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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

**[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 1

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
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Tel: (818) 265-1020
Fax: (818) 265-1021

Attorneys for Berkeley Bowl are:

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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.berkeleybowl.com, by contacting Class Counsel at the address or telephone number provided in Section 10, 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.