BOWL PRODUCE, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: RG19014520

Honorable Evelio Grillo
Department 21

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Reservation No. 768154232963
Date: January 26, 2022
Time: 10:00 a.m.
Department: 21

Complaint Filed: April 10, 2019
FAC Filed: July 17, 2019
SAC Filed: November 20, 2020
Trial Date: None Set

1 This matter has come before the Honorable Evelio Grillo in Department 21 of the Superior
2 Court of the State of California, for the County of Alameda, on January 26, 2022 at 10:00 a.m. for
3 Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. Lawyers *for* Justice, PC
4 appears as counsel for Plaintiffs Davian Montgomery, Nadia Morales, and Nina Williams
5 ("Plaintiffs") and Hopkins & Carley appears as counsel for Defendant Berkeley Bowl Produce, Inc.
6 ("Defendant").

7 The Court, having carefully considered the papers, argument of counsel, and all matters
8 presented to the Court, and good cause appearing, hereby GRANTS Plaintiffs' Motion for
9 Preliminary Approval of Class Action Settlement.

10 **IT IS HEREBY ORDERED THAT:**

11 1. The Court preliminarily approves the Class Action and PAGA Settlement
12 Agreement and Stipulation ("Settlement," "Agreement," or "Settlement Agreement"), attached as
13 "EXHIBIT 1" to the Declaration of Edwin Aiwarzian in Support of Plaintiffs' Motion for Preliminary
14 Approval of Class Action Settlement. This is based on the Court's determination that the Settlement
15 falls within the range of possible approval as fair, adequate, and reasonable.

16 2. This Order incorporates by reference the definitions in the Settlement Agreement,
17 and all capitalized terms defined therein shall have the same meaning in this Order as set forth in the
18 Settlement Agreement.

19 3. It appears to the Court on a preliminary basis that the Settlement is fair, adequate
20 and reasonable. It appears to the Court that extensive investigation and research have been
21 conducted such that counsel for the parties at this time are able to reasonably evaluate their respective
22 positions. It further appears to the Court that the Settlement, at this time, will avoid substantial
23 additional costs by all parties, as well as avoid the delay and risks that would be presented by the
24 further prosecution of the case. It further appears that the Settlement has been reached as the result
25 of intensive, serious and non-collusive, arms-length negotiations, and was entered into in good faith.

26 4. The Court preliminarily finds that the Settlement, including the allocations for
27 Attorneys' Fees, Attorneys' Costs, Service Payments, PAGA Allocation, Settlement Administration
28 Costs, and payments to the Settlement Class Members provided thereby, appear to be within the

1 range of reasonableness of a settlement that could ultimately be given final approval by this Court.
2 Indeed, the Court has reviewed the monetary recovery that is being granted as part of the Settlement
3 and preliminarily finds that the monetary settlement awards made available to the Class Members
4 are fair, adequate, and reasonable when balanced against the probable outcome of further litigation
5 relating to certification, liability, and damages issues.

6 5. The Court concludes that, for settlement purposes only, the proposed Class meets
7 the requirements for certification under section 382 of the California Code of Civil Procedure in
8 that: (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
9 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
10 community of interest amongst the members of the Class with respect to the subject matter of the
11 litigation; (c) Plaintiffs' claims are typical of the claims of the members of the Class; (d) Plaintiffs
12 will fairly and adequately protect the interests of the members of the Class; (e) a class action is
13 superior to other available methods for the efficient adjudication of the controversy; and (f) Class
14 Counsel is qualified to act as counsel for Plaintiffs in their individual capacities and as the
15 representatives of the Class.

16 6. The Court conditionally certifies, for settlement purposes only, the Class, defined as
17 follows:

18 All current and former hourly-paid or non-exempt employees who worked for
19 Defendant within the State of California at any time during the period from April 10,
20 2015 through the date of this Order.

21 7. The Court provisionally appoints Edwin Aiwazian, Arby Aiwazian, Joanna Ghosh,
22 and Melissa LeBlanc of Lawyers *for* Justice, PC as counsel for the Class ("Class Counsel").

23 8. The Court provisionally appoints Plaintiffs Davian Montgomery, Nadia Morales,
24 and Nina Williams as the representatives of the Class (together, "Class Representatives").

25 9. The Court provisionally appoints Simpluris, Inc. ("Simpluris") to handle the
26 administration of the Settlement ("Settlement Administrator").

27 10. Within fifteen (15) calendar days after notice of entry this Order, Defendant shall
28 provide to the Settlement Administrator a data file that identifies for each Class Member, his/her full
name, last-known address, Social Security number, and number of Qualifying Workweeks and, if

1 applicable, Qualifying PAGA Workweeks for each Class Member (collectively referred to as the
2 “Class List”) in conformity with the Settlement Agreement.

3 11. The Court approves, both as to form and content, the Notice of Class Action and
4 PAGA Settlement (“Class Notice”) attached hereto as “**EXHIBIT 1.**” The Class Notice shall be
5 provided to Class Members in the manner set forth in the Settlement Agreement. The Court finds
6 that the Class Notice appears to fully and accurately inform the Class Members of all material
7 elements of the Settlement, of Class Members’ right to be excluded from the Class Settlement by
8 submitting an opt out request, of Class Members’ right to dispute the Qualifying Workweeks and/or
9 Qualifying PAGA Workweeks credited to each of them, and of each Settlement Class Member’s
10 right and opportunity to object to the Class Settlement by submitting a written objection to the
11 Settlement Administrator. The Court further finds that distribution of the Class Notice substantially
12 in the manner and form set forth in the Settlement Agreement and this Order, and that all other dates
13 set forth in the Settlement Agreement and this Order, meet the requirements of due process and shall
14 constitute due and sufficient notice to all persons entitled thereto. The Court further orders the
15 Settlement Administrator to mail the Class Notice by First-Class U.S. mail to all Class Members
16 within fourteen (14) calendar days of receipt of the Class List, pursuant to the terms set forth in the
17 Settlement Agreement.

18 12. The Court hereby preliminarily approves the proposed procedure, set forth in the
19 Settlement Agreement, for seeking exclusion from the Class Settlement. Any Class Member may
20 choose to be excluded from the Class Settlement by submitting a timely and valid written opt out
21 request, in conformity with the requirements set forth in the Class Notice, to the Settlement
22 Administrator, postmarked no later than the date which is forty-five (45) calendar days from the
23 initial mailing of the Class Notice to Class Members (“Response Deadline”). Any such person who
24 timely and validly chooses to opt out of, and be excluded from, the Class Settlement will not be
25 entitled to any recovery under the Class Settlement and will not be bound by the Class Settlement
26 or have any right to object, appeal, or comment thereon. Class Members who have not submitted a
27 timely and valid request to be excluded from the Class Settlement (i.e., Settlement Class Member)
28 shall be bound by the Class Settlement. The opt out procedure does not apply to the PAGA

1 Settlement; PAGA Members will be bound to the PAGA Settlement (i.e., the settlement and release
2 of Settled PAGA Claims) irrespective of whether they exclude themselves from the Class
3 Settlement.

4 13. A Final Approval Hearing shall be held before this Court on
5 _____ at _____ a.m./p.m. in Department 21 of the
6 Alameda County Superior Court, located at 1221 Oak Street, Oakland, California 94612, to
7 determine all necessary matters concerning the Settlement, including: whether the proposed
8 settlement of the Action on the terms and conditions provided for in the Settlement is fair, adequate,
9 and reasonable and should be finally approved by the Court; whether a judgment, as provided in the
10 Settlement, should be entered herein; whether the plan of allocation contained in the Settlement
11 should be approved as fair, adequate, and reasonable to the Class Members; and determine whether
12 to finally approve the requests for the Attorneys' Fees, Attorneys' Costs, Service Payments, and
13 Settlement Administration Costs.

14 14. Class Counsel shall file a motion for final approval of the Settlement and for
15 Attorneys' Fees, Attorneys' Costs, Service Payments, and Settlement Administration Costs, along
16 with the appropriate declarations and supporting evidence, including the Settlement Administrator's
17 declaration, by _____, to be heard at the Final Approval Hearing.

18 15. To object to the Class Settlement, a Class Member must submit their written
19 objection, in conformity with the requirements set forth in the Class Notice, to the Settlement
20 Administrator on or before the Response Deadline. The objection must be signed and must contain
21 the information that is required, as set forth in the Class Notice, including and not limited to the
22 grounds for the objection.

23 16. The Settlement is not a concession or admission, and shall not be used against
24 Defendant as an admission or indication with respect to any claim of any fault or omission by
25 Defendant. Whether or not the Settlement is finally approved, neither the Settlement, nor any
26 document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts
27 thereof, shall in any event be construed as, offered or admitted into evidence as, received as or
28 deemed to be in evidence for any purpose adverse to the Defendant, including, but not limited to,

evidence of a presumption, concession, indication or admission by Defendant of any liability, fault, wrongdoing, omission, concession, or damage, except for legal proceedings concerning the implementation, interpretation, or enforcement of the Settlement.

17. In the event the Settlement does not become effective in accordance with the terms of the Settlement Agreement, or the Settlement is not finally approved, or is terminated, cancelled or fails to become effective for any reason, this Order shall be rendered null and void, shall be vacated, and the Parties shall revert back to their respective positions as of before entering into the Settlement Agreement.

18. The Court reserves the right to adjourn or continue the date of the Final Approval Hearing and any dates provided for in the Settlement Agreement without further notice to the Class Members, and retains jurisdiction to consider all further applications arising out of or connected with the Settlement.

IT IS SO ORDERED.

Dated: _____

By: _____

The Honorable Evelio Grillo
Judge of the Superior Court

EXHIBIT C

Edwin Aiwazian (SBN 232943)
Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

SPENCER SUMISAKI, DAVIAN
MONTGOMERY, individually, and on behalf
of other members of the general public
similarly situated; NADIA MORALES,
individually, and on behalf of other members
of the general public similarly situated and on
behalf of other aggrieved employees pursuant
to the California Private Attorneys General
Act; NINA WILLIAMS, individually, on
behalf of other aggrieved employees pursuant
to the California Private Attorneys General
Act,

Plaintiffs,

v.

BERKELEY BOWL PRODUCE, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: RG19014520

Honorable Evelio Grillo
Department 21

CLASS ACTION

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND
JUDGMENT**

Reservation No.

Date:

Time:

Department:



21

Complaint Filed:

FAC Filed:

SAC Filed:

Trial Date:

April 10, 2019

July 17, 2019

November 20, 2020

None Set

1 This matter has come before the Honorable Evelio Grillo in Department 21 of the above-
2 entitled Court, located at Alameda County Superior Court, located at 1221 Oak Street, Oakland,
3 California 94612, on Plaintiffs Davian Montgomery, Nadia Morales, and Nina Williams (together,
4 “Plaintiffs” or “Named Plaintiffs”) Motion for Final Approval of Class Action Settlement,
5 Attorneys’ Fees, Costs, and Service Payments (“Motion for Final Approval”). Lawyers *for* Justice,
6 PC (“Class Counsel”) appeared for Plaintiffs and the Class. Hopkins & Carley, ALC appeared for
7 Defendant Berkeley Bowl Produce, Inc. (“Defendant”).

8 On [REDACTED], the Court entered the Order Granting Preliminary Approval of Class
9 Action Settlement (“Preliminary Approval Order”), thereby preliminarily approving the settlement
10 of the above-captioned action (the “Action”) in accordance with the Class Action and PAGA
11 Settlement Agreement and Stipulation (“Settlement,” “Agreement,” or “Settlement Agreement”),
12 which, together with the exhibits annexed thereto, set forth the terms and conditions for settlement
13 of the Action.

14 Having reviewed the Settlement Agreement and duly considered the parties’ papers and oral
15 argument, and good cause appearing,

16 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:**

17 1. All terms used herein shall have the same meaning as defined in the Settlement
18 Agreement and the Preliminary Approval Order.

19 2. This Court has jurisdiction over the claims asserted in this proceeding and over all
20 parties to the Action.

21 3. The Court finds that the applicable requirements of California Code of Civil
22 Procedure section 382 and California Rule of Court 3.769, *et seq.*, have been satisfied with respect
23 to the Class Members and the Settlement. The Court hereby makes final its earlier provisional
24 certification of the Class for settlement purposes as set forth in the Preliminary Approval Order. The
25 Class Members are hereby defined to include:

26 All current and former hourly-paid or non-exempt employees who worked for
27 Defendant within the State of California at any time during the period from April 10,
2015 through [REDACTED].

28 4. The Notice of Class Action and PAGA Settlement (“Class Notice”) given to the Class

Members fully and accurately informed Class Members of all material elements of the Settlement and of their opportunity to object to or comment on the Class Settlement, and their opportunity to be excluded from the Class Settlement. The Class Notice fairly and adequately described the Settlement and provided the Class Members with adequate instructions and a variety of means to obtain additional information. The Class Notice was the best notice practicable under the circumstances; was valid, due, and sufficient notice to all Class Members; and complied fully with California Code of Civil Procedure section 382, the laws of the State of California, the California Constitution, due process, and other applicable law.

5. The Court has considered all relevant factors for determining the fairness of the Settlement and has concluded that all such factors weigh in favor of granting final approval of the Settlement. In particular, the Court finds that the Settlement was reached following meaningful discovery and investigation conducted by Class Counsel; that the Settlement is the result of serious, informed, adversarial, and arm's-length negotiations between the parties; and that the terms of the Settlement are in all respects fair, adequate, and reasonable. In so finding, the Court has considered all of the evidence presented, including evidence regarding the strength of the Plaintiffs' case; the risk, expense, and complexity of the claims presented; the likely duration of further litigation; the extent of investigation and discovery completed; and the experience and views of Class Counsel. Accordingly, the Court hereby approves the Settlement and expressly finds that it is, in all respects, fair, reasonable, adequate, and in the best interests of the Class Members, State of California, and PAGA Members, and hereby directs implementation of all remaining terms, conditions, and provisions of the Settlement.

6. A full opportunity has been afforded to the Settlement Class Members to participate in the Final Approval Hearing, and all Settlement Class Members and other persons wishing to be heard have been heard. The Settlement Class Members also have had a full and fair opportunity to exclude themselves from the Class Settlement. Accordingly, the Court determines that all Settlement Class Members who did not timely and validly opt out of the Class Settlement ("Settlement Class Members") are bound by the Class Settlement, and the State of California and

PAGA Members are bound by the PAGA Settlement, and they are bound by this order and judgment (“Final Approval Order and Judgment”).

7. The Court finds that the settlement of the Settled PAGA Claims for the total amount of Four Hundred and Thirty Thousand Dollars and Zero Cents (\$430,000.00), which is designated and allocated as penalties under the California Private Attorneys General Act of 2004 (“PAGA penalties”), is fair, reasonable, and appropriate, and hereby approved. The Settlement Administrator shall distribute the PAGA Allocation as follows: the amount of \$322,500.00 to the California Labor and Workforce Development Agency and the amount of \$107,500.00 to PAGA Members, in accordance with the terms and methodology set forth in Settlement Agreement.

8. The Court finds that payment of Settlement Administration Costs in the amount of \$_____ is appropriate for the services performed and costs incurred and to be incurred for the notice and settlement administration process. It is hereby ordered that the Settlement Administrator, Simpluris, Inc., shall issue payment to itself in the amount of \$_____, in accordance with the terms and methodology set forth in Settlement Agreement.

9. The Court finds that the Service Payments sought are fair and reasonable for the work performed by Plaintiffs on behalf of the Class, State of California, and PAGA Members. It is hereby ordered that the Settlement Administrator issue payment of Service Payments to Plaintiffs Davian Montgomery, Nadia Morales, and Nina Williams in the amount of \$10,000 each, in accordance with the terms and methodology set forth in Settlement Agreement.

10. The Court finds that the request for attorneys’ fees in the amount of \$_____ to Class Counsel falls within the range of reasonableness, and the results achieved justify the award sought. The requested attorneys’ fees to Class Counsel are fair, reasonable, and appropriate, and are hereby approved. It is hereby ordered that the Settlement Administrator issue payment in the amount of \$_____ to Class Counsel for attorneys’ fees, in accordance with the terms and methodology set forth in the Settlement Agreement.

11. The Court finds that reimbursement of litigation costs and expenses in the amount of \$_____ to Class Counsel is reasonable, and hereby approved. It is hereby ordered that the Settlement Administrator issue payment in the amount of \$_____ to Class Counsel for

reimbursement of litigation costs and expenses, in accordance with the terms and methodology set forth in the Settlement Agreement.

12. The Court hereby enters Judgment by which Settlement Class Members shall be conclusively determined to have given a release of any and all Settled Claims against the Released Parties, and all PAGA Members and the State of California shall be conclusively determined to have given a release of any and all Settled PAGA Claims against the Released Parties, as set forth in the Settlement Agreement and Class Notice.

13. It is hereby ordered that Defendant shall deposit the Maximum Settlement Amount, together with an amount sufficient to pay Employer Payroll Taxes, into an account established by the Settlement Administrator within fourteen (14) business days of the Effective Date, in accordance with the terms and methodology set forth in the Settlement Agreement.

14. It is hereby ordered that the Settlement Administrator shall distribute Individual Settlement Payments to the Settlement Class Members and Individual PAGA Payments to PAGA Members within fourteen (14) calendar days after the Maximum Settlement Amount has been deposited by Defendant, in accordance with the terms and methodology set forth in the Settlement Agreement.

15. After entry of this Final Approval Order and Judgment, pursuant to California Rules of Court, Rule 3.769(h), the Court shall retain jurisdiction to construe, interpret, implement, and enforce the Settlement Agreement and this Final Approval Order and Judgment, to hear and resolve any contested challenge to a claim for settlement benefits, and to supervise and adjudicate any dispute arising from or in connection with the distribution of settlement benefits.

16. Notice of entry of this Final Approval Order and Judgment shall be given to the Settlement Class Members by posting a copy of the Final Approval Order and Judgment on the Settlement Administrator's website for a period of at least sixty (60) calendar days after the date of entry of this Final Approval Order and Judgment. Individualized notice is not required.

Dated: _____

By: _____
The Honorable Evelio Grillo
Judge of the Superior Court