

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement,” “Settlement” or “Agreement”), is entered into by and between Sushi Concepts Sunset, LLC (“Defendant”), on the one hand, and Plaintiff Efrain Martinez (“Plaintiff”), on behalf of himself and on behalf of the PAGA Members (as defined below), on the other hand (together, the “Parties”). This Agreement is intended to fully, finally and forever resolve, discharge and settle the Released Claims, as defined in Section VII, upon and subject to the terms and conditions of this Agreement.

I. RECITALS

A. This Settlement Agreement is made in compromise of disputed claims.

B. This Settlement Agreement is made for the sole purpose of settling this PAGA litigation matter on a representative basis. In the event that the Court does not enter the Final Order, or a Judgment is not entered in this lawsuit, or the conditions precedent are not met for any reason, this Settlement Agreement shall be deemed null and void *ab initio*, it shall be of no force or effect whatsoever, it shall not be referred to or utilized for any purpose whatsoever, and the negotiations, terms and entry of the Agreement shall remain subject to the provisions of California Evidence Code sections 1119 and 1152 and any other analogous rules of evidence that might apply.

C. Defendant denies any form of liability or the accuracy of any fact or allegation against it.

Based on the foregoing, the Parties agree as follows:

II. DEFINITIONS

A. “Action” refers to the California PAGA representative action entitled *Martinez v. Innovative Dining Group, LLC et al.* filed by Plaintiff Efrain Martinez in the Superior Court of the State of California for the County of Los Angeles, case no. 21STCV01347.

B. “Court” refers to the Superior Court of the State of California for the County of Los Angeles.

C. “Defense Counsel” refers to Andrew Russell of Fox Rothschild LLP.

D. “Effective Date” means the date of approval of the Settlement by the Court.

E. “Final Order” refers to the order of the Court approving this Settlement on substantially the terms provided herein or as the same may be modified by subsequent agreement of the Parties.

F. “Gross Settlement Amount” shall be the amount which Defendant is obligated to pay under this Agreement, which is One Hundred and Forty Thousand Dollars (\$140,000.00).

G. “Judgment” refers to the judgment entered by the Court in conjunction with the Final Order.

H. “LWDA” means the State of California Labor and Workforce Development Agency.

I. “Net Settlement Amount” refers to the Gross Settlement Amount, less (1) attorney’s fees and litigation costs of PAGA Representative Group Counsel as approved by the Court, and (2) the costs and fees of the Settlement Administrator as approved by the Court. To the extent the Court does not approve the full requested amount of attorney’s fees or litigation costs, and/or costs and fees of the Settlement Administrator, the Net Settlement Amount will increase accordingly.

J. “PAGA Payment Letter” refers to the letter that the Settlement Administrator will enclose with each PAGA Representative Group Penalty Payment (substantially in the form attached hereto as Exhibit 1) as it may hereafter be modified by agreement of the Parties or order of the Court.

K. “PAGA Representative Group” or “PAGA Members” refers to the non-exempt employees who worked for Defendant in California from October 22, 2019 through Effective Date.

L. “PAGA Representative Group Counsel” refers to Christopher Adams, Vache Thomassian, and Caspar Jivalagian of KJT Law Group, LLP.

M. “PAGA Representative Group Penalty Payment” refers to the share of the Net Settlement Amount to which a PAGA Member is entitled to receive pursuant to this Settlement.

N. “Released Parties” refers to Sushi Concepts Sunset, LLC and any parent, subsidiary, affiliate, predecessor or successor, and all agents, employees, officers, directors and attorneys thereof.

O. “Settlement Administrator” refers to Simpluris, Inc. or such other entity upon whom the Parties mutually agree, and which will handle the administration of the Settlement set forth in this Agreement.

III. QUALIFIED STIPULATION TO REPRESENTATIVE GROUP UNDER PAGA

The Parties stipulate, for settlement purposes only, to the establishment of a PAGA Representative Group. Should this Settlement not become effective for any reason, the fact that the Parties stipulated to the establishment of a PAGA Representative Group in this Agreement shall have no bearing on and shall not be admissible on the question of whether a representative action treatment is appropriate in a non-settlement context. Defendant has agreed to resolve the Action through this Settlement, but to the extent this Settlement is deemed void, Defendant does not waive, but rather expressly reserves, all rights to challenge all such claims and allegations in

the Action upon all procedural and factual grounds, including without limitation the ability to challenge representative action treatment on any grounds, as well as asserting any and all other potential defenses or privileges. Plaintiff and PAGA Representative Group Counsel agree that Defendant retains and reserves these rights. Specifically, Plaintiff and PAGA Representative Group Counsel agree not to argue or present any argument that, in the event this Settlement is not approved in full, and to the extent it may be based upon any conditional agreements resulting from mediation and this Agreement, Defendant could not contest any representative action treatment on any grounds, or assert any and all other potential defenses and privileges if the Action were to proceed. Plaintiff and PAGA Representative Group Counsel hereby waive such arguments and agree they will not take a position contrary to this provision.

IV. ATTORNEY'S FEES AND LITIGATION COSTS

PAGA Representative Group Counsel will request that the Court award them attorney's fees in an amount up to and including one-third (\$46,666.66), of the Gross Settlement Amount. PAGA Representative Group Counsel will also ask the Court to award them litigation costs incurred in the amount of nine-thousand, two-hundred seventy-seven dollars and eighty-two cents (\$9,277.82). Defendant has agreed not to oppose such requests. However, if the Court awards a lesser amount of attorney's fees and/or litigation costs, it shall not affect the terms of the Parties' settlement, and any portion of the requested attorney's fees and/or litigation costs not approved shall become part of the Net Settlement Amount. Any award of attorney's fees and costs shall include and satisfy all past and future fees and costs incurred to prosecute, settle, and administer the Action and this Settlement Agreement, including obtaining the Final Order and Judgment. The Settlement Administrator shall issue PAGA Representative Group Counsel an IRS Form 1099 for its award of attorney's fees.

V. SETTLEMENT ADMINISTRATION COSTS

All costs of administering the Settlement, including, but not limited to, the duties provided in this Section below ("Settlement Administration Costs"), shall be paid to the Settlement Administrator out of the Gross Settlement Amount as provided in this Agreement. Settlement Administration Costs shall not exceed Five Thousand Five Hundred Dollars (\$5,000.00). Defendant's total obligation under this Settlement shall not exceed the Gross Settlement Amount, including the Settlement Administrator's fees.

The Settlement Administrator shall be solely responsible for:

- i) Preparing, printing and disseminating to PAGA Members the PAGA Payment Letter;
- ii) Determining and distributing the PAGA Representative Group Penalty Payment to each PAGA Member;
- iii) Preparing and mailing, in accordance with this Agreement and the Final Order of the Court, PAGA Representative Group Counsel's attorney's fees

and costs, PAGA Representative Group Penalty Payments, and the LWDA Penalty Payment;

- iv) Ascertaining current address and addressee information for each PAGA Payment Letter returned as undeliverable and re-mailing the PAGA Payment Letter where appropriate and, as necessary, utilizing the National Change of Address Database maintained by the U.S. Postal Service and undertaking customary skip-tracing measures to confirm and/or determine proper addresses;
- v) Performing all tax reporting duties required by federal, state, and/or local law pertaining to the Settlement Administrator's duties (e.g., 1099s, etc.);
- vi) Apprising PAGA Representative Group Counsel and Defense Counsel of the activities of the Settlement Administrator;
- vii) Maintaining adequate records of its activities, including the dates of each mailing of PAGA Payment Letters, returned mail and other communications and attempted written or electronic communications with PAGA Members;
- viii) Confirming with PAGA Representative Group Counsel and Defense Counsel, in writing, its completion of the administration of the Settlement; and
- ix) Such other tasks as the Parties mutually agree.

VI. PAYMENT OF PAGA PENALTIES

Of the Net Settlement Amount, seventy-five percent (75%) shall be distributed to the LWDA ("LWDA Penalty Payment") and the remaining twenty-five percent (25%) shall be distributed to the PAGA Members ("PAGA Representative Group Penalty Payment").

All PAGA Members shall be paid their PAGA Representative Group Penalty Payment. PAGA Representative Group Penalty Payment amounts shall be based on a formula taking into account the number of each PAGA Member's Active Pay Periods. An "Active Pay Period" shall be defined as each pay period during the PAGA Member worked at least one shift from October 22, 2019 through the Effective Date. The amount paid to each PAGA Member will be determined as follows: the PAGA Representative Group Penalty Payment will be divided by the total number of Active Pay Periods for all PAGA Members from October 22, 2019 through the Effective Date ("Active Pay Period Amount"). Each PAGA Member will then be paid an amount equal to the Active Pay Period Amount multiplied by the PAGA Member's total number of Active Pay Periods. PAGA Members are not eligible to receive any compensation other than the PAGA Representative Group Penalty Payment from this Settlement.

The PAGA Representative Group Penalty Payments are civil penalties, shall be reported on an IRS Form 1099 (to the extent required by law), and will not be subject to local, state, or federal tax withholdings. Each PAGA Member will be responsible for paying all applicable local, state, and federal income taxes on all amounts received pursuant to this Settlement, and they shall not seek any indemnification from the Released Parties in this regard. The PAGA Representative Group Penalty Payments are not being made for any other purpose and will not be construed as compensation for purposes of determining eligibility for any health and welfare benefits or unemployment compensation.

VII. RELEASE OF CLAIMS

PAGA Members will fully release and discharge Defendant and other Released Parties from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorney's fees, damages, action or causes of action contingent or accrued for, arising out of the allegations and claims asserted in the Action, and all claims under PAGA (collectively, "Released Claims"). This release shall apply to all claims arising at any point between October 22, 2019 and the Effective Date. Excluded from the release are potential individual claims for alleged Labor Code violations, if any, which do not arise under PAGA.

VIII. SETTLEMENT AGREEMENT PROCEDURE

Within twenty-one (21) calendar days of execution of this Agreement, Plaintiff shall apply to the Court for approval of the Settlement and approving the PAGA Payment Letter. Defendant shall have the right to review and comment upon the motion for approval of the PAGA settlement. PAGA Representative Group Counsel shall confer with Defense counsel before reserving a hearing date for the motion to seek approval of the Settlement. The Parties will agree on the form of any proposed orders or notices to the PAGA Members, and shall work in good faith reasonably and promptly to present the Settlement to the Court for approval.

IX. BINDING EFFECT

All PAGA Members will be bound by the terms and conditions of this Agreement, the Final Order, the Judgment, and the releases provided herein.

X. SETTLEMENT APPROVAL

A hearing, if required by the Court, shall be held for the purpose of obtaining the Final Order and entry of Judgment approving this Settlement Agreement and releasing the claims of the PAGA Members. The Court shall consider and determine whether (i) the Court should approve this Settlement; (ii) PAGA Representative Group Counsel's application for attorney's fees and litigation costs should be granted; and (iii) the Settlement Administrator's costs are appropriate.

Upon approval of the Settlement by the Court, the Parties request that the Court enter a Final Order and Judgment as follows:

1. Approving the Settlement and directing consummation of its terms and provisions;
2. Dismissing the litigation described in this Agreement with prejudice as to Sushi Concepts Sunset, LLC and without prejudice as to Innovative Dining Group, LLC, which the Parties agree was not Plaintiff's employer;
3. Approving PAGA Representative Group Counsel's application for an award of attorney's fees and costs;
4. Approving Settlement Administrator's costs; and
5. Entering final judgment, permanently barring and enjoining all PAGA Members from prosecuting any of the Released Claims against Released Parties, as defined herein, upon satisfaction of all payments and obligations hereunder.

The judgment will contain the definition of the PAGA Representative Group and the full release language. PAGA Representative Group Counsel shall give timely notice of the judgment to the LWDA under Labor Code section 2699(1)(3).

XI. SETTLEMENT TERMINATION

A. Grounds for Settlement Termination: In accordance with the procedures specified herein, this Agreement may be terminated on the following grounds: Any Party may terminate the Agreement if the Court declines to enter the Final Order or Judgment in substantially the form submitted by the Parties (incidental or minor changes to the PAGA Payment Letter ordered by the Court are not grounds for termination), or the Settlement as agreed does not become final for any other reason. The terminating Party shall give written notice to the other Party no later than ten (10) business days after the Court acts.

The recovery of attorney's fees and costs by PAGA Representative Group Counsel are terms of this Agreement, but the allowance or disallowance by the Court of an award of attorney's fees and/or costs shall not be grounds for terminating this Settlement.

B. Effect of Termination: Valid termination shall have the following effects:

1. The Settlement Agreement shall be terminated and shall have no force or effect, and no Party shall be bound by any of its terms, except as otherwise provided herein;
2. The Final Order and Judgment shall be vacated;

3. The Settlement Agreement and all negotiations, statements and proceedings relating thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be restored to their respective positions in the Action prior to the Settlement; and

4. Neither this Settlement Agreement, nor filings in furtherance of the Settlement shall be admissible or offered into evidence in the Action or any other action for any purpose whatsoever.

5. Defendant shall have no obligation to pay any amounts set forth in this Agreement.

XII. FUNDING OF SETTLEMENT

Within fifteen (15) business days of the Effective Date, or April 1, 2022, whichever is later, Defendant shall deposit the Gross Settlement Amount into an interest-bearing account established by the Settlement Administrator, which is to be held in escrow for the purpose of effectuating this Settlement. The Parties agree to treat this account as a “Qualified Settlement Fund” (“QSF”) pursuant to section 468(13) of the Internal Revenue Code of 1986, as amended. All interest earned on the account opened by the Settlement Administrator shall inure to the benefit of the LWDA and the PAGA Representative Group.

Defendant’s monetary obligation under this Agreement is limited to the Gross Settlement Amount. Defendant may not be called upon or required to contribute additional monies above the Gross Settlement Amount. If this Agreement is cancelled, rescinded, terminated, voided, or nullified, or the Settlement of the Action is barred by operation of law, or invalidated, or ordered not to be carried out by a court of competent jurisdiction, Defendant will cease to have any obligation to pay any portion of the Gross Settlement Amount to anyone under the terms of this Agreement and all previous disbursements from the Gross Settlement Amount will be immediately paid back to Defendant by the person or entity who received such disbursement, except for the Settlement Administration Costs.

XIII. PAYMENT PROCEDURE

This shall be an all-in Settlement without a reversion. PAGA Members will be automatically paid without submitting any claim form.

1. PAGA Representative Group Counsel will advise Defense Counsel and the Settlement Administrator as to the amount of attorney’s fees and litigation costs payments awarded by the Court.

2. Within fifteen (15) business days of the Effective Date, Defendant will provide the Settlement Administrator with confidential “PAGA Representative Group Member Data” containing the following for each PAGA Member, to the extent Defendant has such information: (1) full legal name; (2) social security number; (3) last known address; (4) telephone number and/or e-mail address, if available; and (5) number of Active Pay Periods (defined in Section VI above) for each of the PAGA Members. The Parties agree that the PAGA Representative Group

Member Data shall be treated and maintained as confidential. Promptly upon receipt of the PAGA Representative Group Member Data, the Settlement Administrator shall obtain updated forwarding addresses from the U.S. Postal Service.

3. Within five (5) business days after receipt of the PAGA Representative Group Member Data, the Settlement Administrator shall provide to the Parties a written statement of how the Gross Settlement Amount will be allocated. The allocation shall include attorney's fees and litigation costs of PAGA Representative Group Counsel as awarded by the Court, Settlement Administration Costs, the LWDA Penalty Payment, and the total of all payments to be paid to all eligible PAGA Members.

4. Within fifteen (15) business days after the funding of the Gross Settlement Amount, the Settlement Administrator shall issue to each qualifying PAGA Member a check in the amount of his or her PAGA Representative Group Penalty Payment with the PAGA Payment Letter in English and Spanish via first-class mail using the updated address information. With respect to each PAGA Payment Letter and PAGA Representative Group Penalty Payment which is returned as undeliverable, the Settlement Administrator shall within ten (10) days attempt to determine a correct address by conducting a skip-trace to locate the PAGA Members and shall re-send the PAGA Payment Letter with the PAGA Representative Group Penalty Payment via first-class mail to any new address thereby determined. Checks not negotiated within one hundred eighty (180) calendar days from their issue are void, but this Agreement and the release herein will nonetheless be binding as if they had cashed the checks. Any unclaimed funds in the Settlement Administrator's account as a result of the failure to timely cash PAGA Representative Group Penalty Payment checks, plus any interest that has accrued thereon, will be distributed to the California State Controller's Unclaimed Property Fund in the name of the PAGA Member.

5. Within fifteen (15) business days after the funding of the Gross Settlement Amount, the Settlement Administrator shall distribute the PAGA Representative Group Counsel's attorney's fees and litigation costs.

6. Within fifteen (15) business days after the funding of the Gross Settlement Amount, the Settlement Administrator shall pay the LWDA Penalty Payment to the LWDA.

7. Within fifteen (15) business days after the funding of the Gross Settlement Amount, the Settlement Administrator shall pay itself the Court approved Settlement Administration Costs.

XIV. INADMISSIBILITY OF SETTLEMENT AGREEMENT/DENIAL OF LIABILITY

This Settlement Agreement is the result of a good-faith compromise of disputed claims, and neither it nor any statement or conduct in furtherance of the Settlement shall be offered or construed to be an admission or concession of any kind by any Party. In particular, but without limiting the generality of the foregoing, nothing about this Settlement shall be offered or construed as an admission of liability, wrongdoing, impropriety, responsibility, or fault whatsoever by Defendant, who expressly denies any liability, wrongdoing, impropriety, responsibility, or fault whatsoever. In addition, and also without limiting the generality of the

foregoing, nothing about this Settlement shall be offered or construed as an admission or evidence of the propriety or feasibility of representative action treatment in the Action or any other action for adversarial, rather than Settlement purposes.

XV. PUBLICITY

Plaintiff and PAGA Representative Group Counsel shall not issue a press release or otherwise notify the media about the terms of the Settlement or advertise or market any of the terms of the Settlement through written, recorded or electronic communications. Plaintiff and PAGA Representative Group Counsel further agree that if contacted in writing regarding this case, they will state only that the lawsuit exists and has been resolved. This provision does not prevent PAGA Representative Group Counsel from communicating with PAGA Members and/or taking any step necessary to obtain approval of the settlement.

XVI. INTERIM STAY OF PROCEEDINGS

Pending completion of the settlement process, the Parties agree to a stay of all proceedings in the Action except such as are necessary to implement the Settlement itself.

XVII. NOTICES

All notices, requests, demands and other communications required or permitted to be given pursuant to this Agreement shall be in writing and, except as provided elsewhere in this Agreement or in any communication to PAGA Members, shall be delivered personally or via postage prepaid first-class mail as follows:

A. If to Plaintiff or PAGA Representative Group Counsel, then to:

Christopher Adams
KJT Law Group, LLP
230 N. Maryland Ave., Suite 306
Glendale, California 92606
Telephone: (818) 507-8525
Facsimile: (818) 507-8588

B. If to Defendant or Defense Counsel, then to:

Andrew Russell
Fox Rothschild LLP
10250 Constellation Boulevard, Suite 900
Los Angeles, California 90067-1506
Telephone: (310) 598-4150
Facsimile: (310) 556-9828

XVIII. RETENTION OF JURISDICTION BY THE COURT

Following entry of the Final Order and Judgment pursuant to this Settlement Agreement, the Court shall retain jurisdiction for the purpose of addressing any issues which may arise with respect to settlement administration or the enforcement of the terms of this Settlement Agreement.

XIX. ENTIRE AGREEMENT

This Settlement Agreement and its associated Exhibit set forth the entire agreement of the Parties with respect to their subject matter and supersede any and all other prior agreements and all negotiations leading up to the execution of this Settlement Agreement, whether oral or written, regarding the subjects covered herein. The Parties acknowledge that no representations, inducements, promises or statements relating to the subjects covered herein, oral or otherwise, have been made by any of the Parties or by anyone acting on behalf of the Parties which are not embodied or incorporated by reference herein, and further agree that no other agreement, covenant, representation, inducement, promise or statement relating to the subjects covered herein not set forth in writing in this Settlement Agreement have been made.

XX. MODIFICATION OR AMENDMENT

This Settlement Agreement may not be modified, amended or altered except in a writing signed by each Party whose rights or obligations hereunder would be affected thereby or by that Party's authorized legal representative, or as ordered by the Court.

XXI. CHOICE OF LAW

This Settlement Agreement shall be governed by and construed, enforced and administered in accordance with the laws of the State of California, without regard to its conflicts-of-law rules.

XXII. CONSTRUCTION

This Settlement Agreement is entered into freely and voluntarily without duress or undue pressure or influence of any kind or nature whatsoever and neither Plaintiff, nor the PAGA Members, nor Defendant has relied on any promises, representations or warranties regarding the subject matter hereof other than as set forth in this Agreement. Each Party has been represented by counsel in the settlement negotiations leading up to, and in connection with the preparation and execution of, this Settlement Agreement.

The Parties acknowledge and agree that all Parties had an equal hand in drafting this Settlement Agreement so that it shall not be deemed to have been prepared or drafted by one Party or another. All Parties waive the provisions of California Civil Code section 1654, which provides, in pertinent part, that "the language of a contract should be interpreted most strongly against the Party who caused the uncertainty to exist."

XXIII. EXECUTION IN COUNTERPARTS

This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Any signature to this Agreement transmitted by facsimile and any copies of any signatures are valid and binding.

XXIV. AUTHORITY

The individuals signing this Settlement Agreement on behalf of Defendant represent and warrant that they are duly authorized to do so. The Parties likewise represent and warrant that they have the authority to execute this Settlement Agreement and to take all appropriate action required and permitted to be taken by this Settlement Agreement, except such action that is the prerogative of the Court.

XXV. REASONABLE COOPERATION

The Parties shall support the settlement and its approval by the Court. The Parties shall provide reasonable cooperation with one another and the Settlement Administrator in implementing this Settlement, including but not limited to providing information and executing documents necessary to effectuating its purpose.

XXVI. BINDING EFFECT

This Settlement shall be enforceable, binding upon and inure to the benefit of the respective parties hereto, their respective legal successors, heirs, administrators, executors, assigns and each of them.

XXVII. NO PRIOR ASSIGNMENT

The parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

XXVIII. MISCELLANEOUS

A. Headings: The headings in this Agreement are included for convenience only and shall not be given weight in its construction.

B. Signatures: Facsimile transmissions of the signatures or digital signatures of the Parties or their representatives shall be binding on the Parties.

IN WITNESS WHEREOF, this Settlement Agreement, consisting of 12 pages, has been duly executed by and on behalf of the Parties as of the date first written above.

3/10/2022

Dated: January ____, 2022

DocuSigned by:



Efrain Martinez

On behalf of Plaintiff and the PAGA Members

3/18/22 @

Dated: January ____, 2022

By: 

Name: Lee Mauer

Title: Manager

On behalf of Defendant Sushi Concepts Sunset, LLC