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April 1, 2022

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VIA LWDA PAGA FILING PORTAL

CALIFORNIA LABOR & WORKFORCE DEVELOPMENT AGENCY
ATTN: PAGA ADMINISTRATOR
1515 CLAY STREET, SUITE 801
OAKLAND, CA 94612

Re: Justin Lie v. Benihana International, Inc.
Superior Court of The State of California, County of San Mateo
Case No. 21-CIV-00153

To Whom It May Concern:

My firm, Littler Mendelson, P.C., represents Defendant Benihana International, Inc. in the above referenced matter. On April 1, 2022, Defendant, pursuant to the parties' stipulated agreement, filed a motion to approve PAGA settlement and dismiss the of PAGA action (the "Motion"), set to be heard on April 26, 2022. Enclosed as **Exhibit A** is a true and correct copy of the Motion, and all corresponding documents.

Should you have any questions or need additional information, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in blue ink that reads "Chad D. Greeson".

Chad D. Greeson

Enclosure

EXHIBIT A

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10 Attorneys for Defendant
BENIHANA INTERNATIONAL, INC.

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12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN MATEO
15

16 JUSTIN LIE, individually and on behalf of
himself and all others similarly situated,

17 Plaintiff,

18 v.

19 BENIHANA INTERNATIONAL, INC., a
20 Delaware Corporation; and DOES 1-50,
inclusive,

21 Defendants.
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Case No. 21-CIV-00153

**NOTICE OF MOTION AND MOTION
TO APPROVE PAGA SETTLEMENT
AND DISMISSAL OF PAGA ACTION**

ASSIGNED FOR ALL PURPOSES TO
JUDGE NANCY FINEMAN, DEPT. 4

Hearing Date: April 26, 2022
Time: 2:00 p.m.
Dept.: 4 CR N

Complaint Filed: Jan. 12, 2021
First Amd. Compl. Filed: Dec. 5, 2021
Second Amd. Comp. Filed: Jan. 18, 2022

1 **TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

2 **YOU ARE HEREBY NOTIFIED THAT** at 2:00 p.m. on April 26, 2022, or as soon
3 thereafter as the matter can be heard, in Department 4 CR N of the above-entitled Court before
4 Honorable Judge Nancy Fineman, Defendant Benihana International, Inc. ("Benihana") will and
5 hereby does move for an order: (1) approving Benihana's and Plaintiff Justin Lie's ("Lie")
6 (collectively, the "Parties") PAGA Settlement and Stipulation and the payment described therein
7 resolving Lie's individual claims for relief under the California Private Attorneys General Act
8 (California Labor Code section 2698, *et seq.*) ("PAGA"); (2) dismissing Lie's individual wage and
9 hour claims with prejudice; (3) dismissing the representative PAGA claims of the Aggrieved
10 Employees, other than those of Plaintiff, without prejudice; and (4) having all Parties bear their
11 own respective fees and costs except as expressly provided in the PAGA Settlement Agreement.

12 This Motion is based on this notice, the accompanying Memorandum of Points and
13 Authorities, the Declaration of Chad Greeson, and the complete files and records in this action. The
14 Labor Workforce Development agency has been served with this Motion.

15
16 DATED: April 1, 2022

LITTLER MENDELSON, P.C.

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19 By: 
20 Constance E. Norton
Chad D. Greeson

21 Attorneys for Defendant BENIHANA
22 INTERNATIONAL, INC.

1 **I. INTRODUCTION**

2 The Parties, after extensive negotiations, entered into a Settlement Agreement to resolve
3 and settle Lie’s individual claims arising out of Plaintiff’s employment with and separation from
4 Benihana and association with Benihana. In conjunction with that Settlement Agreement, the
5 parties entered into a separate PAGA Settlement Agreement and Stipulation for Approval of PAGA
6 Settlement and Dismissal of PAGA Action (“PAGA Settlement and Stipulation”) by which the
7 Parties intend to resolve, settle, and discharge Lie’s PAGA Complaint by dismissing Lie’s
8 individual PAGA claims in the Second Amended Complaint with prejudice and dismissing the
9 representative PAGA claims in the Second Amended Complaint without prejudice. A true and
10 correct copy of the PAGA Settlement and Stipulation is attached as **Exhibit 1** to the Declaration of
11 Chad Greeson, filed concurrently herewith. In addition, the LWDA received notice of this
12 Settlement and this Motion as set forth in the accompanying proof of service.

13 Benihana now asks this Court to review and approve the PAGA Settlement and Stipulation,
14 in accordance with the proposed order submitted herewith.

15 **II. RELEVANT FACTS**

16 On about November 5, 2020, Lie filed a notice with the Labor and Workforce Development
17 Agency under the California Private Attorneys General Act (California Labor Code section 2698
18 *et seq.*) (“PAGA”) asserting various alleged Labor Code and wage and hour violations, which was
19 also sent to Defendant (the “PAGA Letter”). Subsequently, on January 12, 2021, Lie filed a PAGA
20 representative action against Defendant in the Superior Court of State of California, County of San
21 Mateo, designated as Case No. 21-CIV-00153 (“Complaint”). Plaintiff sought civil penalties
22 pursuant to PAGA predicated on the following alleged violations: (1) Labor Code [“Labor Code”]
23 §§ 216, 225.5, 1182.12, 1194, 1197, and 1198 and California’s Industrial Welfare Commission’s
24 [“IWC”] Order No. 5-2001 (Unpaid Minimum Wage); (2) Labor Code §§ 216, 225.5, 510, 515,
25 1194, 1197, 1198 and IWC Order No. 5-2001 (Unpaid Overtime); (3) Labor Code §§ 226.7, 512,
26 and IWC Order No. 5-2001 (Unpaid Meal Period Premiums); (4) Labor Code § 226.7 and IWC
27 Order No. 5-2001 (Unpaid Rest Period Premiums); (5) Labor Code §§ 1194, 1197, and 1197.1
28 (Unpaid Minimum Wages); (6) Labor Code § 351 (Unpaid Tips); (7) Labor Code § 246 (Unpaid

1 Sick Leave); (8) Labor Code § 204 (Unpaid Semi-monthly Wages and Meal/Rest Premiums); (9)
2 Labor Code §§ 201-203 (Unpaid Wages upon Separation); (10) Labor Code § 226 (Inaccurate
3 Wage Statements); (11) Labor Code §§ 1174, 1175, and IWC Order No. 5-2001; (12) Labor Code
4 § 2802 (Unpaid Business Expenses). Through the PAGA complaint, Lie sought to represent
5 himself, the State of California, and current and former employees of Defendant allegedly
6 aggrieved.

7 Shortly thereafter, on or about December 2, 2021, Lie filed a First Amended Complaint
8 (“FAC”) pursuant to the Court’s Minute Order dated November 16, 2021, dismissing all of the
9 previously asserted PAGA claims except for the following: (a) Labor Code § 246 (Unpaid Sick
10 Leave); (b) Labor Code §§ 201-203 (Unpaid Wages upon Separation); and (c) Labor Code § 2802
11 (Unpaid Business Expenses). Again, Lie sought civil penalties under PAGA in the FAC on behalf
12 of himself, the State of California, and current and former employees of Defendant in California.
13 Thereafter, on or about January 5, 2022, Lie and Benihana entered a stipulation where Lie agreed
14 to dismiss the claim for PAGA penalties for violation of Labor Code sections 201-203, leaving two
15 claims for PAGA civil penalties in a proposed Second Amended Complaint (“SAC”) based upon
16 the following predicate violations: (i) Labor Code § 246 (Unpaid Sick Leave); and (ii) Labor Code
17 § 2802 (Unpaid Business Expenses).

18 On or about February 14, 2022, Lie submitted a demand for arbitration to AAA for his
19 individual wage and hour claims (“Arbitration Demand”). The PAGA letter, the Complaint, the
20 FAC, the SAC, and the Arbitration Demand are collectively referred to herein as the “Lawsuit”.

21 Prior to arbitration, Lie and Benihana, through their respective counsel, negotiated a
22 settlement of Plaintiff’s non-PAGA claims, including a general release of claims and a Civil Code
23 section 1542 waiver, for which additional consideration is being provided and is memorialized in
24 a separate Confidential Settlement Agreement and Release. In conjunction with that Settlement
25 Agreement, the Parties entered into the PAGA Settlement Agreement and Stipulation, which has
26 now been submitted to the Court for review and approval.

27 **III. TERMS OF THE PAGA SETTLEMENT**

28 The PAGA Settlement and Stipulation is subject to approval consistent with Labor Code

1 section 2699 *et seq.* The PAGA Settlement and Stipulation is for the settlement and release of Lie’s
2 individual PAGA claims. Pursuant to the PAGA Settlement and Stipulation, Benihana will make a
3 payment in the amount of \$200 to settle and release Lie’s individual PAGA claims. Of the \$200
4 Defendant agrees to pay: (1) \$150.00 (representing 75% of said \$200.00) will be paid to the LWDA;
5 and (2) \$50.00 (representing 25% of said \$200.00) will be payable to “Justin Lie” and shall
6 represent payment for PAGA penalties and for which a form 1099 shall issue Benihana shall
7 distribute said amounts to the LWDA and to Plaintiff no later than fourteen (14) business days of
8 the Effective Date.

9 Pursuant to California Labor Code section 2699(1), Benihana will provide a copy of the
10 PAGA Settlement and Stipulation and this Motion to the LWDA concurrently with the filing of the
11 instant motion for settlement approval, as set forth in the accompany proof of service. In addition,
12 Benihana shall submit to the LWDA a copy of the Court’s judgment and order approving the PAGA
13 Settlement and Stipulation within ten (10) days after entry of judgment and order.

14 **IV. THE PARTIES HAVE SETTLED LIE’S INDIVIDUAL PAGA CLAIMS**

15 The Parties agreed to settle Lie’s individual PAGA claims after extensive negotiations and
16 an exchange of relevant information and data. The PAGA Settlement and Stipulation is intended to
17 only resolve the PAGA claims as individually applicable to Lie and is not intended to nor does it
18 release claims, if any, that may be applicable to the Aggrieved Employees in any representative
19 PAGA claim. However, the PAGA Settlement and Stipulation shall not be construed as an
20 admission by Benihana whatsoever, or as an admission by Benihana of any violation of Plaintiff’s
21 (nor any allegedly Aggrieved Employee’s) rights, violation of any order, law, statute, duty or
22 contract whatsoever. Benihana specifically disclaims any liability to Plaintiff or any other
23 Aggrieved Employee for any alleged violation of their rights, or for any alleged violation of any
24 order, law, statute, duty or contract.

25 **V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE SETTLEMENT** 26 **OF LIE’S INDIVIDUAL PAGA CLAIMS**

27 Labor Code section 2699(1) requires that the Court “shall review and approve any settlement
28 of any civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted

1 to the agency at the same time that it is submitted to the Court.”

2 Accordingly, the parties respectfully request that the Court review and approve the Parties’
3 PAGA Settlement and Stipulation.

4 **A. The Amount Paid to Lie Is Fair and Reasonable**

5 The Parties believe that the PAGA Settlement and Stipulation is fair and reasonable, and,
6 therefore, should be approved. The PAGA Settlement and Stipulation was reached after extensive
7 negotiations, and represents a fair, adequate, and reasonable resolution of the action, in conjunction
8 with Plaintiff’s desire to no longer pursue a representative PAGA claim on behalf of other
9 individuals. The Parties arrived at this PAGA Settlement and Stipulation in arms’ length
10 negotiations, taking into account all relevant factors, present, and potential.

11 The \$200 payment is reasonable, when considered in light of the fact that it is solely and
12 only to settle Lie’s claims – the rights of any of the allegedly Aggrieved Employees are not
13 impacted by the PAGA Settlement and Stipulation. Moreover, this is a significant individual
14 penalty for the alleged PAGA claims, when considered in conjunction with the negotiated
15 settlement of Plaintiff’s non-PAGA claims, for which additional consideration is being provided
16 and is memorialized in a separate Confidential Settlement Agreement and Release, which will be
17 produced for review to this Court in chambers upon the Court’s request. Further, it takes into
18 account Lie’s desire to longer purpose a representative PAGA claim on behalf of other individuals
19 and the inherent risk in PAGA actions, whereby, if this were to proceed to litigation, there is a real
20 risk that no PAGA penalties would be paid, as based on the available data considered by Lie and
21 his counsel. Accordingly, and given the risks inherent in litigation and Lie’s desires, the Court
22 should find the PAGA Settlement and Stipulation fair and reasonable.

23 **B. The Remaining Settlement Terms Are Fair and Reasonable**

24 Although PAGA requires that a court approve the proposed PAGA Settlement and
25 Stipulation, Labor Code section 2699(1) does not require that a court approve any other elements
26 of the proposed PAGA Settlement and Stipulation. Because Lie did not make any class allegations
27 for which Defendant seeks approval, the approval provisions applicable to class settlements under
28 California Code of Civil Procedure section 382 do not apply. Accordingly, the Court only need to

1 approve the settlement of the civil penalty awarded to Lie.

2 **VI. CONCLUSION**

3 Based on the foregoing, Benihana respectfully requests the Court approve the PAGA
4 Settlement and Stipulation and enter the proposed order submitted herewith.

5 DATED: April 1, 2022

6 LITTLER MENDELSON, P.C.

7
8 By: 

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10 Constance E. Norton
Chad D. Greeson

11 Attorneys for Defendant BENIHANA
12 INTERNATIONAL, INC.

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Attorneys for Defendant
BENIHANA INTERNATIONAL, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

JUSTIN LIE, individually and on behalf of
himself and all others similarly situated,

Plaintiff,

v.

BENIHANA INTERNATIONAL, INC., a
Delaware Corporation; and DOES 1-50,
inclusive,

Defendants.

Case No. 21-CIV-00153

**DECLARATION OF CHAD GREESON
IN SUPPORT OF DEFENDANT'S
MOTION AND TO APPROVE PAGA
SETTLEMENT AND DISMISSAL OF
PAGA ACTION**

ASSIGNED FOR ALL PURPOSES TO
JUDGE NANCY FINEMAN, DEPT. 4

Hearing Date: April 26, 2022
Time: 2:00 p.m.
Dept.: 4 CR N

Complaint Filed: Jan. 12, 2021
First Amd. Compl. Filed: Dec. 5, 2021
Second Amd. Comp. Filed: Jan. 18, 2022

1 I, CHAD GREESON, declare as follows:

2 1. I am a shareholder with the law firm of Littler Mendelson P.C., and am counsel for
3 Defendant BENIHANA INTERNATIONAL, INC. (“Benihana”) I make this declaration based on
4 my own personal knowledge and, if called to testify, could and would testify to the matters stated
5 herein.

6 2. This Declaration is being submitted in support of the Motion by Benihana for an
7 order approving the Settlement in the above-entitled Action.

8 3. On about November 5, 2020, Lie filed a notice with the Labor and Workforce
9 Development Agency under the California Private Attorneys General Act (California Labor Code
10 section 2698 *et seq.*) (“PAGA”) asserting various alleged Labor Code and wage and hour violations,
11 which was also sent to Benihana (the “PAGA Letter”).

12 4. On January 12, 2021, Lie filed a PAGA representative action against Benihana in
13 the Superior Court of State of California, County of San Mateo, designated as Case No. 21-CIV-
14 00153 (“Complaint”). Plaintiff sought civil penalties pursuant to PAGA predicated on the
15 following alleged violations: (1) Labor Code [“Labor Code”] §§ 216, 225.5, 1182.12, 1194, 1197,
16 and 1198 and California’s Industrial Welfare Commission’s [“IWC”] Order No. 5-2001 (Unpaid
17 Minimum Wage); (2) Labor Code §§ 216, 225.5, 510, 515, 1194, 1197, 1198 and IWC Order No.
18 5-2001 (Unpaid Overtime); (3) Labor Code §§ 226.7, 512, and IWC Order No. 5-2001 (Unpaid
19 Meal Period Premiums); (4) Labor Code § 226.7 and IWC Order No. 5-2001 (Unpaid Rest Period
20 Premiums); (5) Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (6) Labor Code
21 § 351 (Unpaid Tips); (7) Labor Code § 246 (Unpaid Sick Leave); (8) Labor Code § 204 (Unpaid
22 Semi-monthly Wages and Meal/Rest Premiums); (9) Labor Code §§ 201-203 (Unpaid Wages upon
23 Separation); (10) Labor Code § 226 (Inaccurate Wage Statements); (11) Labor Code §§ 1174, 1175,
24 and IWC Order No. 5-2001; (12) Labor Code § 2802 (Unpaid Business Expenses). Through the
25 PAGA complaint, Lie sought to represent himself, the State of California, and current and former
26 employees of Benihana allegedly aggrieved.

27 5. On or about December 2, 2021, Lie filed a First Amended Complaint (“FAC”)
28 pursuant to the Court’s Minute Order dated November 16, 2021, dismissing all the previously

1 asserted PAGA claims except for the following: (a) Labor Code § 246 (Unpaid Sick Leave); (b)
2 Labor Code §§ 201-203 (Unpaid Wages upon Separation); and (c) Labor Code § 2802 (Unpaid
3 Business Expenses). Again, Lie sought civil penalties under PAGA in the FAC on behalf of himself,
4 the State of California, and current and former employees of Benihana in California.

5 6. On or about January 5, 2022, Lie and Benihana entered a stipulation where Lie
6 agreed to dismiss the claim for PAGA penalties for violation of Labor Code sections 201-203,
7 leaving two claims for PAGA civil penalties in a proposed Second Amended Complaint (“SAC”)
8 based upon the following predicate violations: (i) Labor Code § 246 (Unpaid Sick Leave); and (ii)
9 Labor Code § 2802 (Unpaid Business Expenses).

10 7. On or about February 14, 2022, Lie submitted a demand for arbitration to AAA for
11 his individual wage and hour claims (“Arbitration Demand”). The PAGA letter, the Complaint, the
12 FAC, the SAC, and the Arbitration Demand are collectively referred to herein as the “Lawsuit”.

13 8. By way of the PAGA Letter, the PAGA Complaint, the PAGA FAC, and the PAGA
14 SAC, Lie has asserted and threatens to assert claims on behalf of himself, the State of California,
15 and other California employees as alleged in the operative PAGA SAC.

16 9. However, the Parties now desire to resolve all of Lie’s individual claims against
17 Benihana and to no longer proceed with this Lawsuit or the claims submitted to AAA for arbitration.
18 Further, Plaintiff no longer wishes to proceed in a representative capacity.

19 10. After extensive negotiations, which included arms-length negotiation, and the
20 exchange of relevant information, which was considered in conjunction with all relevant facts, the
21 parties reached an agreement.

22 11. Separately, the Parties separately negotiated a settlement of Plaintiff’s non-PAGA
23 claims, including a general release of claims and a Civil Code section 1542 waiver, for which
24 additional consideration is being provided and which is memorialized in a separate Confidential
25 Settlement Agreement and Release. Upon the Court’s request, the Confidential Settlement
26 Agreement and Release may be disclosed confidentially for the Court’s review in chambers.

27 12. In conjunction with the Parties’ Confidential Settlement Agreement and Release,
28 the Parties’ entered into a separate PAGA Settlement Agreement and Stipulation for Approval of

1 PAGA Settlement and Dismissal of PAGA Action (“PAGA Settlement and Stipulation”) by which
2 the Parties intend to resolve, settle, and discharge Lie’s PAGA Complaint by dismissing Lie’s
3 individual PAGA claims in the Second Amended Complaint with prejudice and dismissing the
4 representative PAGA claims in the Second Amended Complaint without prejudice.

5 13. A true and correct copy of the fully executed PAGA Settlement and Stipulation is
6 attached as **Exhibit 1**. A proposed order approving the PAGA Settlement and Stipulation is
7 submitted herewith.

8 14. Defendant is serving copies of this notice of motion and motion for approval of
9 PAGA Settlement to the Labor Workforce Development Agency as reflected in the proof of service.

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

12 Executed this 1st day of April 2022.

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Chad Greeson

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EXHIBIT 1

PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT AND RELEASE

This Private Attorneys General Act Settlement and Release Agreement (“Agreement”) is made and entered into by Plaintiff Justin Lie (“Lie” or “Plaintiff”) and Defendant Benihana International, Inc. (“Defendant”).

RECITALS

A. WHEREAS, Lie worked as a non-exempt employee for Defendant from approximately September 17, 2017 to December 9, 2019.

B. WHEREAS, on about November 5, 2020, Lie filed a notice with the Labor and Workforce Development Agency under the California Private Attorneys General Act of 2004 (California Labor Code section 2698, *et seq.*) (“PAGA”) asserting various alleged Labor Code and wage and hour violations, which was also sent to Defendant (the “PAGA Letter”).

C. WHEREAS, on January 12, 2021, Lie filed a PAGA representative action against Defendant in the Superior Court of the State of California, County of San Mateo, designated as Civil Case No. 21-CIV-00153 (“Complaint”). Plaintiff sought civil penalties on his behalf and on behalf of others allegedly aggrieved pursuant to PAGA based on the following predicate violations: (1) California Labor Code [“Labor Code”] §§ 216, 225.5, 1182.12, 1194, 1197, and 1198 and California’s Industrial Welfare Commission’s [“IWC”] Order No. 5-2001 (Unpaid Minimum Wage); (2) Labor Code §§ 216, 225.5, 510, 515, 1194, 1197, 1198 and IWC Order No. 5-2001 (Unpaid Overtime); (3) Labor Code §§ 226.7, 512, and IWC Order No. 5-2001 (Unpaid Meal Period Premiums); (4) Labor Code § 226.7 and IWC Order No. 5-2001 (Unpaid Rest Period Premiums); (5) Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (6) Labor Code § 351 (Unpaid Tips); (7) Labor Code § 246 (Unpaid Sick Leave); (8) Labor Code § 204 (Unpaid Semi-monthly Wages and Meal/Rest Premiums); (9) Labor Code §§ 201-203 (Unpaid Wages upon Separation); (10) Labor Code § 226 (Inaccurate Wage Statements); (11) Labor Code §§ 1174, 1175, and IWC Order No. 5-2001; and (12) Labor Code § 2802 (Unpaid Business Expenses). Lie sought to represent himself, the State of California, and other allegedly aggrieved employees who worked for Defendant in the California as hourly, non-exempt employees regardless of title or position.

D. WHEREAS, on or about December 2, 2021, Lie filed a First Amended Complaint (“FAC”) pursuant to the Court’s Minute Order dated November 16, 2021, dismissing all of the previously asserted PAGA claims except for the following predicate violations: (a) Labor Code § 246 (Unpaid Sick Leave); (b) Labor Code §§ 201-203 (Unpaid Wages upon Separation); and (c) Labor Code § 2802 (Unpaid Business Expenses). Again, Lie sought civil penalties under PAGA in the FAC on behalf of himself, the State of California, and current and former non-exempt employees of Defendant in California.

E. WHEREAS, on or about January 5, 2022, Lie and Defendant entered a stipulation, where Lie agreed to dismiss the claim for PAGA penalties for violation of Labor Code sections 201-203, leaving two PAGA claims for civil penalties in a proposed Second Amended Complaint (“SAC”) based upon the following predicate violations: (i) Labor Code § 246 (Unpaid Sick Leave); and (ii) Labor Code § 2802 (Unpaid Business Expense Reimbursements). Lie also sought civil penalties under PAGA in the SAC on behalf of himself, the State of California, and current and former non-exempt employees of Defendant in California.

F. WHEREAS, on or about February 14, 2022, Lie submitted a demand for arbitration to AAA for his individual wage and hour claims (“Arbitration Demand”). The PAGA letter, the Complaint, the FAC, the SAC, and the Arbitration Demand are collectively referred to herein as the “Lawsuit”.

G. WHEREAS, Defendant contends it has satisfied all of its obligations to Lie, and Defendant has paid all wages, expense reimbursements reasonably incurred and all benefits including overtime, minimum wages, and meal and rest period premiums due and owing to Lie, and Defendant denies all of Lie's allegations in the PAGA Letter, the Complaint, the FAC, the SAC, and the Arbitration Demand.

H. WHEREAS, a *bona fide* good faith dispute exists between Lie and Defendant (sometimes referred to collectively as "Parties") as to the merits of Lie's asserted and threatened claims, including those claims asserted in the PAGA Letter, the Complaint, the FAC, the SAC, and the Arbitration Demand.

I. WHEREAS, the Parties now desire to resolve and settle Plaintiff's individual PAGA claim arising out of Plaintiff's employment with and separation from Defendant and association with Defendant.

J. WHEREAS, Plaintiff is not pursuing a representative PAGA claim on behalf of other individuals.

NOW THEREFORE IN CONSIDERATION of the promises and covenants contained in this Agreement, Lie and Defendant agree to the following:

1. **Definition of Releasees:** References in this Agreement to "Releasees" shall include Defendant Benihana International, Inc., and all of its current and former direct and indirect parents, subsidiaries, affiliated and related companies and entities, and all of its current and former officers, directors, employees, insurers, reinsurers, attorneys, and agents.

2. **Approval of PAGA Settlement and Dismissal of Action as Condition Precedent:** In conjunction with this Agreement, the Parties are entering into a separate PAGA Settlement Agreement and Stipulation for Approval of PAGA Settlement and Dismissal of PAGA Action ("PAGA Settlement and Stipulation") by which the Parties resolve, settle, and discharge the PAGA Complaint by dismissing Plaintiff Lie's individual PAGA claims in the SAC *with* prejudice and dismissing the representative PAGA claims in the SAC *without* prejudice and subject to the Court's approval. This Agreement is contingent upon execution by the Parties and approval by the Court of the PAGA Settlement and Stipulation. The Court's unconditional approval of the PAGA Settlement and Stipulation approving the PAGA settlement and dismissing the PAGA Action as set forth herein is an express condition precedent to Defendant's and Plaintiff's obligations under this Agreement (including, but not limited to, all payment obligations). If the PAGA Settlement and Stipulation is not unconditionally approved by the Court as outlined herein, then: (1) this Agreement shall be null and void; (2) neither the Settlement nor any of the related negotiations or proceedings shall be of any force or effect; and (3) all Parties to the Settlement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court.

3. **Settlement Payment/Consideration:** In consideration for Plaintiff's agreement to settle and release his individual claim under the PAGA, Defendant agrees to pay two hundred dollars and zero cents (\$200.00) to settle and release Plaintiff's individual PAGA claim, of which: (1) \$150.00 (representing 75% of said \$200.00) will be paid to the Labor & Workforce Development Agency ("LWDA"); and (2) \$50.00 (representing 25% of said \$200.00) will be payable to "Justin Lie", and shall represent payment for PAGA penalties and for which a form 1099 shall issue. Counsel for Defendant shall distribute said amounts to the LWDA and to Plaintiff no later than fourteen (14) business days of the Court's (1) approval of the PAGA settlement and dismissing the PAGA Complaint, and (2) rejecting Plaintiff's demand for arbitration without any administrative fees being charged to Defendant and

dismissing it without prejudice prior to AAA initiating any action on the complaint. Plaintiff agrees that Defendant's designation of settlement funds in the manner set forth in this paragraph is fully acceptable. Plaintiff further acknowledges that the foregoing constitutes an accord and satisfaction and a full and complete settlement of Plaintiff's individual PAGA claims. Defendant's payment set forth in this paragraph shall constitute the entire consideration to be provided to Plaintiff pursuant to this PAGA Settlement Agreement and for resolution of his individual PAGA claims. Plaintiff agrees not to seek any further compensation for any other claimed damage, costs or attorneys' fees in connection with the matters encompassed in this PAGA Settlement Agreement.

4. **Effective Date:** The Effective Date of this PAGA Settlement Agreement is the date that the Court approves the PAGA Settlement and Stipulation or the date that the Plaintiff rejects or dismisses the individual claims in arbitration with prejudice, whichever is later. Plaintiff represents that he does not seek to pursue a PAGA claim on behalf of other aggrieved employees and therefore a dismissal with prejudice on behalf of other alleged "aggrieved employees" is not warranted. To the extent the Court does not approve the PAGA Settlement and Stipulation, the Parties and their counsel agree that they will cooperate with each other and use their best efforts to effect the PAGA Settlement to obtain Court approval for same.

5. **LWDA Notification:** Plaintiff will timely provide the notifications and submission to the LWDA as required by Labor Code section 2699(l), with copies to Defendant.

6. **Taxes; Indemnification:** Plaintiff acknowledges and agrees that Defendant has not made any representations regarding the tax consequences of any payment made pursuant to this Agreement. Lie agrees that he is responsible for payment of any and all taxes on the payments made pursuant to this Agreement. Lie further agrees to indemnify, hold harmless and defend Defendant against any and all claims, demands, or liabilities that may be asserted by any governmental agency (including but not limited to any local, state or federal taxing authority or agency) against Defendant for any federal, state or local taxes or penalties that may be payable as a result of any payment made pursuant to this Agreement. In addition, Lie agrees to pay any and all interest or penalties charged to or assessed against Defendant based on any payment made pursuant to this Agreement.

7. **Release of PAGA Claims:** To the greatest extent permitted by law, Plaintiff individually and on behalf of himself only freely, knowingly and voluntarily releases and forever discharges Defendant and the Releasees of and from all manner of actions, suits, claims, damages, liabilities, penalties, arbitrations, charges, claims for attorneys' fees, interest, expenses and costs, judgments, awards, orders, executions or demands of any nature whatsoever, whether known or unknown, suspected or unsuspected, against Releasees or any of them, which Plaintiff ever had, now has, or which Plaintiff or Plaintiff's heirs, assigns, executors or administrators hereafter can, shall or may have arising under the California Private Attorneys General Act (California Labor Code section 2698, *et seq.*) which includes claims brought under the PAGA predicated upon California Labor Code sections 201, 202, 203, 204, 216, 225.5, 226, 226.7, 246, 351, 510, 512, 515, 1182.12, 1194, 1197, 1197.1, 1198, 2802; IWC Order No. 5-2001; and/or any other California Labor Code provisions that could have been asserted under the PAGA in connection with the PAGA Letter, the Complaint, the FAC, the SAC, or the Arbitration Demand ("Released Claims"), including but not limited to any claims for penalties, wages, interest and/or attorneys' fees and costs thereon arising from any and all of the Released Claims. All such Released Claims (including, without

limitation, claims for related attorneys' fees and costs) are forever barred by this Agreement regardless of the forum in which they may be brought.

Nothing in this Agreement shall affect any state or federal government agencies' rights and responsibilities to enforce the California Labor Code or any other applicable law, nor shall anything in this Agreement be construed as a basis for interfering with Plaintiff's protected right to file a timely charge with, or participate in an investigation or proceeding with a state, federal or local government entity; provided, however, if the state, federal or local government entity commences an investigation on Plaintiff's behalf pertaining to the claims asserted in the PAGA Complaint and/or PAGA Letter, Plaintiff specifically waives and releases his right, if any, to recover any monetary or non-monetary benefits of any sort whatsoever arising from any such investigation or otherwise and from any such administrative charge or complaint filed with any government agency other than the NLRB.

8. **No Admission of Liability:** This PAGA Settlement Agreement shall not be construed as an admission by Defendant or the Releasees of liability or of any violation of the rights of Lie or any person, or of any violation of any law, statute, duty or order whatsoever. Defendant and the Releasees do not admit that they ever violated any provision of the California Labor Code, including, but not limited to, those sections for which Plaintiff seeks relief, including under the PAGA, or of any other law. Defendant and the Releasees specifically disclaim any liability to Lie or any other person, including any allegedly aggrieved employees, for any violation of any contract, law, statute, duty, order, or any other basis. This PAGA Settlement shall not be used or offered as evidence to establish liability against Defendant or the Releasees in any subsequent action or proceeding; provided, however, this shall not prevent the PAGA Settlement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize the PAGA Settlement.

9. **Severance:** If any provision of this Agreement is held to be invalid by a court of competent jurisdiction, that provision shall be deemed severed and deleted from this Agreement, and neither that provision nor its severance and deletion shall affect the validity of the remaining provisions. Notwithstanding the foregoing, no portion of any release contained herein may be deemed severed or deleted from this Agreement, except upon waiver in writing by the applicable all Releasees. If such release is found to be invalid, this entire Agreement shall be deemed null and void.

10. **Choice of Law:** This PAGA Settlement Agreement is to be interpreted pursuant to the laws of California, except where the application of federal law applies.

11. **Counterparts/Facsimile Signatures:** This PAGA Settlement Agreement may be executed in counterparts, and signatures exchanged by facsimile or other electronic means (e.g., PDF) shall be effective for all purposes hereunder to the same extent as original signatures, all of which when taken together shall constitute the Agreement. Any Party who delivers a facsimile or PDF signature page agrees to later deliver an original signature page to any Party who requests it.

Having read, understood, and agreed to the foregoing terms and conditions, the Parties hereby voluntarily execute this PAGA Settlement Agreement by placing their signatures below.

Mar 16, 2022

Date



Justin Lie (Mar 16, 2022 12:32 PDT)

JUSTIN LIE

Date

By:

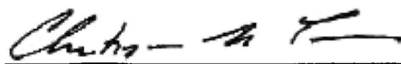
[NAME]

Benihana International, inc.

Approved as to form:

March 16, 2022

Date



Christina Lucio

Counsel for Plaintiff Justin Lie

Date

Chad D. Greeson

Counsel for Defendant Benihana International, Inc.

4870-6227-0480.1 / 062447-1174

Having read, understood, and agreed to the foregoing terms and conditions, the Parties hereby voluntarily execute this PAGA Settlement Agreement by placing their signatures below.

Date

3/14/2028
Date

JUSTIN LIE

By: Cristina Mendoza
Cristina Mendoza
Benihana International, Inc.

Approved as to form:

Date

March 24, 2022

Date

Christina Lucio
Counsel for Plaintiff Justin Lie

Chad D. Greeson
Chad D. Greeson
Counsel for Defendant Benihana International, Inc.

4870-6227-0480.1 / 062447-1174

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7 1255 Treat Boulevard
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8 Walnut Creek, California 94597
Telephone: 925.927.4507
9 Fax No.: 925.946.9809

10 Attorneys for Defendant
BENIHANA INTERNATIONAL, INC.
11
12

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN MATEO
15

16 JUSTIN LIE, individually and on behalf of
himself and all others similarly situated,

17 Plaintiff,

18 v.
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20 BENIHANA INTERNATIONAL, INC., a
Delaware Corporation; and DOES 1-50,
inclusive,

21 Defendants.
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Case No. 21-CIV-00153

[PROPOSED] ORDER

ASSIGNED FOR ALL PURPOSES TO
JUDGE NANCY FINEMAN, DEPT. 4

Hearing Date: April 26, 2022
Time: 2:00 p.m.
Dept.: 4 CR N

Complaint Filed: Jan. 12, 2021
First Amd. Compl. Filed: Dec. 5, 2021
Second Amd. Comp. Filed: Jan. 18, 2022

[PROPOSED] ORDER

On April 26, 2022, Defendant Benihana International, Inc.'s ("Benihana") Motion to Motion to Approve PAGA Settlement and Dismissal of PAGA Action came regularly for hearing at 2:00 p.m. in Department 4 CR N of the above captioned Court, the Honorable Nancy Fineman, presiding.

The Court, having considered the evidence proffered in support of Benihana's Motion, with no opposition to being offered by Plaintiff Justin Lie, having read and considered the supporting authorities, and having heard and considered the arguments of counsel, and good cause appearing therefore, hereby orders as follows:

Benihana's Motion is GRANTED [IN FULL/IN PART] as follows:

(1) The PAGA Settlement and Stipulation between Defendant Benihana International, Inc. and Plaintiff Justin Lie (collectively, the "Parties") and the payment described therein resolving Lie's individual claims for relief under the California Private Attorneys General Act (California Labor Code section 2698, *et seq.*) is approved;

(2) The above-captioned action is hereby dismissed *with* prejudice as to Plaintiff's individual claims;

(3) The above-captioned action is hereby without prejudice as to the Aggrieved Employees' representative PAGA claims; and

(4) All Parties in the above-captioned actions will bear their own respective fees and costs as expressly provided for in the PAGA Settlement and Stipulation.

Dated: _____

By: _____

Honorable Judge Nancy Fineman
Judge of the Superior Court

4893-8961-2057.1 / 062447-1174

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Attorneys for Defendant
BENIHANA INTERNATIONAL, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

JUSTIN LIE, individually and on behalf of
himself and all others similarly situated,

Plaintiff,

v.

BENIHANA INTERNATIONAL, INC., a
Delaware Corporation; and DOES 1-50,
inclusive,

Defendants.

Case No. 21-CIV-00153

PROOF OF SERVICE

ASSIGNED FOR ALL PURPOSES TO
JUDGE

Complaint Filed: January 12, 2021

I am a resident of the State of California, over the age of eighteen years, and not a
party to the within action. My business address is Treat Towers, 1255 Treat Boulevard, Suite 600,
Walnut Creek, California 94597. On April 1, 2022, I served the within document(s):

NOTICE OF MOTION AND MOTION TO APPROVE PAGA
SETTLEMENT AND DISMISSAL OF PAGA ACTION

DECLARATION OF CHAD GREESON IN SUPPORT OF
DEFENDANT'S MOTION AND TO APPROVE PAGA
SETTLEMENT AND DISMISSAL OF PAGA ACTION

[PROPOSED] ORDER

- ☐ by facsimile transmission at or about _____ on that date. This document was transmitted by using a facsimile machine that complies with California Rules of Court Rule 2003(3), telephone number . The transmission was reported as complete and without error. A copy of the transmission report, properly issued by the transmitting machine, is attached. The names and facsimile numbers of the person(s) served are as set forth below.
- ☐ by placing a true copy of the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at Walnut Creek, California addressed as set forth below.
- ☐ by depositing a true copy of the same enclosed in a sealed envelope, with delivery fees provided for, in an overnight delivery service pick up box or office designated for overnight delivery, and addressed as set forth below.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☒ Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses on the attached service list on the dates and at the times stated thereon. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. The electronic notification address of the person making the service is gcamacho@littler.com.

James R. Hawkins
Christina M. Lucio
Sheila Gonzales
Nicole Miccolis
James Hawkins APLC
9880 Research Drive, Suite 200
Irvine, CA 92618
P: 949.387.7200 / F: 949.387.6676
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Christina@Jameshawkinsaplc.com
sheila@jameshawkinsaplc.com
nicole@jameshawkinsaplc.com

I am readily familiar with the firm's practice of collection and processing correspondence for mailing and for shipping via overnight delivery service. Under that practice it would be deposited with the U.S. Postal Service or if an overnight delivery service shipment,

1 deposited in an overnight delivery service pick-up box or office on the same day with postage or
2 fees thereon fully prepaid in the ordinary course of business.

3 I declare that I am employed in the office of a member of the bar of this court at
4 whose direction the service was made. Executed on April 1, 2022, at Walnut Creek, California.
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8 Gina Camacho

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