

**PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT AND
RELEASE**

This Private Attorneys General Act Settlement Agreement and Release ("Settlement Agreement") is entered into by and between Kimberly Bejines ("Plaintiff"), for herself and as a representative of the State of California and the Aggrieved Employees (as defined in Section 3(a)(5) below), on the one hand, and, on the other, Defendants Anaheim Hills Jewelry and Coin Mart, Inc. and Bagel Me! #9, #13 & #15, Inc. (collectively, "Defendants"), subject to approval by the Court. The term "Party" or "Parties" as used herein shall refer to Plaintiff, Defendants, or both, as may be appropriate.

I. **Recitals.** This Settlement Agreement is made with reference to the following facts:

WHEREAS, Plaintiff was employed at Defendant BAGEL ME! #9, #13 & #15, INC. from on or about March, 2018 until on or about May 28, 2019.

WHEREAS, Plaintiff filed a Complaint in the Superior Court of the State of California, County of Orange, Case Number 30-2020-01147879-CU-OE-CXC, entitled KIMBERLY BEJINES Plaintiff v. ANAHEIM HILLS JEWELRY AND COIN MART, INC., BAGEL ME! #9, #13, & #15, INC. and DOES 1 to 100, Defendants (hereinafter referred to as the "Lawsuit"). In the Lawsuit, Plaintiff alleged eight (8) causes of action against Defendants. The First Cause of Action asserts a claim for Failure to Pay Hourly and Overtime Wages and seeks unpaid wages and prejudgment interest on any unpaid wages from the date such amounts were due, attorney's fees and costs, and other relief the court deems proper. The Second Cause of Action asserts a claim for Failure to Provide Meal Periods or Compensation in Lieu Thereof and seeks meal break penalties, attorney's fees and costs, and other relief the court deems proper. The Third Cause of Action asserts a claim for Failure to Provide Rest Periods or Compensation in Lieu Thereof and seeks rest break penalties, attorney's fees and costs, and other relief the court deems proper. The Fourth Cause of Action asserts a claim for Failure to Reimburse Required Business Expenses and seeks reimbursement of plaintiff's expenditures, plus interest, attorney's fees and costs, and other relief the court deems proper. The Fifth Cause of Action asserts a claim for Failure to Furnish Itemized Wage Statements and seeks wage statement penalties, attorney's fees and costs, and other relief the court deems proper. The Sixth Cause of Action asserts a claim for Failure to Pay All Wages Upon Conclusion of Employment and seeks waiting time penalties, attorney's fees and costs, and other relief the court deems proper. The Seventh Cause of Action asserts a claim for Unlawful and/or Unfair Business Practices and seeks restitution of unpaid wages and premium pay, attorney's fees and costs, and other relief the court deems proper. (The First through Seventh Causes of action are collectively referred to as the "Individual Claims".) The Eighth Cause of Action asserts a claim under the California Private Attorney General Act (hereinafter referred to as "PAGA") set forth in California Labor Code, §2698 et. seq. on Plaintiff's behalf and the Aggrieved Employees of Defendants for the State of California and seeks penalties pursuant to California Labor Code, §§558, 1197.1, 203 and 2699, attorney's fees and costs, and other relief the court deems proper (hereinafter referred to as the "Representative PAGA Claim") for Plaintiff, the Aggrieved Employees and the State of California.

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WHEREAS, Defendants deny all of the allegations in the Lawsuit and deny that they have committed any misconduct, statutory or regulatory violations, wrongdoing, or any other actionable contact.

WHEREAS, the Parties understand, acknowledge, and agree that this Private Attorney General Act Settlement Agreement constitutes a compromise of Plaintiff's Individual Claims and the Representative PAGA Claim, and that it is the desire and intention of the Parties to effect a final and complete resolution of Plaintiff's Individual Claims and of the Representative PAGA Claim that Plaintiff and all PAGA Aggrieved Employees have against Defendants. The Parties further acknowledge that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission by Defendants of liability.

WHEREAS, the Parties believe and agree that this Agreement provides for a fair, adequate, and reasonable resolution of the PAGA Representative Claim, and have arrived at the settlement in extensive, arms-length negotiations through Mediation with the Honorable Jan Adler, Judge Retired, taking into account all relevant factors, present and potential.

WHEREAS, under California Law, the State may assess and collect civil penalties from "employers" for violations of certain provisions of the Labor Code. See, California Labor Code, §§2699(a) et seq. Under PAGA, however, if an "aggrieved employee" "give[s] written notice by certified mail to the [State] and the employer of the specific provision of the [Labor Code] alleged to have been violated," and the State thereafter decides not to investigate, or does investigate and determines that a citation against the employer should not issue, the employee may, "as an alternative" to enforcement by the State, bring a civil action under PAGA to recover the civil penalties "on behalf of himself or herself and other current or former employees." *Id.* "[C]ivil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the state and 25 percent to the aggrieved employees." *Id.*

WHEREAS, California Labor Code, §2699(l) requires Court approval of any penalties sought as part of a proposed settlement agreement pursuant to PAGA. Pursuant to Labor Code, §2699(f)(2), the civil penalty for violations of the California Labor Code for which there is not a civil penalty otherwise specifically provided is \$100 for each "aggrieved employee" per pay period for the initial violation and \$200 for each "aggrieved employee" per pay period for each subsequent violation.

WHEREAS, the Parties mutually desire to enter into a separate and related Confidential Settlement Agreement and Release with respect to Plaintiff's Individual Claims (hereinafter referred to as "Plaintiff's Individual Settlement Agreement").

2. **Nonadmission of Wrongdoing.** The Parties agree that neither this Settlement Agreement nor the furnishing of the consideration for this Settlement Agreement shall be deemed or construed at any time for any purpose as an admission by the Released Parties of wrongdoing or evidence of any liability or unlawful conduct of any kind.

3. **Consideration:**

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(a) In consideration for Plaintiff signing this Settlement Agreement and complying with its terms, Defendants shall pay the maximum gross sum of TWENTY FIVE THOUSAND DOLLARS AND ZERO CENTS (\$25,000.00) (the "Total Settlement Amount") to resolve the Action and Released Claims, as defined in paragraph 9, below, which will be paid as follows:

(1) Attorneys' fees of up to thirty-three and one third percent (33 1/3%) of the Total Settlement Amount which amounts to EIGHT THOUSAND THREE HUNDRED THIRTY THREE DOLLARS AND THIRTY THREE CENTS (\$8,333.33) subject to Court approval, and reimbursement of litigation costs and expenses up to the additional amount of FIVE THOUSAND THREE HUNDRED SEVENTY FOUR DOLLARS AND EIGHTY ONE CENTS (\$5,374.81) subject to Court approval (collectively, "Attorneys' Fees and Costs"), which Defendants will not contest.

(2) An enhancement fee of up to the amount of FIVE HUNDRED DOLLARS AND ZERO CENTS (\$500.00) to Plaintiff ("Enhancement Fee"), which Defendants will not contest.

(3) Costs and expenses of administration of the Settlement up to the amount of ONE THOUSAND TWO HUNDRED NINETY FIVE DOLLARS AND ZERO CENTS (\$1,295.00) ("Settlement Administration Costs") to Phoenix Settlement Administrators (the "PAGA Settlement Administrator").

(4) The amounts stated in Paragraphs 1 – 3 above, once approved by the Court, shall be paid from the Total Settlement Amount. The balance remaining after these deductions is referred to as the "Net Settlement Amount."

(5) Seventy-five percent (75%) of the Net Settlement Amount shall be distributed to the LWDA ("LWDA Payment"); and the remaining twenty-five percent (25%) of the Net Settlement Amount shall be distributed on a pro rata basis, based on pay periods worked within the PAGA Covered Period to the Alleged Aggrieved Employees, defined solely for purposes of this Settlement as all employees of Defendants in California who were subjected to any of the Labor Code violations referenced herein who worked during the "Covered PAGA Period" between March 23, 2019 through the date the Court approves this Settlement Agreement (the "Aggrieved Employees"). The 25% portion of the Net Settlement Amount payable to Aggrieved Employees is referred to as the "Employees' Portion."

(b) Because this is a settlement of PAGA claims for civil penalties only, the portion of the Settlement is allocated to unpaid wages. One Hundred Percent (100%) of the payments for Attorneys' Fees and Costs, Enhancement Fees, and the Net Settlement Amount to be paid to the LWDA and Aggrieved Employees as described in Section 3(a) above will be treated and reported for tax purposes as non-wage payments and the Settlement Administrator will be responsible for issuing IRS Forms 1099 as required.

4. **Court Approval Is Required.** Plaintiff understands and agrees that the State of California and Aggrieved Employees, including Plaintiff, would not receive the consideration

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specified in Section 3(a) above, except for Plaintiff's execution of this Settlement Agreement, and the fulfillment of the promises contained herein, as well as Court approval of the Settlement. If this Settlement Agreement is not approved by the Court, the Parties shall request leave and work jointly to attempt to remedy the PAGA settlement in order to obtain the Court's approval. Plaintiff shall timely provide notice of this Settlement Agreement and the Court's Approval of this Settlement Agreement to the LWDA in accordance with Labor Code §§ 2698 *et seq.*

5. Disbursal of Settlement Funds/Dismissal of Action.

(a) Subject to Section 4 above, Defendants shall remit to the PAGA Settlement Administrator the sums described more fully in Section 3(a) above, within ten (10) days after all of the following has occurred: (i) the Settlement Agreement is fully executed by all Parties and their counsel; (ii) Plaintiff has provided notice of the Settlement Agreement to the LWDA, (iii) the Court has entered an order approving the Settlement Agreement; and (iv) Plaintiff has provided notice of Court approval to the LWDA. If the date by which payment by Defendants is due falls on a Saturday, Sunday or legal holiday in the State of California, then the due date shall be extended the next following day which is not a Saturday, Sunday or legal holiday in the State of California.

(b) Upon complete distribution of the Total Settlement Amount by the PAGA Settlement Administrator in accordance with this Settlement Agreement, the Settlement Administrator will notify the parties of distribution of the entire Total Settlement Amount, and within ten (10) business days of such notification, Plaintiff will seek dismissal of the Action in its entirety with prejudice.

6. Approval and Implementation of the PAGA Settlement.

(a) The Parties will cooperate in obtaining an order from the Court approving this Settlement Agreement and dismissal of the Action based thereon, as described herein. The Parties further agree to cooperate in the drafting and/or filing of any further documents and/or filings reasonably necessary to be prepared and/or filed, and to take all steps that may be requested by the Court relating in order to obtain approval and implementation of this Settlement Agreement, and the payments described in Section 3(a) above.

(b) The Parties shall seek to obtain Court approval of this Settlement Agreement by way of an unopposed motion to be filed by Plaintiff's Counsel and/or Application if allowed by the court. Plaintiff's Counsel shall provide a draft of all documents to be submitted in connection with the motion to approve this Settlement Agreement to Edward W. Lukas, Jr. of Harrington, Foxx, Dubrow & Canter, LLP ("Defendant's Counsel") for review and approval prior to filing.

(c) The Parties expressly acknowledge that the Court's approval of the Settlement Agreement is a condition precedent to any payments described in this Settlement Agreement. Therefore, the Parties further acknowledge that, should the Court not grant approval of this Settlement Agreement and/or should the Court refuse to grant dismissal of the action and closure of the case based on the Settlement, the entirety of this Settlement Agreement shall be null and void.

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7. Notice to Recipients.

(a) There shall be no basis for objections to the Settlement Agreement or approval process by the Court by the Aggrieved Employees. There also shall be no opt-out process for the Aggrieved Employees.

(b) Each Aggrieved Employee will be entitled to a *pro rata* share of 25% of the Net Settlement Amount (i.e., the Employees' Portion) based upon the number of pay periods they each worked between March 26, 2019 through the date of the Court's Order Granting Settlement Approval ("Compensable Workweeks"), based on Defendant's payroll records. Specifically, to calculate each Aggrieved Employee's share of the Employees' Portion ("Individual Settlement Share"), the PAGA Settlement Administrator shall:

(1) For each Aggrieved Employee, divide the number of Compensable pay periods he or she worked by the total aggregate number of Compensable pay periods worked by all Aggrieved Employees, and then multiply this amount by the Employees' Portion to arrive at each Aggrieved Employee's Individual Settlement Share.

(2) One Hundred Percent (100%) of all Individual Settlement Shares are to be considered penalties and will not be subject to local, state or federal payroll tax withholdings. All Aggrieved Employees who cash, deposit, or otherwise negotiate their Individual Settlement Share checks shall receive an IRS Form 1099 for their Individual Settlement Share as required by the IRS.

(c) The Parties agree to retain Phoenix Settlement Administrators to serve as the PAGA Settlement Administrator.

(d) The PAGA Settlement Administrator shall distribute each Individual Settlement Share by way of check, along with a cover letter agreed to by the Parties and approved by the Court, in the following manner:

(1) No later than fourteen (14) calendar days after the Court's order granting approval of the Settlement, Defendants shall provide the PAGA Settlement Administrator with a list of all Aggrieved Employees (the "Aggrieved Employees List"), containing the following information for each Aggrieved Employee: (i) first and last name; (ii) last known address; (iii) social security number; and (iv) dates of employment.

(2) The PAGA Settlement Administrator shall conduct one (1) National Change of Address ("NCOA") search for all individuals identified on the Aggrieved Employee List.

(3) No later than fourteen (14) calendar days after the PAGA Settlement Administrator's receipt of the Total Settlement Amount, the PAGA Settlement Administrator shall mail the agreed-upon Cover Letter and Individual Settlement Share checks (together, the "PAGA Settlement Package") to all Aggrieved Employees by first-class United States mail. For each PAGA Settlement Package that is returned undeliverable, the PAGA Settlement Administrator shall promptly attempt to locate an alternate, updated address for the

Aggrieved Employee at issue, by using an address refresher database and shall attempt one (1) re-mailing of the PAGA Settlement Package.

(4) The Individual Settlement Share checks issued to Aggrieved Employees shall remain valid for one hundred eighty (180) calendar days, and thereafter, shall be cancelled. Funds associated with cancelled checks shall be transmitted to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 et seq., for the benefit of those Settlement Class members who did not cash their checks until such time that they claim their property.

(e) Also no later than fourteen (14) calendar days after the PAGA Settlement Administrator receives the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement Administrator shall transmit the LWDA Payment to the LWDA.

8. Release of Claims by Plaintiff, Aggrieved Employees, and the State of California.

(a) Upon the Effective Date, Plaintiff and Aggrieved Employees, individually and on behalf of their heirs, executors, administrators, representatives, attorneys, successors and assigns, and the State of California, on behalf of itself and its administrators, representatives, and assigns, will be deemed to have knowingly and voluntarily released and forever discharged Defendants, including Defendants' parents, subsidiaries, divisions, affiliated corporations, trustees, directors, officers, shareholders, agents, attorneys, insurers, or employees (collectively, the "Released Parties"), to the full extent permitted by law, of and from the Action and from any and all claims asserted and unasserted, arising during the period from March 26, 2019 through the date on which the Court grants approval of the Settlement, for civil penalties under California Labor Code sections 558 and 2698, *et seq.* ("PAGA") as well as any interest, fees, and costs available under PAGA, based on the factual allegations in the Operative Complaint or what could have been alleged in the Operative Complaint based on the facts alleged therein, including but not limited to, civil penalty claims under PAGA for violations of Labor Code sections §§ 201-204, 226, 226.3, 226.7, 510, 512, 558, 1182.1, 1194, 1197.1, 1198, 2802, 3751, 3752, 6401, and 6403 in conformity with Labor Code section 2699.3.

9. **No Transfer/Assignment of Claims.** Plaintiff warrants and represents that Plaintiff has not assigned or transferred or purported to assign or transfer to any person or entity all or any part of or any interest in any claim released under this Settlement Agreement. Plaintiff is solely responsible for the satisfaction of any assignment or lien to any lien holder and will indemnify and hold the Released Parties harmless against any liens, damages, penalties, fines, fees, assessments, taxes or attorneys' fees that may be imposed against or incurred by any of the Released Parties as a result of the Action of any lien holder or any lien claimant or any court in relation to any interest which any third party may have in any claim which Plaintiff is releasing under this Settlement Agreement or any interest in any of the proceeds paid to Plaintiff or Plaintiff's Counsel under this Settlement Agreement.

10. Liens and Attorneys' Fees/Indemnification.

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Plaintiff is solely responsible for any liens made in connection with any services performed on Plaintiff's behalf by any attorney, consultants, or expert witnesses. Each Party solely is responsible for any fees and costs they or it has incurred including, but not limited to, fees for attorneys, consultants and expert witnesses. Plaintiff acknowledges that none of the Released Parties are responsible for the payment of any fees incurred on behalf of Plaintiff in connection with the prosecution of the Action, except to the extent the Settlement Agreement provides for payment of Attorneys' Fees and Costs.

11. Governing Law and Interpretation.

(a) This Settlement Agreement shall be governed and conformed in accordance with the laws of the State of California provided, however, that parol evidence shall not be admissible to alter, vary or supplement the term of this Settlement Agreement. Should any provision of this Settlement Agreement be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable such provision immediately shall become null and void, leaving the remainder of this Settlement Agreement in full force and effect.

(b) In the event of a breach of any provision of this Settlement Agreement, any Party reserves the right to institute an action specifically to enforce any term or terms of this Settlement Agreement or seek damages for breach. In an action to enforce any term or terms of this Settlement Agreement or to seek damages for breach of this Settlement Agreement, the prevailing Party in that action shall be entitled to recover reasonable attorney's fees and costs from the non-prevailing Party.

12. Amendment. This Settlement Agreement may not be modified, altered or changed except in writing and signed by both Parties or their counsel wherein specific reference is made to this Settlement Agreement, subject to approval by the Court.

13. Miscellaneous.

(a) This Settlement Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which, taken together shall constitute the same instrument. A signature made on a faxed or electronically mailed copy of the Settlement Agreement or a signature transmitted by facsimile or electronic mail shall have the same effect as the original signature. Electronic signatures obtained via DocuSign shall also have the same effect as an original wet signature.

(b) The section headings used in this Settlement Agreement are intended solely for convenience of reference and shall not in any manner amplify, limit, modify or otherwise be used in the interpretation of any of the provisions hereof.

(c) This Settlement Agreement was the result of negotiations between the Parties and their respective counsel. In the event of vagueness, ambiguity or uncertainty, this Settlement Agreement shall not be construed against the Party preparing it, but shall be construed as if all Parties prepared it jointly.

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(d) If Plaintiff or Defendants fail to enforce this Settlement Agreement or to insist on performance of any term, that failure does not mean a waiver of that term or of the Settlement Agreement. The Settlement Agreement remains in full force and effect anyway.

14. Confidentiality. The parties agree that Plaintiffs individual settlement should be disclosed to the court. Due to the confidential nature of the plaintiff's individual settlement. Plaintiff should file the settlement agreement under seal only.

HAVING ELECTED TO EXECUTE THIS SETTLEMENT AGREEMENT, TO FULFILL THE PROMISES AND TO RECEIVE THE CONSIDERATION SET FORTH IN SECTION 3(a) ABOVE, PLAINTIFF AND DEENDANTS, FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTER INTO THIS SETTLEMENT AGREEMENT.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Settlement Agreement as of the date set forth below:

Date: 02/16/21 | 12:34 PST

DocuSigned by:

Kimberly Bejines

B1BEE1079AB044A

KIMBERLY BEJINES

Individually and On Behalf of the State of California and Aggrieved Employees

Date: 2/13/21

Stuart Golub, pres.

By STUART GOLUB for ANAHEIM HILLS JEWELRY AND COIN MART, INC. and BAGEL ME! #9, #13 & #15, INC.

Approved as to form and content.

FRONTIER LAW CENTER

Date: 02/17/21 | 1:51 PST

DocuSigned by:

Dan Ginzburg

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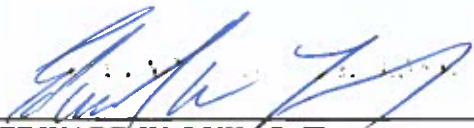
By:

MANNY M. STARR
DANIEL GINZBURG
Attorneys for Plaintiff
KIMBERLY BEJINES

PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AND RELEASE

HARRINGTON, FOXX, DUBROW &
CANTER, LLP

Date: 2/13/21

By: 

EDWARD W. LUKAS, JR.

Attorney for Defendants ANAHEIM HILLS
JEWELRY AND COIN MART, INC. and
BAGEL ME! #9, #13 & #15, INC.

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