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20 cmoore@ohaganmeyer.com
21

22 Attorneys for Defendants
23 NORTH BEACH RESTAURANT, INC.;
24 NORIS ORSI; and STEPHEN DAVID MAYER
25
26

27 SUPERIOR COURT OF CALIFORNIA
28 COUNTY OF SAN FRANCISCO

DANIEL BARTON; LUIS DE LA
TORRE; NENAD NINO JOVICIC;
MELVIN PICOLO; GREGORY PETRI;
MARK MARCO CANDELA; SPIRO
GEORGOPOLOUS; MARILYN
KITAGAWA; LUCA ORTOLANI; RUY
CAMPOSECO

Plaintiffs,

v.

NORTH BEACH RESTAURANT, INC.;
NORIS ORSI; STEPHEN DAVID
MAYER; AND DOES 1 TO 100,

Defendants.

Case No. CGC-21-590019

ASSIGNED FOR ALL PURPOSES TO HON.
JUDGE ANNE-CHRISTINE MASSULLO
DEPARTMENT 304

**JOINT EX PARTE APPLICATION FOR
APPROVAL OF PAGA SETTLEMENT
(LABOR CODE §2699(l)); DECLARATION
OF ALLAN A. VILLANUEVA**

**[PROPOSED] ORDER GRANTING APPROVAL
OF PAGA SETTLEMENT FILED
CONCURRENTLY**

Action Filed: February 26, 2021
Trial Date: None Set

**Hearing Date: December 13, 2021
Time: 10:00 a.m.**

TO ALL INTERESTED PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on **December 13, 2021, at 10:00 a.m., in Department 304** of the San Francisco Superior Court, located at 400 McAllister Street, San Francisco, CA 94102-4514, the Honorable Anne-Christine Massullo, presiding, Plaintiffs and Defendants will jointly apply ex parte for approval of the PAGA settlement. This application is made pursuant to Labor Code §2699(1)(2), which provides, “The superior court shall review and approve any settlement of any civil action filed pursuant to this part.”

This application is based upon this Notice, the attached Memorandum of Points and Authorities; the Declaration of Allan A. Villanueva in support thereof; the pleadings and records on file in this action; and on such other and further evidence as the Court may consider at or before the hearing on this application.

As set forth in the Declaration of Allan A. Villanueva, pursuant to California Rules of Court Rule 3.1204, notice of this ex parte application was given to Defendants and the Labor and Workforce Development Agency (“LWDA”) in this action on Wednesday, December 8, 2021. Villanueva Decl. ¶¶3-4.

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS

Plaintiffs are ten restaurant workers, eight of whom were servers, and two, Gregory Petri and Marilyn Kitagawa were bartenders, who worked for North Beach Restaurant. North Beach Restaurant is located at 1512 Stockton St, San Francisco, CA 94133, and is owned, managed and/or operated by Defendant North Beach Restaurant, Inc. (NBRI). Plaintiffs are informed that Defendant Noris Orsi is a shareholder and Defendant Stephen David Mayer is a Director of NBRI.

On September 28, 2020, served Defendants and the Labor and Workforce Development Agency (LWDA) with a PAGA notice.

1
2 On February 26, 2021, Plaintiffs filed a wage and hour case for minimum wages,
3 including for split shifts; overtime wages; liquidated damages; meal and rest break
4 premiums; conversion of tips; statutory penalties for late payment of wages, wage statement
5 violations, and waiting time; restitution under the Unfair Competition Law; and civil
6 penalties under the Private Attorney's General Act (PAGA).
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11 After having conducted discovery, the Parties engaged Patrick Kelly, Esq. to mediate
12 the matter on November 10, 2021, in an effort to resolve the matter.
13

14 On November 10, 2021, the Parties reached an agreement to settle both the Plaintiffs'
15 individual claims and the PAGA claims. The Parties memorialized the terms of the PAGA
16 settlement in a PRIVATE ATTORNEYS GENERAL ACT ("PAGA") SETTLEMENT
17 AGREEMENT ("Settlement Agreement"), a copy of which is attached as Exhibit A to the
18 declaration of Allan A. Villanueva.
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22

23 The Settlement Agreement provides, in relevant part:

- 24 • The settlement is "subject to the approval of the Court in accordance with
25 California Labor Code section 2699(1)(2)."
26 • "If the Court does not grant approval of the Settlement, then the Settlement
27 will become null and void."
28 • "NBR shall pay no more than \$20,000.00. Seventy-five percent (75%) of the
Net Settlement Amount will be distributed to the LWDA and the remaining (25%) will be
distributed to the PAGA Settlement Group Members pursuant to the below provisions
regarding calculation of each Member's share."
• "Net Settlement Amount" means the amount that is available for distribution of
the LWDA Payment and as Settlement Shares to the PAGA Settlement Group Members after
deduction of fees ("PAGA Settlement Administration Fees") from the Total Settlement
Amount. The PAGA Settlement Administration Fees will be paid to the Settlement
Administrator, ILYM Group, Inc. ("ILYM Group").
• "DEFENDANT represents that there are approximately 20 individuals that
compose the PAGA Settlement Group Members."
• "The Settlement Shares and the LWDA Payment will be paid out of the
Settlement Amount within fourteen (14) calendar days after the Settlement becomes Final."

The Parties respectfully request the Court pursuant to Labor Code §2699(1), to review
and approve the PAGA settlement reached by the parties.

II. LEGAL ARGUMENT

California law provides for civil penalties for violations of certain Labor Code

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2 provisions. (See, e.g., §§ 210, subd. (a), 225.5, 226.3, 256, 2699, subd. (f).) Prior to the
3
4 enactment of PAGA, many of these penalties were “ ‘enforceable only by the state’s labor
5
6 law enforcement agencies.’ ” *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59
7
8 Cal.4th 348, 381.

9 In enacting PAGA, “[t]he Legislature declared that adequate financing of labor law
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11 enforcement was necessary to achieve maximum compliance with state labor laws, that
12
13 staffing levels for labor law enforcement agencies had declined and were unlikely to keep
14
15 pace with the future growth of the labor market, and that it was therefore in the public
16
17 interest to allow aggrieved employees, acting as private attorneys general, to recover civil
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19 penalties for Labor Code violations.” *Arias v. Superior Court* (2009) 46 Cal.4th 969, 980.

20 PAGA thus “augment[ed] the limited enforcement capability of the [LWDA] by
21
22 empowering employees to enforce the Labor Code as representatives of the [LWDA]”
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24 (*Iskanian*, supra, 59 Cal.4th at p. 383) and “deputizing [them] to prosecute Labor Code
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26 violations on the state’s behalf” (*id.* at p. 360).

27 An authorized PAGA plaintiff “acts as ‘ “the proxy or agent of the state’s labor law
28
enforcement agencies” ’ and ‘ “represents the same legal right and interest as” ’ those
agencies—‘ “namely, recovery of civil penalties that otherwise would have been
assessed and collected by the [LWDA].” ’ [Citation.]” *ZB, N.A. v. Superior Court* (2019) 8
Cal.5th 175, 185.

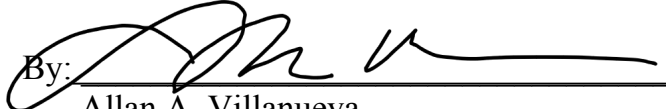
Labor Code §2699(l)(2) provides, “The superior court shall review and approve any
settlement of any civil action filed pursuant to this part. The proposed settlement shall be
submitted to the agency at the same time that it is submitted to the court.”

The Parties respectfully request the court to review and approve the PAGA settlement
reached by the parties. The Labor and Workforce Development Agency was provided a copy
of this ex parte application on December 8, 2021. Villanueva Decl. ¶4.

III. CONCLUSION

Based on the foregoing, the Parties respectfully request that the PAGA settlement
under the terms and conditions set forth above be approved.

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2
3 DATED: December 8, 2021 Law Office of Allan A. Villanueva
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7 By: 
8 Allan A. Villanueva
9 Attorney for Plaintiffs
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13 DATED: December 8, 2021 O'HAGAN MEYER
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16 By: 
17 Christine C. Lee
18 Carla Vasques dos Santos-Moore
19 Attorney for Defendants
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DECLARATION OF ALLAN A. VILLANUEVA

1. I am an attorney licensed to practice law before all California courts and I am counsel of record for Plaintiffs.
2. I know the following to be true of my own personal knowledge and, if called as a witness, I could and would testify competently thereto.
3. On Wednesday, December 8, 2021, I sent an e-mail, with a copy of this ex parte application to Carla Moore, Esq. and Christine Lee, Esq., counsel for Defendants.
4. On Wednesday, December 8, 2021, I transmitted a copy of this ex parte
- 5.

1
2 application to the LWDA pursuant to Labor Code §2699(1)(4).
3

4 5. Plaintiffs are ten restaurant workers, eight of whom were servers, and two,
5
6 Gregory Petri and Marilyn Kitagawa were bartenders, who worked for North Beach
7
8 Restaurant. North Beach Restaurant is located at 1512 Stockton St, San Francisco, CA
9
10 94133, and is owned, managed and/or operated by Defendant North Beach Restaurant, Inc.
11 (NBRI) Plaintiff is informed that Defendant Noris Orsi is a shareholder and Defendant
12
13 Stephen David Mayer is a Director of NBRI.

14 6. On September 28, 2020, served Defendants and the Labor and Workforce
15
16 Development Agency (LWDA) with a PAGA notice.

17 7. On February 26, 2021, Plaintiffs filed a wage and hour case for minimum
18
19 wages, including for split shifts; overtime wages; liquidated damages; meal and rest break
20
21 premiums; conversion of tips; statutory penalties for late payment of wages, wage statement
22
23 violations, and waiting time; restitution under the Unfair Competition Law; and civil
24
25 penalties under the Private Attorney's General Act (PAGA).

26 8. After having conducted discovery, the Parties engaged Patrick Kelly, Esq. to
27
28 mediate the matter on November 10, 2021, in an effort to resolve the matter.

 9. On November 10, 2021, the Parties reached an agreement to settle both the
Plaintiffs' individual claims and the PAGA claims. The Parties memorialized the terms of
the PAGA settlement in a PRIVATE ATTORNEYS GENERAL ACT ("PAGA")
SETTLEMENT AGREEMENT ("Settlement Agreement"), a copy of which is attached as
Exhibit A.

 10. The Settlement Agreement provides, in relevant part:
 • The settlement is "subject to the approval of the Court in accordance with
California Labor Code section 2699(1)(2)."
 • "If the Court does not grant approval of the Settlement, then the Settlement
will become null and void."
 • "NBR shall pay no more than \$20,000.00. Seventy-five percent (75%) of the
Net Settlement Amount will be distributed to the LWDA and the remaining (25%) will be
distributed to the PAGA Settlement Group Members pursuant to the below provisions
regarding calculation of each Member's share."

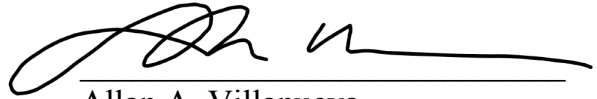
1 • “Net Settlement Amount” means the amount that is available for distribution of
2 the LWDA Payment and as Settlement Shares to the PAGA Settlement Group Members after
3 deduction of fees (“PAGA Settlement Administration Fees”) from the Total Settlement
4 Amount. The PAGA Settlement Administration Fees will be paid to the Settlement
5 Administrator, ILYM Group, Inc. (“ILYM Group”).”
6

7 • “DEFENDANT represents that there are approximately 20 individuals that
8 compose the PAGA Settlement Group Members.”
9

10 • “The Settlement Shares and the LWDA Payment will be paid out of the
11 Settlement Amount within fourteen (14) calendar days after the Settlement becomes Final.”

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

14 Date: December 8, 2021

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Allan A. Villanueva

EXHIBIT A

**PRIVATE ATTORNEYS GENERAL ACT ("PAGA")
SETTLEMENT AGREEMENT**

This Settlement Agreement under the California Labor Code Private Attorneys General Act ("PAGA") is made by and between Plaintiffs Daniel Barton, Luis De La Torre, Nenad Nino Jovicic, Melvin Picolo, Mark Marco Candela, Spiro Georgopolous, Marilyn Kitawaga, Luca Ortolani, and Ruy Camposeco ("PLAINTIFFS") on behalf of themselves, other aggrieved employees, and the State of California, on the one hand, and Defendants North Beach Restaurant, Inc. ("NBR"), Stephen David Mayer, and Noris Orsi ("DEFENDANTS") on the other hand (collectively, the "Parties"), subject to the approval of the Court in accordance with California Labor Code section 2699(1)(2), and subject to the following terms and conditions.

I. DEFINITIONS

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

- A.** "Action" means the civil action titled *Daniel Barton et al. v. North Beach Restaurant, Inc. et al.*, Case No. CGC-21-590019.
- B.** "Agreement," "Settlement," or "Settlement Agreement" means this Settlement Agreement.
- C.** "Complaint" means the Complaint filed by PLAINTIFFS on February 26, 2021 in the Action.
- D.** "Court" means the San Francisco County Superior Court of California.
- E.** "Covered Period" means the period of time from September 28, 2019 to the date the Court approves this Settlement.
- F.** "DEFENDANTS" means North Beach Restaurant, Inc., Stephen David Mayer and Noris Orsi.
- G.** "Final" means that the Settlement has been fully and finally approved and the Order signed by the Court.
- H.** "DEFENDANTS' Counsel" means O'Hagan Meyer.
- I.** "Order" means the Order Granting Approval of Settlement. The Parties will submit a proposed Order in the form evidenced by Exhibit A to this Agreement for consideration by the Court.
- J.** "LWDA" means the California Labor & Workforce Development Agency.

- K.** “LWDA Payment” means the portion of the payment from the Settlement Amount to be paid to the LWDA under the Settlement Agreement.
- L.** “Net Settlement Amount” means the amount that is available for distribution of the LWDA Payment and as Settlement Shares to the PAGA Settlement Group Members after deduction of fees (“PAGA Settlement Administration Fees”) from the Total Settlement Amount. The PAGA Settlement Administration Fees will be paid to the Settlement Administrator, ILYM Group, Inc. (“ILYM Group”).
- M.** “PAGA Settlement Group Members” means all persons employed by NBR during the Covered Period in the positions of server and bartender.
- N.** “PLAINTIFFS” means Daniel Barton, Luis De La Torre, Nenad Nino Jovicic, Melvin Picolo, Mark Marco Candela, Spiro Georgopolous, Marilyn Kitawaga, Luca Ortolani, and Ruy Camposeco
- O.** “PLAINTIFFS’ Counsel” means the Law Firm of Allan A. Villanueva.
- P.** “Released Parties” means North Beach Restaurant, Inc., Stephen David Mayer, Noris Orsi, and any present and former parents, subsidiaries and affiliated companies or entities, and their respective officers, directors, employees, partners, shareholders and agents, and any other successors, assigns and legal representatives and their related persons and entities.
- Q.** “Settlement Share” means the portion of the Settlement Amount allocable to each PAGA Settlement Group Member as provided by this Agreement.
- R.** “Total Settlement Amount” means the total amount to be paid by NBR as provided by this Agreement.

II. FACTUAL BACKGROUND

A. On February 26, 2021, PLAINTIFFS filed this Action against DEFENDANTS, alleging various violations of California Labor Code and seeking civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

B. This Agreement represents a compromise and settlement of highly disputed claims relating to the wage and hour claims at issue in the Action. Nothing in this Agreement is intended or will be construed as an admission by DEFENDANTS that PLAINTIFFS’ claims in the Action have merit or that they have any liability to PLAINTIFFS or the PAGA Settlement Group on those claims.

III. SETTLEMENT TERMS AND CONDITIONS

A. Stipulation for Settlement Only. Consistent with this Agreement, PLAINTIFFS will stipulate to the dismissal with prejudice of all PAGA claims against DEFENDANTS that arise from or relate to the claims alleged in the Complaint.

B. Representation Regarding PAGA Settlement Group Members. DEFENDANT represents that there are approximately 20 individuals that compose the PAGA Settlement Group Members.

C. Total Settlement Amount. Subject to the terms and conditions of this Agreement, the Total Settlement Amount is \$20,000.00 (Twenty Thousand Dollars and No Cents). PLAINTIFFS’ Counsel's attorney's fees and costs are addressed in a separate agreement concerning PLAINTIFFS’ individual claims. The Total Settlement Amount will cover (a) PAGA Settlement Administration Fees, (b) all Settlement Shares to PAGA Settlement Group Members, and (c) the LWDA Payment. NBR shall pay no more than \$20,000.00. Seventy-five percent (75%) of the Net Settlement Amount will be distributed to the LWDA and the remaining (25%) will be distributed to the PAGA Settlement Group Members pursuant to the below provisions regarding calculation of each Member’s share.

D. Settlement Shares. Subject to the terms and conditions of this Agreement, each PAGA Settlement Group Member will be allocated a Settlement Share from 25% of the Net Settlement Amount and 75% of the Net Settlement Amount shall be paid to the LWDA. The Settlement Share is intended to settle claims for civil penalties. Accordingly, the payments to PAGA Settlement Group Members will not be reduced by payroll tax withholding and deductions; instead, NBR will issue to the PAGA Settlement Group Member an IRS Form 1099 and its state and local equivalents with respect to the payment.

E. Distribution of Settlement Shares to PAGA Settlement Group Members. After deducting for the amounts for the LWDA Payment and costs of the PAGA Settlement Administration Fee, the remainder of the Net Settlement Amount will be paid as Settlement Shares to each PAGA Settlement Group Member. The portion of the Settlement Amount

available for distribution to PAGA Settlement Group Members (25% of the Net Settlement Amount) will be divided among all PAGA Settlement Group Members based on the number of pay periods worked during the Covered Period. ILYM Group will calculate the total number of pay periods worked by all PAGA Settlement Group Members during the Covered Period to get the “Total Pay Periods.” ILYM Group will then divide the 25% of the Settlement Amount to be paid to the PAGA Settlement Group Members by the Total Pay Periods during the Covered Period. This will yield the amount to be paid to each PAGA Settlement Group Member for each pay period, or the “Settlement Amount Per Pay Period.” Each PAGA Settlement Group Member's share of the settlement will then be calculated by multiplying the Settlement Amount Per Pay Period by the number of pay periods worked by that PAGA Settlement Group Member during the PAGA Period, based on NBR's records. The PAGA Settlement Group Members will be paid Settlement Payments based on the number of pay periods they worked as calculated by ILYM Group.

F. Payment to LWDA. NBR will pay 75% of the Net Settlement Amount to the LWDA as its share of the Settlement attributable to civil penalties under PAGA (the “LWDA Payment”). If the Court approves an LWDA Payment of less than 75%, the remainder will be retained in the Settlement Amount.

G. Distribution of Settlement Shares. In connection with the Parties' Ex Parte Application for Order Approving Settlement (“Ex Parte Application”), ILYM Group will distribute Settlement Shares due under the Settlement and otherwise administer the Settlement. ILYM Group's duties will include preparing, printing, and mailing the Notice Packet to the PAGA Settlement Group Members; conducting a National Change of Address search and using Accurint and other reasonable and cost-effective skip trace methods to locate any PAGA Settlement Group Member whose Notice Packet was returned by the U.S. Postal Service as non-deliverable, and re-mailing the Notice Packet to the PAGA Settlement Group Member's new address; issuing the checks to effectuate the payments due under the Settlement; and otherwise administering the Settlement pursuant to this Agreement.

H. Procedure for Approving Settlement.

1. Stipulation and Proposed Order Approving the Settlement.

a. The Parties will cooperate in seeking approval of the Settlement, including by drafting and filing an Ex Parte Application for Order Approving Settlement. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents reasonably necessary to be prepared or filed and shall take all steps that may be requested by the Court relating to the approval and implementation of the Settlement. PLAINTIFFS' Counsel shall submit the Settlement Agreement and Ex Parte Application papers to the LWDA at the same time they are filed with the Court.

b. At the hearing on the Parties' Ex Parte Application, the Parties will jointly appear (if so ordered by the Court), support the granting of the Ex Parte Application and submit an order granting the Ex Parte Application in the form evidenced by Exhibit A to this Agreement.

c. PLAINTIFFS' Counsel will file the Ex Parte Application. If the Court does not grant the Ex Parte Application approving the Settlement, under the specific terms requested, the Parties agree to meet and confer to address the Court's concerns and determine whether resolution of the claims encompassed by the Settlement can be obtained in a manner consistent with the Court's concerns.

d. If the Court does not grant approval of the Settlement, then the Settlement will become null and void.

I. No Right to Opt Out. The Parties agree there is no statutory right to provide aggrieved employees the option to opt out as PAGA Settlement Group Member.

J. Notice and Payment of Settlement Shares to PAGA Settlement Group Members. After the Court enters its order granting the Stipulation and Proposed Order approving Settlement, every PAGA Settlement Group Member will be provided with a notice explaining the Settlement (see Exhibit B; "Notice Packet") and payment of the PAGA Settlement Group Member's Settlement Share.

1. ILYM Group will send each PAGA Settlement Group Member the Notice Packet and payment of the PAGA Settlement Group Member's Settlement Share pursuant to the terms of this Agreement. ILYM Group will mail the Notice Packets and Settlement Share payments to all identified PAGA Settlement Group Members, using the mailing address information in its possession, unless modified by any updated address information that NBR obtains in the course of administration of the Settlement.

2. In the event of returned or non-deliverable Notice Packets and Settlement Share payments, ILYM Group will make reasonable efforts to locate PAGA Settlement Group Members and re-send the Notice Packets and Settlement Share payments. ILYM Group will promptly, and not later than 15 calendar days from receipt of the returned packet and payment, search for a more current address for the PAGA Settlement Group Member using Accurint or other reasonable and cost-effective skip trace method, and re-mail the Notice Packet and Settlement Share payment to the PAGA Settlement Group Member. ILYM Group will use the PAGA Settlement Group Members' data to find a more current address. ILYM Group will be responsible for taking reasonable steps consistent with this Agreement and court order, as agreed to with PLAINTIFFS' Counsel and according to the following deadlines, to trace the mailing address of any PAGA Settlement Group Member for whom a Notice Packet or Settlement Share payment is returned by the U.S. Postal Service as undeliverable. These reasonable steps will include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address and promptly re-mailing to PAGA Settlement Group Members for whom new addresses are found.

K. Submission of Order. A copy of the superior court's judgment in any civil action filed pursuant to this part and any other order in that action that either provides for or denies an award of civil penalties under this code shall be submitted to the agency by PLAINTIFFS' Counsel within 10 days after entry of the judgment or order.

L. Waiver of Right to Appeal. Provided that the Court's approval of this Settlement is consistent with the material terms of this Agreement, PLAINTIFFS, DEFENDANTS, and their respective counsel, hereby waive any and all rights to appeal the approval of the Settlement and the Order therefore will become non-appealable at the time it is entered.

M. Timing of Settlement Payments. The Settlement Shares and the LWDA Payment will be paid out of the Settlement Amount within fourteen (14) calendar days after the Settlement becomes Final.

N. Uncashed Settlement Share Checks. A PAGA Settlement Group Member must receive or cash his or her Settlement Share payment or check within 180 calendar days after it is mailed to him or her. If a check is returned to ILYM Group, ILYM Group will make all reasonable efforts to re-mail it to the PAGA Settlement Group Member at his or her correct address in accordance with the procedures set forth above. If a PAGA Settlement Group Member cannot be located using the procedures set forth above, or if a PAGA Settlement Group Member fails to cash the check for his or her Settlement Share within 180 days after it is mailed to him or her, ILYM Group will distribute the funds represented by the uncashed check to the California State Controllers' Office as unclaimed property.

O. Release and Waiver of Claims.

1. PAGA Settlement Group Members. In consideration for the LWDA Payment and the PAGA Settlement Group Members awarded Settlement Shares, as of the date the Settlement becomes Final, the LWDA and PAGA Settlement Group Members release any and all known and unknown claims under PAGA against the Released Parties that were alleged in the Complaint, including all Labor Code sections and PAGA penalties referenced in the Complaint (the "PAGA Settlement Group Members' Released Claims").

2. PLAINTIFFS Waiver of Rights under California Civil Code Section 1542. PLAINTIFFS' released claims shall include all PAGA respective claims, whether known or unknown by the releasing party relating to the allegations in the Complaint. Thus, even if PLAINTIFFS discover facts in addition to or different from those that he or she now knows or believes to be true with respect to the subject matter of the Complaint, those claims will remain released and forever barred. Therefore, PLAINTIFFS expressly waive and relinquish the provisions, rights and benefits of section 1542 of the California Civil Code, which reads:

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

P. No Effect on Other Benefits. The Settlement Shares will not result in any additional benefit payments (such as 401(k) or bonus) beyond those provided by this Agreement to the PAGA Settlement Group Members.

IV. MISCELLANEOUS TERMS

1. No Admission of Liability.

a. DEFENDANTS deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, or have any liability to anyone under the claims asserted in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims and a bona fide dispute of allegedly unpaid sums. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by DEFENDANTS. This Settlement and the fact that PLAINTIFFS and DEFENDANTS were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with the Settlement).

b. Whether or not the Order becomes Final, nothing in this Agreement, any document, statement, proceeding or conduct related to the Settlement, or any reports or accounting of those matters, will be construed as, offered or admitted in evidence as, received as, or deemed to be evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage.

c. Nothing herein shall prohibit or otherwise prevent DEFENDANTS from challenging and/or asserting defenses against any claim that the PAGA Settlement Group Members are entitled to multiple penalties under PAGA for alleged multiple violations of the California Labor Code (i.e. stacking) relating to the remainder of the claims in PLAINTIFFS' Complaint or for making any other argument in defense of this action.

d. This Section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may be admitted in evidence and otherwise used in any and all proceedings to enforce any or all terms of this Agreement, or in defense of any claims released or barred by this Agreement.

2. Integrated Agreement. After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Agreement or its exhibits other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.

3. Attorney Authorization. PLAINTIFFS' Counsel and DEFENDANTS' Counsel warrant and represent that they are authorized by PLAINTIFFS

and DEFENDANTS, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court or mediator, and in all cases all such documents, supplemental provisions and assistance of the Court will be consistent with this Agreement.

4. Modification of Agreement. This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their successors-in-interest.

5. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

6. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.

7. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

8. Fair Settlement. The Parties and their respective counsel affirm that they reached this Agreement through arms-length negotiations, taking into account all relevant factors, and after having conducted adequate discovery and investigation.

9. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

10. Notice. All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail and addressed as follows:

To PLAINTIFFS and the PAGA Settlement Group:

Allan V. Villanueva
Law Office of Allan A. Villanueva
6101 Bollinger Canyon Road, Ste. 379C
San Ramon, CA 94583
Telephone: (925) 365-1680
Facsimile: (650) 479-3086

To Defendant:

Christine C. Lee
Carla Vasques dos Santos-Moore
O'Hagan Meyer
221 Caledonia Street
Sausalito, California 94965
Telephone: (415) 578-6900
Facsimile: (415) 578-6910

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12. Jurisdiction. Pursuant to Code of Civil Procedure section 664.6, the court shall retain jurisdiction to enforce the terms of this Agreement and shall award reasonable attorney's fees and costs to the prevailing party in a suit or proceeding thereunder.

V. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: **12/07/2021**

DANIEL BARTON

By: 
Daniel Barton (Dec 7, 2021 19:43 PST)
Daniel Barton

Dated:

Plaintiff MARILYN KITAGAWA

By: _____
Marilyn Kitagawa

Plaintiff RUY CAMPOSECO

Dated:

By: _____
Ruy Camposeco

Dated:

Plaintiff LUCA ORTOLANI

By: _____
Luca Ortolani

Dated:

Plaintiff SPIRO GEORGOPOLOUS

By: _____
Spiro Georgopolous

Dated:

Plaintiff MARK MARCO CANDELA

By: _____
Mark Marco Candela

Plaintiff MELVIN PICOLO

Dated:

By: _____
Melvin Picolo

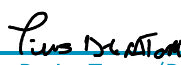
Plaintiff NENAD NINO JOVICIC

Dated:

By: _____
Nenad Nino Jovicic

Plaintiff LUIS DE LA TORRE

Dated: 12 08 2021

By:  _____
[Luis De La Torre \(Dec 8, 2021 08:24 PST\)](#)
Luis De La Torre

Dated:

Plaintiff LUCA ORTOLANI

By: _____
Luca Ortolani

Dated:

Plaintiff SPIRO GEORGOPOLOUS

By: _____
Spiro Georgopolous

Dated:

Plaintiff MARK MARCO CANDELA

By: _____
Mark Marco Candela

Dated: 12/07/2021

Plaintiff MELVIN PICOLO

By: 
[Melvin Picolo \(Dec 7, 2021 19:09 PST\)](#)
Melvin Picolo

Dated:

Plaintiff NENAD NINO JOVICIC

By: _____
Nenad Nino Jovicic

Plaintiff LUIS DE LA TORRE

Dated:

By: _____
Luis De La Torre

Dated:

Plaintiff LUCA ORTOLANI

By: _____
Luca Ortolani

Dated:

Plaintiff SPIRO GEORGOPOLOUS

By: _____
Spiro Georgopolous

Dated:

Plaintiff MARK MARCO CANDELA

By: _____
Mark Marco Candela

Plaintiff MELVIN PICOLO

Dated:

By: _____
Melvin Picolo

Dated: 12/07/2021

Plaintiff NENAD NINO JOVICIC

By:  _____
Nenad Nino Jovicic

Plaintiff LUIS DE LA TORRE

Dated:

By: _____
Luis De La Torre

To Defendant:

Christine C. Lee
Carla Vasques dos Santos-Moore
O'Hagan Meyer
221 Caledonia Street
Sausalito, California 94965
Telephone: (415) 578-6900
Facsimile: (415) 578-6910

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Dated:

DANIEL BARTON

By: _____
Daniel Barton

Dated:

Plaintiff MARILYN KITAGAWA

By: _____
Marilyn Kitagawa

Plaintiff RUY CAMPOSECO

Dated: 12/08/2021

By:  _____
Ruy Camposeco (Dec 8, 2021 08:52 PST)

Dated:

Plaintiff LUCA ORTOLANI

By: _____
Luca Ortolani

Dated: 12/7/2021

Plaintiff SPIRO GEORGPOLOUS

By:  _____
[Spiro Georgopoulos \(Dec 8, 2021 08:20 PST\)](#)
Spiro Georgopolous

Dated:

Plaintiff MARK MARCO CANDELA

By: _____
Mark Marco Candela

Plaintiff MELVIN PICOLO

Dated:

By: _____
Melvin Picolo

Plaintiff NENAD NINO JOVICIC

Dated:

By: _____
Nenad Nino Jovicic

Plaintiff LUIS DE LA TORRE

Dated:

By: _____
Luis De La Torre

Dated: 12/07/2021

Plaintiff LUCA ORTOLANI

By:  Luca Ortolani (Dec 7, 2021 18:22 PST)
Luca Ortolani

Dated:

Plaintiff SPIRO GEORGOPOLOUS

By: _____
Spiro Georgopolous

Dated:

Plaintiff MARK MARCO CANDELA

By: _____
Mark Marco Candela

Dated:

Plaintiff MELVIN PICOLO

By: _____
Melvin Picolo

Dated:

Plaintiff NENAD NINO JOVICIC

By: _____
Nenad Nino Jovicic

Dated:

Plaintiff LUIS DE LA TORRE

By: _____
Luis De La Torre

Dated:

Plaintiff LUCA ORTOLANI

By: _____
Luca Ortolani

Dated:

Plaintiff SPIRO GEORGOPOLOUS

By: _____
Spiro Georgopolous

Dated: 12-8-2021

Plaintiff MARK MARCO CANDELA

By: *mark marco candela*
mark marco candela (Dec 8, 2021 09:35 PST)
Mark Marco Candela

Plaintiff MELVIN PICOLO

Dated:

By: _____
Melvin Picolo

Plaintiff NENAD NINO JOVICIC

Dated:

By: _____
Nenad Nino Jovicic

Plaintiff LUIS DE LA TORRE

Dated:

By: _____
Luis De La Torre

To Defendant:

Christine C. Lee
Carla Vasques dos Santos-Moore
O'Hagan Meyer
221 Caledonia Street
Sausalito, California 94965
Telephone: (415) 578-6900
Facsimile: (415) 578-6910

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V. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated:

DANIEL BARTON

By: _____
Daniel Barton

Dated: 12/07/2021

Plaintiff MARILYN KITAGAWA

By: **Marilyn Kitagawa**

Marilyn Kitagawa

Plaintiff RUY CAMPOSECO

Dated:

By: _____
Ruy Camposeco

Division located at 400 McAllister St., San Francisco, California 94102 during the Clerk's normal business hours, or searching for Case No. CGC-21-590019 on www.sfsuperiorcourt.org.

The Court has approved this settlement. You are receiving the enclosed check because, under PAGA, "aggrieved employees" are entitled to 25% of the civil penalties awarded to the State. Because you held the position of server or bartender in the applicable time period, you are a member of the Settlement Group and you are entitled to a pro-rated share of the civil penalties.

If you have any questions about the settlement, you may contact: PLAINTIFFS'

Counsel at:

Allan V. Villanueva
Law Office of Allan A. Villanueva
6101 Bollinger Canyon Road, Ste. 379C
San Ramon, CA 94583
Telephone: (925) 365-1680
Facsimile: (650) 479-3086

Please do not telephone the Court for information regarding the settlement or the claims process.

Signature: 
Marilyn Kitagawa (Dec 7, 2021 21:33 PST)

Email: marilyn.kitagawa@gmail.com

To Defendant:

Christine C. Lee
Carla Vasques dos Santos-Moore
O'Hagan Meyer
221 Caledonia Street
Sausalito, California 94965
Telephone: (415) 578-6900
Facsimile: (415) 578-6910

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Dated:

DANIEL BARTON

By: _____
Daniel Barton

Dated:

Plaintiff MARILYN KITAGAWA

By: _____
Marilyn Kitagawa

Plaintiff RUY CAMPOSECO

Dated:

By: _____
Ruy Camposeco

Dated:

Plaintiff LUCA ORTOLANI

By: _____
Luca Ortolani

Dated:

Plaintiff SPIRO GEORGOPOLOUS

By: _____
Spiro Georgopolous

Dated:

Plaintiff MARK MARCO CANDELA

By: _____
Mark Marco Candela

Plaintiff MELVIN PICOLO

Dated:

By: _____
Melvin Picolo

Plaintiff NENAD NINO JOVICIC

Dated:

By: _____
Nenad Nino Jovicic

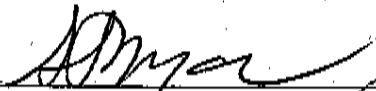
Plaintiff LUIS DE LA TORRE

Dated:

By: _____
Luis De La Torre

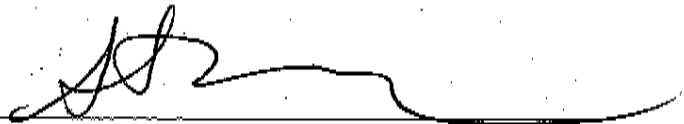
Dated: 12/8/21

NORTH BEACH RESTAURANT, INC.

By:  CEO
CEO for North Beach Restaurant, Inc.

Dated: 12/8/21

Defendant STEPHEN MAYER

By: 
Stephen Mayer

Dated:

Defendant NORIS ORSI

By: _____
Noris Orsi

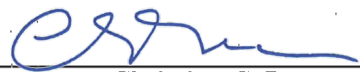
APPROVED AS TO FORM:

Dated:

By: _____
Allan V. Villanueva
Attorney for PLAINTIFFS

Dated: 12/8/2021

O'HAGAN MEYER

By: 
Christine C. Lee
Carla Vasques dos Santos-Moore
North Beach Restaurant, Inc., Noris Orsi
and Stephen David Mayer

Dated:

By: _____

Luis De La Torre

Dated:

NORTH BEACH RESTAURANT, INC.

By: _____

_____ for North Beach Restaurant, Inc.

Dated:

Defendant STEPHEN MAYER

By: _____

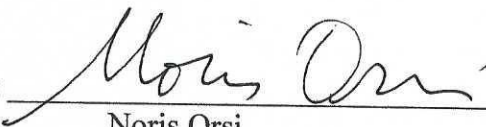
Stephen Mayer

Dated:

12/7/2021

Defendant NORIS ORSI

By: _____


Noris Orsi

APPROVED AS TO FORM:

Dated:

By: _____

Allan V. Villanueva
Attorney for PLAINTIFFS

Dated:

O'HAGAN MEYER

EXHIBIT A

1 ALLAN A. VILLANUEVA, SBN 163480
Law Office of Allan A. Villanueva
2 6101 Bollinger Canyon Road, Suite 379C
San Ramon, CA 94583
3 Telephone (925) 365-1680
Facsimile (650) 479-3086
4 allan@allanvillanuevalaw.com

5 Attorney for Plaintiffs

6 CHRISTINE C. LEE (SBN 236430)
CARLA VASQUES DOS SANTOS-MOORE
7 (SBN 241883)
O'HAGAN MEYER
8 221 Caledonia Street
Sausalito, California 94965
9 Telephone: 415.578.6900
Facsimile: 415.578.6910
10 Email: clee@ohaganmeyer.com
cmoore@ohaganmeyer.com

11 Attorneys for Defendants
12 NORTH BEACH RESTAURANT, INC.;
NORIS ORSI; and STEPHEN DAVID MAYER
13

14 SUPERIOR COURT OF CALIFORNIA

15 COUNTY OF SAN FRANCISCO

16 DANIEL BARTON; LUIS DE LA
TORRE; NENAD NINO JOVICIC;
17 MELVIN PICOLO; GREGORY PETRI;
MARK MARCO CANDELA; SPIRO
18 GEORGOPOLOUS; MARILYN
KITAGAWA; LUCA ORTOLANI; RUY
19 CAMPOSECO

20 Plaintiffs,

21 v.

22 NORTH BEACH RESTAURANT, INC.;
23 NORIS ORSI; STEPHEN DAVID
MAYER; AND DOES 1 TO 100,

24 Defendants.
25
26
27
28

Case No. CGC-21-590019

ASSIGNED FOR ALL PURPOSES TO HON.
JUDGE ANNE-CHRISTINE MASSULLO
DEPARTMENT 304

**[PROPOSED] ORDER GRANTING
APPROVAL OF PAGA SETTLEMENT
FILED CONCURRENTLY**

Action Filed: February 26, 2021

Trial Date: None Set

Hearing Date: December 13, 2021

Time: 10:00 a.m.

Dept. 304

1 Plaintiffs’ and Defendants’ joint ex parte Application for Approval of PAGA
2 Settlement was heard by the Court on December 13, 2021. The Court having reviewed the ex
3 parte Application for Approval of PAGA Settlement, the terms of which are set forth in the
4 Exhibit A of the Declaration of Allan A. Villanueva filed with the Parties’ ex parte
5 Application, the papers, the arguments of counsel, and all other evidence and matters
6 presented, and good cause appearing:

7 IT IS HEREBY ORDERED, ADJUDGED and DECREED that the Plaintiffs’ and
8 Defendants’ joint ex parte Application for Approval of PAGA Settlement is GRANTED.
9 The terms of settlement in the PRIVATE ATTORNEYS GENERAL ACT ("PAGA")
10 SETTLEMENT AGREEMENT (“Agreement”), attached as Exhibit A, are hereby
11 APPROVED in accordance with Labor Code section 2699(1)(2), and finds that the
12 Agreement is, in all respects, fair, adequate, and reasonable and directs the Parties to
13 effectuate the PAGA settlement according to the terms set forth in the Agreement.

14 The Court retains jurisdiction of this case pursuant CCP §664.6 to adjudicate any
15 matters related to this Order and the Agreement.

16 IT IS SO ORDERED ADJUDGED AND DECREED.

17
18 DATED: December __, 2021

19 _____
20 Hon. Judge Anne-Christine Massullo
21 Superior Court of California
22 County of San Francisco
23
24
25
26
27
28

EXHIBIT B

NOTICE OF APPROVAL OF SETTLEMENT

NOTICE OF SETTLEMENT

On [Date], the San Francisco County Superior Court approved a settlement of claims under the Private Attorneys General Act (“PAGA”) brought by Plaintiffs Daniel Barton et al. (“PLAINTIFFS”) against Defendants North Beach Restaurant, Inc., Stephen David Mayer, and Noris Orsi (“DEFENDANTS”) concerning NBR’s alleged violations of Labor Code statutes. The case is entitled Daniel Barton, et al. v. North Beach Restaurant, Inc., et al., Case No. CGC-21-590019.

DEFENDANTS deny any liability and deny PLAINTIFFS’ allegations. Specifically, NBR contends that it complied with the requirements of the Labor Code and that civil penalties are not recoverable.

After good-faith negotiations in which both sides recognized the substantial risk of an uncertain outcome, PLAINTIFFS and DEFENDANTS agreed to settle the Action pursuant to the terms and conditions of the Settlement.

The Settlement covers claims under the Private Attorneys General Act (“PAGA”) arising from the alleged violations of the Labor Code. You are member of the Settlement Group, which is defined as:

All current and former aggrieved employees that held
the position of server or bartender while employed by NBR
working for the period of September 28, 2019 to [the date the Court grants approval of the
Settlement].

As a result of the Settlement, Defendant has agreed to pay \$20,000.00 (Twenty Thousand Dollars and No Cents) in civil penalties.

The Settlement approved by the Court includes a release by Settlement Group members, for the period of September 28, 2019 to [the date the Court grants approval of the Settlement], of any and all known and unknown claims under PAGA against the “Released Parties” that arise out of or relate to the “Liability Release PAGA Claims,” including but not limited to claims for violation of California Labor Code sections and Wage Orders referenced in PLAINTIFFS’ Complaint. (the “PAGA Settlement Group Members’ Released Claims”). Such claims include claims for attorney’s fees and costs.

The “Released Parties” are NBR, Stephen David Mayer, Noris Orsi, and any present and former parents, subsidiaries and affiliated companies or entities, and their respective officers, directors, employees, partners, shareholders and agents, and any other successors, assigns and legal representatives and its related persons and entities.

The “Liability Release PAGA Claims” are claims under PAGA that arise from or relate to the allegations contained in the Complaint.

A complete copy of the Settlement, as well as the Court’s order approving the Settlement, along with other papers relevant to the claims, can be requested from counsel for the Parties. You may also review pleadings and other records relevant to the case at the Office of the Clerk of the Court, Superior Court of California for San Francisco County, Complex

Division located at 400 McAllister St., San Francisco, California 94102 during the Clerk's normal business hours, or searching for Case No. CGC-21-590019 on www.sfsuperiorcourt.org.

The Court has approved this settlement. You are receiving the enclosed check because, under PAGA, "aggrieved employees" are entitled to 25% of the civil penalties awarded to the State. Because you held the position of server or bartender in the applicable time period, you are a member of the Settlement Group and you are entitled to a pro-rated share of the civil penalties.

If you have any questions about the settlement, you may contact: PLAINTIFFS'

Counsel at:

Allan V. Villanueva
Law Office of Allan A. Villanueva
6101 Bollinger Canyon Road, Ste. 379C
San Ramon, CA 94583
Telephone: (925) 365-1680
Facsimile: (650) 479-3086

Please do not telephone the Court for information regarding the settlement or the claims process.