

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

ARI GOLD, as an aggrieved employee pursuant
to the Private Attorneys General Act ("PAGA"),

Plaintiff,

vs.

BENIHANA NATIONAL CORP., a Delaware
corporation; BENIHANA BEVERLY HILLS
CORP., a Florida corporation; BENIHANA
CARLSBAD CORP., a Delaware corporation;
BENIHANA DOWNEY CORP., a Florida
corporation; BENIHANA ENCINO CORP., a
California corporation; BENIHANA
INTERNATIONAL, INC., a Delaware
corporation; BENIHANA MARINA CORP., a
California corporation; BENIHANA
MONTEREY CORPORATION, a Delaware
corporation; BENIHANA OF PUENTE HILLS
CORP., a Delaware corporation; BENIHANA
ONTARIO CORP., a Delaware corporation;
BENIHANA SANTA ANITA CORP., a
Delaware corporation; BENIHANA SUNRISE
CORPORATION, a Delaware corporation; and
DOES 1 through 10, inclusive,

Defendants

Case No.: 37-2016-00022320-CU-OE-NC

**JOINT STIPULATION OF CLASS ACTION
AND PAGA SETTLEMENT AND RELEASE**

JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT AND RELEASE

This Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement” or “Settlement Agreement”) is made and entered into by and between Plaintiff Ari Gold (“Plaintiff” or “Class Representative”), as an individual and on behalf of all others similarly situated, and Defendants Benihana National Corp., Benihana Beverly Hills Corp., Benihana Carlsbad Corp., Benihana Downey Corp., Benihana Encino Corp., Benihana International, Inc., Benihana Marina Corp., Benihana Monterey Corp., Benihana of Puente Hills Corp., Benihana Ontario Corp., Benihana Santa Anita Corp., Benihana Sunrise Corp, and Benihana, Inc. (“Defendants”) (collectively with Plaintiff, the “Parties”).

DEFINITIONS

The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

1. “Action” means the action entitled *Ari Gold v. Benihana National Corp.*, No. 37-2016-00022320-CU-OE-NC (San Diego County Superior Court).

2. “Amended Complaint” means the amended complaint that is to be filed by Plaintiff Ari Gold, pursuant to Paragraph 38 of this Settlement Agreement, in the Superior Court of the State of California, County of San Diego, in the matter entitled *Ari Gold v. Benihana National Corp., et al.*, Case No. 37-2016-00022320-CU-OE-NC.

3. “Attorneys’ Fees and Costs” means attorneys’ fees agreed upon by the Parties and approved by the Court for Class Counsel’s litigation and resolution of the Action, and all out-of-pocket costs incurred and to be incurred by Class Counsel in the Action, including but not limited to fees and expenses of experts, investigation expenses, costs associated with documenting the Settlement, providing any notices required as part of the Settlement or Court order, securing the Court’s approval of the Settlement, administering the Settlement, and obtaining entry of a Judgment terminating the Action. Class Counsel will request attorneys’ fees not in excess of one-third (1/3) of the Gross Settlement Amount, or Seven Hundred Fifty Thousand Dollars (\$750,000). The Attorneys’ Fees and Costs will also mean and include the additional reimbursement of any costs and expenses associated with Class Counsel’s litigation and settlement of the Action, up to Fifty Thousand Dollars (\$50,000), subject to the Court’s approval. Defendants have agreed not to oppose Class Counsel’s request for fees and

1 reimbursement of costs as set forth above.

2 4. "Class Counsel" means Capstone Law APC.

3 5. "Class List" means a complete list of all Class Members that Defendants will diligently
4 and in good faith compile from their records and provide to the Settlement Administrator within twenty
5 (20) calendar days after Preliminary Approval of this Settlement. The Class List will be formatted in
6 Microsoft office Excel and will include each Class Member's full name; most recent mailing address and
7 telephone number (if available); Social Security number; dates of employment; the respective number of
8 Work Shifts and Workweeks that each Class Member worked during the Class Period and PAGA
9 Period; and any other relevant information needed to calculate settlement payments. The Class List will
10 be for the Settlement Administrator's eyes only and will not be shared with Class Counsel.

11 6. "Class Member(s)" or "Settlement Class" means all current and former non-exempt
12 employees of Defendants in the State of California who performed work for Defendants at any time
13 during the period from June 26, 2014 through December 31, 2020.

14 7. "Class Period" means the period from June 26, 2014 through December 31, 2020.

15 8. "Class Representative Enhancement Payment" means the amount to be paid to Plaintiff
16 in recognition of his effort and work in prosecuting the Action on behalf of Class Members, and for his
17 general release of claims. Subject to the Court granting final approval of this Settlement Agreement and
18 subject to the exhaustion of any and all appeals, Plaintiff will request Court approval of a Class
19 Representative Enhancement Payment of Ten Thousand Dollars (\$10,000).

20 9. "Class Settlement" means the Released Class Claims by Class Members who do not
21 timely exclude themselves from the settlement in accordance with the provisions of the Settlement
22 Agreement.

23 10. "Complaint" means the Complaint filed by Plaintiff Ari Gold in the Superior Court of
24 the State of California, County of San Diego, on or about June 30, 2016, entitled *Ari Gold v. Benihana*
25 *National Corp., et al.*, Case No. 37-2016-00022320-CU-OE-NC.

26 11. "Court" means the San Diego County Superior Court.

27 12. "Defendants" means Benihana National Corp., Benihana Beverly Hills Corp., Benihana
28 Carlsbad Corp., Benihana Downey Corp., Benihana Encino Corp., Benihana International, Inc.,

Benihana Marina Corp., Benihana Monterey Corp., Benihana of Puente Hills Corp., Benihana Ontario Corp., Benihana Santa Anita Corp., Benihana Sunrise Corp, and Benihana, Inc.

13. “Effective Date” is the date on which the Settlement is approved and the Court’s order approving the settlement and entry of judgment (“Judgment”) becomes final. For purposes of this Settlement Agreement, the Judgment “becomes final” upon the latter of: (i) if no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from, or other challenge to, the Court’s Judgment (this time period shall be 60 calendar days after the Court’s Judgment is entered); (ii) the date affirmance of an appeal of the Judgment becomes final under the California Code of Civil Procedure; or (iii) the date of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding on review of any court of appeal decision relating to the Judgment.

14. “Final Approval” means the date on which the Court enters an order granting final approval of the Settlement Agreement.

15. “Gross Settlement Amount” means the Gross Settlement Amount of Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000), to be paid by Defendants in full satisfaction of all Released Class Claims and Released PAGA Claims, which includes all Individual Settlement Payments to Participating Class Members and PAGA Employees, Attorneys’ Fees and Costs, the Class Representative Enhancement Payment, the PAGA Settlement Amount, and Settlement Administration Costs. This Gross Settlement Amount has been agreed to by Plaintiff and Defendants based on the aggregation of the agreed-upon settlement value of individual claims. In no event will Defendants be liable for more than the Gross Settlement Amount except as otherwise explicitly set forth herein. There will be no reversion of the Gross Settlement Amount to Defendants. Defendants will be separately responsible for any employer payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions, which shall not be paid from the Gross Settlement Amount.

16. “Individual Settlement Payment” means each Participating Class Member’s and PAGA Employee’s respective shares of the Net Settlement Fund and PAGA Fund.

17. “Net Settlement Fund” means the portion of the Gross Settlement Amount remaining after deducting the Attorneys’ Fees and Costs, the Class Representative Enhancement Payment, the PAGA Settlement Amount, and Settlement Administration Costs. The Net Settlement Fund will be

distributed to Participating Class Members. There will be no reversion of the Net Settlement Fund to Defendants.

18. “Notice of Objection” means a Class Member’s valid and timely written objection to the Class Settlement. For the Notice of Objection to be valid, it must include: (i) the objector’s full name, signature, address, and telephone number, (ii) a written statement of all grounds for the objection accompanied by any legal support for such objection; (iii) copies of any papers, briefs, or other documents upon which the objection is based; and (iv) a statement whether the objector intends to appear at the final fairness hearing. Any Class Member who does not submit a timely written objection to the Class Settlement, or who fails to otherwise comply with the specific and technical requirements of this section, will be foreclosed from objecting to the Class Settlement and seeking any adjudication or review of the Class Settlement, by appeal or otherwise.

19. “Notice Packet” means the Notice of Class Action Settlement, substantially in the form attached as Exhibit A.

20. “PAGA Employees” means all current and former non-exempt employees of Defendants in the State of California who worked for Defendants at any time during the period from June 30, 2015 through December 31, 2020.

21. “PAGA Letters” means those letters and amended letters sent prior to the filing of the Complaint by Class Counsel to the California Labor & Workforce Development Agency, on behalf of Plaintiff and “aggrieved employees,” for the purpose of complying with the notice and reporting requirements of California Labor Code section 2699.3, asserting that Defendants had committed violations of the Labor Code.

22. “PAGA Period” means the period from June 30, 2015 through December 31, 2020.

23. “PAGA Settlement” means the Released PAGA Claims by the PAGA Employees.

24. “PAGA Settlement Amount” means the amount that the Parties have agreed to pay to the Labor and Workforce Development Agency (“LWDA”) and PAGA Employees in connection with Plaintiff’s claim under the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”). The Parties have agreed that One Hundred Thousand Dollars (\$100,000) of the Gross Settlement Amount will be allocated to the PAGA Settlement. Pursuant to PAGA, Seventy-Five Percent

(75%), or Seventy Five Thousand Dollars (\$75,000), of the PAGA Settlement Amount will be paid to the California Labor and Workforce Development Agency (“Labor and Workforce Development Agency Payment”), and Twenty-Five Percent (25%), or Twenty Five Thousand Dollars (\$25,000), of the PAGA Settlement Amount (“PAGA Fund”) will be disbursed to PAGA Employees, regardless of whether they request to be excluded from the Settlement Class.

25. “Parties” means Plaintiff and Defendants collectively.

26. “Participating Class Members” means all Class Members who do not submit timely and valid Requests for Exclusion.

27. “Plaintiff” means Ari Gold.

28. “Preliminary Approval” means the date on which the Court enters an order granting preliminary approval of the Settlement Agreement.

29. “Released Class Claims” means all claims by the Class Members alleged in the initial and Amended Complaints and PAGA Letters, or that could have been alleged based on the facts asserted therein, including but not limited to claims under the Fair Labor Standards Act based on the facts asserted. This release expressly includes: Any and all claims, debts, rights, demands, obligations or liabilities of every nature and description, whether known or unknown, for damages, penalties, liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution, or equitable relief pled in the initial and Amended Complaints and PAGA Letters or claims that could have been pled related to or arising out of the allegations set forth in the initial and Amended Complaints and PAGA Letters or arising from the same or similar facts, including but not limited to: (i) all claims for the failure to pay wages, the failure to calculate and pay overtime and minimum wages, including claims pursuant to California Labor Code sections 210, 221, 223, 224, 225.5, 351, 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198 or 1199 and claims under the Fair Labor Standards Act (“FLSA”); (ii) all claims for meal period and rest break violations and premiums pursuant to California Labor Code sections 226.7, 512, 1198 and applicable IWC Wage Order(s); (iii) all claims for failure to timely pay wages upon termination pursuant to California Labor Code sections 201, 202, or 203; (iv) all claims for failure to timely pay wages during employment pursuant to California Labor Code section 204; (v) all claims for inaccurate or improper itemized wage statements, failure to maintain records concerning hours worked

1 or wages paid pursuant to California Labor Code sections 226, 226.3, 1174, 1174.5 or 2810.5; (vi) all
2 claims for failure to pay reporting time pay pursuant to California Labor Code section 1198 or California
3 Code of Regulations, Title 8, section 11050(5); (vii) all claims for failure to pay split shift pay pursuant to
4 California Labor Code section 1198 or California Code of Regulations, Title 8, section 11050(4)(C); a
5 (viii) all incorporated or related claims arising out of the preceding alleged violations pursuant to
6 California Business and Professions Code sections 17200, *et seq.*

7 30. “Released PAGA Claims” means all claims for PAGA civil penalties that were pled or
8 could have been pled by PAGA Employees arising out of or related to the allegations set forth in the
9 initial and Amended Complaints and PAGA Letters during the PAGA Period, including without
10 limitation all claims for PAGA penalties based on alleged violations of Labor Code sections 201, 202,
11 203, 204, 210, 221, 223, 224, 225.5, 226, 226.3, 226.7, 351, 510, 512, 558, 1174, 1174.5, 1182.12, 1194,
12 1194.2, 1197, 1197.1, 1198, 1199, 2810.5.

13 31. “Released Parties” means Defendants, and any of their or their past, present and future
14 direct or indirect parents, subsidiaries, predecessors, successors and affiliates, as well as each of its or
15 their past, present and future officers, directors, employees, partners, members, shareholders and agents,
16 attorneys, insurers, reinsurers, and any individual or entity which could be jointly liable with Defendants.

17 32. “Request for Exclusion” means a timely letter submitted by a Class Member indicating a
18 request to be excluded from the Settlement Class. The Request for Exclusion must: (i) set forth the
19 name, address, telephone number and last four digits of the Social Security Number of the Class
20 Member requesting exclusion; (ii) be signed by the Class Member; (iii) be returned to the Settlement
21 Administrator; (iv) clearly state that the Class Member does not wish to be included in the Settlement
22 Class; and (v) be faxed or postmarked on or before the Response Deadline. Class Members who are also
23 PAGA Employees cannot exclude themselves from the PAGA Settlement even if they exclude
24 themselves from the Class Settlement.

25 33. “Response Deadline” means the deadline by which Class Members must postmark or
26 fax to the Settlement Administrator Requests for Exclusion, postmark or fax disputes concerning the
27 calculation of Individual Settlement Payments, or postmark Notices of Objection to the Settlement
28 Administrator. The Response Deadline will be forty-five (45) calendar days from the initial mailing of

1 the Notice Packet by the Settlement Administrator, unless the forty-fifth (45th) calendar day falls on a
2 Sunday or State holiday, in which case the Response Deadline will be extended to the next day on which
3 the U.S. Postal Service is open.

4 34. "Settlement Administration Costs" means the costs payable from the Gross Settlement
5 Amount to the Settlement Administrator for administering this Settlement, including, but not limited to,
6 printing, distributing, and tracking documents for this Settlement, tax reporting, distributing the Gross
7 Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The
8 Settlement Administration Costs will be paid from the Gross Settlement Amount, including, if necessary,
9 any such costs in excess of the amount represented by the Settlement Administrator as being the
10 maximum costs necessary to administer the Settlement. Based on an estimated Settlement Class of
11 approximately Nine Thousand (9,000) Class Members, the Settlement Administration Costs are
12 currently estimated to be Thirty-Five Thousand Dollars (\$35,000).

13 35. "Settlement Administrator" means Simpluris, Inc., or any other third-party class action
14 settlement administrator agreed to by the Parties and approved by the Court for the purposes of
15 administering this Settlement. The Parties each represent that they do not have any financial interest in
16 the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that
17 could create a conflict of interest.

18 36. "Work Shifts" means the number of shifts worked by a Class Member or PAGA
19 Employee for Defendants during the Class Period. A "Work Shift" is defined as at least four hours of
20 recorded work by a Class Member or PAGA Employee within a 24-hour period, made up of one or
21 more recorded work segments, with no more than a four hour break between recorded segments. All
22 recorded work segments in a 24-hour period for which there is no more than a four hour break between
23 such recorded work segments shall comprise a single Work Shift. A Class Member or PAGA Employee
24 may accrue a maximum of two Work Shifts per 24-hour period. Calculation of Work Shifts will be
25 based upon Defendant's timekeeping and payroll records. All Class Members and PAGA Employees
26 will be credited with at least one Work Shift, respectively.

27 37. "Workweeks" means the number of weeks during which a Class Member or PAGA
28 Employee performed any work for Defendants during the Class Period. Workweeks shall be determined

1 from Defendants' payroll records.

2 **TERMS OF AGREEMENT**

3 The Plaintiff, on behalf of himself and the Settlement Class, and Defendants agree as follows:

4 38. Amended Complaint for Settlement Purposes. Plaintiff agrees to file the Amended
5 Complaint, which will retain the Private Attorneys General Act claim, adding Benihana, Inc. as a
6 defendant, and adding class action (and, where not previously specifically alleged, PAGA) claims for (1)
7 failure to pay overtime (including for failure to pay wages at the regular rate); (2) failure to pay minimum
8 wage (including Failure to Pay Split Shift Premiums and Reporting Time Pay); (3) unpaid wages and
9 liquidated damages (under the FLSA); (4) failure to provide meal and rest periods; (5) failure to provide
10 compliant wage statements; (6) failure to pay wages upon termination; (7) collecting or receiving wages
11 already paid (including pursuant to Lab. C. sec. 351); (8) unfair business practices pursuant to Business
12 & Professions Code Sections 17200, *et seq.*

13 39. Funding of the Gross Settlement Amount. Defendants will make a deposit of the Gross
14 Settlement Amount of Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000) into a Qualified
15 Settlement Fund to be established by the Settlement Administrator. Defendants will pay the employer's
16 share of payroll taxes separately. After the Effective Date, the Gross Settlement Amount will be used for:
17 (i) Individual Settlement Payments; (ii) the Labor and Workforce Development Agency Payment; (iii)
18 the Class Representative Enhancement Payment; (iv) Attorneys' Fees and Costs; and (v) Settlement
19 Administration Costs. Defendants will deposit the Gross Settlement Amount and the employer's share of
20 payroll taxes within fifteen (15) calendar days after the Effective Date.

21 40. Attorneys' Fees and Costs. Defendants agree not to oppose or impede any application or
22 motion by Class Counsel for Attorneys' Fees and Costs of not more than Seven Hundred Fifty Thousand
23 Dollars (\$750,000), plus the reimbursement of all out-of-pocket costs and expenses associated with Class
24 Counsel's litigation and settlement of the Action (including expert fees, investigations expenses, etc.),
25 not to exceed Fifty Thousand Dollars (\$50,000), both of which will be paid from the Gross Settlement
26 Amount.

27 41. Class Representative Enhancement Payment. In exchange for a general release, and in
28 recognition of his effort and work in prosecuting the Action on behalf of Class Members, Defendants

1 agree not to oppose or impede any application or motion for a Class Representative Enhancement
2 Payment of Ten Thousand Dollars (\$10,000) to Plaintiff. The Class Representative Enhancement
3 Payment will be paid from the Gross Settlement Amount and will be in addition to Plaintiff's Individual
4 Settlement Payment paid pursuant to the Settlement. Plaintiff will be solely and legally responsible to
5 pay any and all applicable taxes on the Class Representative Enhancement Payment.

6 42. Settlement Administration Costs. The Settlement Administrator will be paid for the
7 reasonable costs of administration of the Settlement and distribution of payments from the Gross
8 Settlement Amount, which is currently estimated to be Thirty-Five Thousand Dollars (\$35,000). These
9 costs, which will be paid from the Gross Settlement Amount, will include, *inter alia*, the required tax
10 reporting on the Individual Settlement Payments, the issuing of 1099 and W-2 IRS Forms, distributing
11 Notice Packets, calculating and distributing the Gross Settlement Amount, and providing necessary
12 reports and declarations.

13 43. PAGA Settlement Amount. Subject to Court approval, the Parties agree that the amount
14 of One Hundred Thousand Dollars (\$100,000) from the Gross Settlement Amount will be designated for
15 satisfaction of Plaintiff's PAGA claim. Pursuant to PAGA, Seventy-Five Percent (75%), or Seventy Five
16 Thousand Dollars (\$75,000), of this sum will be paid to the LWDA and Twenty-Five Percent (25%), or
17 Twenty Five Thousand Dollars (\$25,000), will be paid to PAGA Employees in proportion to the number
18 of Work Shifts worked during the PAGA Period.

19 44. No Right to Exclusion or Objections by Representative Action Members. Because this
20 settlement resolves claims and actions brought pursuant to PAGA by Plaintiff acting as a proxy and as a
21 Private Attorney General of, and for, the State of California and the LWDA, the Parties agree that no
22 PAGA Employee has the right to exclude himself or herself from the PAGA Settlement. PAGA
23 Employees will be bound by the terms of the PAG Release, upon the Settlement Agreement's approval
24 by the Court, regardless of whether he or she cashes any payment received as a result of this Settlement.
25 The Parties also agree that no PAGA Employee has the right to object to the terms of the PAGA
26 Settlement.

27 45. Net Settlement Fund. The entire Net Settlement Fund will be distributed to Participating
28 Class Members. No portion of the Net Settlement Fund will revert to or be retained by Defendants.

1 46. PAGA Fund. The entire PAGA Fund will be distributed to all PAGA Employees. No
2 portion of the PAGA Fund will revert to or be retained by Defendants.

3 47. Individual Settlement Payment Calculations. Individual Settlement Payments will be
4 calculated and apportioned from the Net Settlement Fund and PAGA Fund based on the number of
5 Work Shifts each Class Member and PAGA Employee worked during the applicable Class Period and
6 PAGA Period. Specific calculations of Individual Settlement Payments will be made as follows:

7 47(a) Payments from the Net Settlement Fund. Defendants will calculate the total
8 number of Work Shifts worked by each Class Member during the Class
9 Period and the aggregate total number of Work Shifts worked by all Class
10 Members during the Class Period. To determine each Class Member's
11 estimated "Individual Settlement Payment" from the Net Settlement Fund,
12 the Settlement Administrator will use the following formula: The Net
13 Settlement Fund will be divided by the aggregate total number of Work
14 Shifts, resulting in the "Work Shift Value." Each Class Member's
15 "Individual Settlement Payment" will be calculated by multiplying each
16 individual Class Member's total number of Work Shifts by the Work Shift
17 Value. The Individual Settlement Payment will be reduced by any required
18 deductions for each Participating Class Member as specifically set forth
19 herein, including employee-side tax withholdings or deductions. The entire
20 Net Settlement Fund will be disbursed to all Class Members who do not
21 submit timely and valid Requests for Exclusion. If there are any valid and
22 timely Requests for Exclusion, the Settlement Administrator shall
23 proportionately increase the Individual Settlement Payment for each
24 Participating Class Member according to the number of Work Shifts
25 worked, so that the amount actually distributed to the Settlement Class
26 equals 100% of the Net Settlement Fund.

27 47(b) Payments from the PAGA Fund. Defendants will calculate the total number
28 of Work Shifts worked by each PAGA Employee during the PAGA Period

1 and the aggregate total number of Work Shifts worked by all PAGA
2 Employees during the PAGA Period. To determine each PAGA
3 Employee's estimated "Individual Settlement Payment" from the PAGA
4 Fund, the Settlement Administrator will use the following formula: The
5 PAGA Fund will be divided by the aggregate total number of Work Shifts
6 during the PAGA Period, resulting in the "PAGA Work Shift Value." Each
7 PAGA Employee's "Individual Settlement Payment" will be calculated by
8 multiplying each individual PAGA Employee's total number of Work
9 Shifts during the PAGA Period by the PAGA Work Shift Value. The entire
10 PAGA Fund will be disbursed to all PAGA Employees, and regardless
11 whether they request to be excluded from the Settlement Class.

12 48. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
13 Participating Class Members under this Settlement, as well as any other payments made pursuant to this
14 Settlement, will not be utilized to calculate any additional benefits under any benefit plans to which any
15 Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k)
16 plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan.
17 Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions,
18 or amounts to which any Class Members may be entitled under any benefit plans.

19 49. Administration Process. The Parties agree to cooperate in the administration of the
20 settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in
21 administration of the Settlement.

22 50. Delivery of the Class List. Within twenty (20) calendar days of Preliminary Approval,
23 Defendants will provide the Class List to the Settlement Administrator.

24 51. Notice by First-Class U.S. Mail. Within ten (10) calendar days after receiving the Class
25 List from Defendants, the Settlement Administrator will mail a Notice Packet to all Class Members and
26 PAGA Employees via regular First-Class U.S. Mail, using the most current, known mailing addresses
27 identified in the Class List.

28 52. Confirmation of Contact Information in the Class Lists. Prior to mailing, the Settlement

1 Administrator will perform a search based on the National Change of Address Database for information
2 to update and correct for any known or identifiable address changes. Any Notice Packets returned to the
3 Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly
4 via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement
5 Administrator will indicate the date of such re-mailing on the Notice Packet. If no forwarding address is
6 provided, the Settlement Administrator will promptly attempt to determine the correct address using a
7 skip-trace, or other search using the name, address and/or Social Security number of the Class Member
8 involved, and will then perform a single re-mailing. Those Class Members who receive a re-mailed
9 Notice Packet, whether by skip-trace or by request, will have either (i) an additional fifteen (15) calendar
10 days or (ii) until the Response Deadline, whichever is later, to submit a Request for Exclusion or an
11 objection to the Settlement.

12 53. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice Packet
13 will provide: (i) information regarding the nature of the Action; (ii) a summary of the Settlement's
14 principal terms; (iii) the Settlement Class and PAGA Employee definitions; (iv) the total number of
15 Work Shifts each respective Class Member and PAGA Employee worked for Defendants during the
16 applicable Class Period and PAGA Period; (v) each Class Member's and PAGA Employee's estimated
17 Individual Settlement Payment and the formulae for calculating Individual Settlement Payments; (vi) the
18 dates which comprise the Class Period and PAGA Period; (vii) instructions on how to submit Requests
19 for Exclusion or Notices of Objection; (viii) the deadlines by which the Class Member must postmark or
20 fax Request for Exclusions, or postmark Notices of Objection to the Settlement; and (ix) the claims to be
21 released.

22 54. Disputed Information on Notice Packets. Class Members will have an opportunity to
23 dispute the information provided in their Notice Packets. To the extent Class Members dispute their
24 employment dates or the number of Work Shifts on record, Class Members may produce evidence to the
25 Settlement Administrator showing that such information is inaccurate. Defendants' records will be
26 presumed correct, but the Settlement Administrator shall contact the Parties regarding the dispute and the
27 Parties will work in good faith to resolve it. All disputes must be submitted by the Response Deadline,
28 and will be decided within ten (10) business days after the Response Deadline.

1 55. Defective Submissions. If a Class Member's Request for Exclusion is defective as to the
2 requirements listed herein, that Class Member will be given an opportunity to cure the defect(s). The
3 Settlement Administrator will mail the Class Member a cure letter within three (3) business days of
4 receiving the defective submission to advise the Class Member that his or her submission is defective
5 and that the defect must be cured to render the Request for Exclusion valid. The Class Member will have
6 until (i) the Response Deadline or (ii) fifteen (15) calendar days from the date of the cure letter,
7 whichever date is later, to postmark or fax a revised Request for Exclusion. If the revised Request for
8 Exclusion is not postmarked or received by fax within that period, it will be deemed untimely.

9 56. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the
10 Settlement Class must sign and fax or postmark a written Request for Exclusion to the Settlement
11 Administrator within the Response Deadline. In the case of Requests for Exclusion that are mailed to the
12 Settlement Administrator, the postmark date will be the exclusive means to determine whether a Request
13 for Exclusion has been timely submitted.

14 57. Escalator Clause. If the total number of Workweeks worked by Class Members during
15 the Class Period is greater than Four Hundred Ninety-Five Thousand (495,000), then Defendants will
16 proportionally increase the Gross Settlement Amount. For any additional Workweeks beyond 495,000,
17 the Gross Settlement Amount shall be increased by Four Dollars and Fifty-Five Cents (\$4.55) per
18 Workweek.

19 58. Settlement Terms Bind All Class Members Who Do Not Opt-Out. All Class Members
20 who do not affirmatively opt-out of the Settlement Class by submitting a timely and valid Request for
21 Exclusion will be bound by all of its terms, including those pertaining to the Released Class Claims, as
22 well as any Judgment that may be entered by the Court if it grants final approval to the Settlement.

23 59. FLSA Settlement. To the extent required by law, Class Members who cash their
24 settlement checks shall be deemed to have opted-in to the FLSA collective action for purposes of
25 releasing Released Parties from any claims predicated under the FLSA that could have been alleged
26 under the same or similar facts, allegations and/or claims pleaded in the Action. The Settlement
27 Administrator shall include a legend on the settlement check stating "By cashing this check, I am opting
28 into the FLSA settlement in *Ari Gold v. Benihana National Corp. et al.*, Superior Court of the State of

California, County of San Diego, Civil Case No.: 37-2016-00022320-CU-OENC, and releasing claims under FLSA, 29 U.S.C. § 216(b) as described in the Settlement Agreement.”

60. Releases by Participating Class Members. Upon the Effective Date, and except as to such rights or claims as may be created by this Settlement Agreement, each Participating Class Member, together and individually, on their behalf and on behalf of their respective spouses, heirs, executors, administrators, agents, and attorneys, shall fully and forever release and discharge all of the Released Parties, or any of them, from each of the Released Class Claims during the Class Period.

61. Releases by PAGA Employees. Upon the Effective Date, and except as to such rights or claims as may be created by this Settlement Agreement, each PAGA Employee, together and individually, on their behalf and on behalf of their respective spouses, heirs, executors, administrators, agents, and attorneys, shall fully and forever release and discharge all of the Released Parties, or any of them, from each of the Released PAGA Claims during the PAGA Period.

62. Defendants’ Right to Rescind. If Ten Percent (10%) or more Class Members timely opt out of the Settlement Class, Defendants will have the sole and absolute discretion to rescind/void the Settlement Agreement within twenty (20) calendar days after receiving from the Settlement Administrator the final list of opt-outs. Defendants agree to meet and confer in good faith with Class Counsel before rescinding or voiding the Settlement Agreement. In the event that Defendants elect to rescind/void the Settlement Agreement, Defendants shall provide written notice of such rescission to Class Counsel. If Defendants rescind the Settlement Agreement, then Defendants will be responsible for all Settlement Administration Costs incurred to the date of rescission. Such rescission will have the same effect as a termination of the Settlement Agreement for failure to satisfy a condition of settlement, and the Settlement Agreement will become null and void and have no further force or effect. The Parties specifically agree not to solicit or encourage opt-outs, directly or indirectly, through any means.

63. Objection Procedures. To object to the Class Settlement, a Class Member must postmark a valid Notice of Objection to the Settlement Administrator on or before the Response Deadline. The Notice of Objection must be signed by the Class Member and contain all information required by this Settlement Agreement. The postmark will be deemed the exclusive means for determining that the Notice of Objection is timely. Class Members who fail to object in the manner

1 specified above will be deemed to have waived all objections to the Class Settlement and will be
2 foreclosed from making any objections, whether by appeal or otherwise, to the Class Settlement. There
3 will be no basis for objecting to the PAGA Settlement by any Class Member or PAGA Employee. Class
4 Members who postmark timely Notices of Objection will have a right to appear at the Final Approval
5 Hearing in order to have their objections heard by the Court. At no time will any of the Parties or their
6 counsel seek to solicit or otherwise encourage Class Members to submit written objections to the
7 Settlement Agreement or appeal from the Order and Judgment. Class Counsel will not represent any
8 Class Members with respect to any such objections to this Settlement.

9 64. Certification Reports Regarding Individual Settlement Payment Calculations. The
10 Settlement Administrator will provide Defendants' counsel and Class Counsel a weekly report that
11 certifies the number of Class Members who have submitted valid Requests for Exclusion, objections to
12 the Settlement, and whether any Class Member has submitted a challenge to any information contained
13 in their Notice Packet. Additionally, the Settlement Administrator will provide to counsel for both Parties
14 any updated reports regarding the administration of the Settlement Agreement as needed or requested.

15 65. Distribution Timing of Individual Settlement Payments. Within twenty five (25)
16 calendar days of the Effective Date, the Settlement Administrator will issue payments to: (i)
17 Participating Class Members and PAGA Employees; (ii) the Labor and Workforce Development
18 Agency; (iii) Plaintiff; and (iv) Class Counsel. The Settlement Administrator will also issue a payment to
19 itself for Court-approved services performed in connection with the Settlement.

20 66. Un-cashed Settlement Checks. Funds represented by Individual Settlement Payment
21 checks returned as undeliverable and Individual Settlement Payment checks remaining un-cashed for
22 more than one hundred and twenty (120) calendar days after issuance will be tendered to the State
23 Controller's office, Unclaimed Property Division.

24 67. Certification of Completion. Upon completion of administration of the Settlement, the
25 Settlement Administrator will provide a written declaration under oath to certify such completion to the
26 Court and counsel for all Parties.

27 68. Treatment of Individual Settlement Payments. All Individual Settlement Payments will
28 be allocated as follows: (i) Twenty Percent (20%) of each Individual Settlement Payment from the Net

1 Settlement Fund will be allocated as wages for which IRS Forms W-2 will be issued; and (ii) Eighty
2 Percent (80%) will be allocated as non-wages for which IRS Forms 1099-MISC will be issued. All
3 Individual Settlement Payments from the PAGA Fund will be allocated as non-wages for which IRS
4 Forms 1099-MISC will be issued.

5 69. Administration of Taxes by the Settlement Administrator. The Settlement Administrator
6 will be responsible for issuing to Plaintiff, Participating Class Members, PAGA Employees and Class
7 Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to
8 this Settlement. The Settlement Administrator will also be responsible for forwarding all payroll taxes
9 and penalties to the appropriate government authorities.

10 70. Tax Liability. Defendants make no representation as to the tax treatment or legal effect
11 of the payments called for hereunder, and Plaintiff, PAGA Employees and Participating Class Members
12 are not relying on any statement, representation, or calculation by Defendants or by the Settlement
13 Administrator in this regard.

14 71. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES
15 OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS
16 AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY")
17 ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND
18 NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES
19 OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR
20 WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED
21 OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
22 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
23 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS
24 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
25 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS
26 AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY
27 ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY
28 UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO

1 ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
2 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
3 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF
4 ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER
5 SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
6 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
7 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
8 AGREEMENT.

9 72. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
10 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
11 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of
12 action or right herein released and discharged.

13 73. Nullification of Settlement Agreement. In the event that: (i) the Court does not finally
14 approve the Settlement as provided herein; or (ii) Defendant exercises its right to rescind the Settlement,
15 as described above, or (iii) the Settlement does not become final for any other reason, then this
16 Settlement Agreement, and any documents generated to bring it into effect, will be null and void. Any
17 order or judgment entered by the Court in furtherance of this Settlement Agreement will likewise be
18 treated as void from the beginning.

19 74. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to request
20 the Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary Approval Order
21 for: (i) conditional certification of the Settlement Class for settlement purposes only, (ii) preliminary
22 approval of the proposed Settlement Agreement, (iii) setting a date for a final fairness hearing. The
23 Preliminary Approval Order will provide for the Notice Packet to be sent to all Class Members as
24 specified herein. In conjunction with the Preliminary Approval hearing, Plaintiff will submit this
25 Settlement Agreement, which sets forth the terms of this Settlement, and will include the proposed
26 Notice of Class Action Settlement, attached as Exhibit A. Class Counsel will be responsible for drafting
27 all documents necessary to obtain preliminary approval.

28 75. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the

1 deadlines to postmark Requests for Exclusion or objections to the Settlement Agreement, and with the
2 Court's permission, a final fairness hearing will be conducted to determine the Final Approval of the
3 Settlement Agreement along with the amounts properly payable for: (i) Attorneys' Fees and Costs; (ii)
4 the Class Representative Enhancement Payment; (iii) Individual Settlement Payments; (iv) the Labor
5 and Workforce Development Agency Payment; (v) all Settlement Administration Costs. The final
6 fairness hearing will not be held earlier than thirty (30) calendar days after the Response Deadline. Class
7 Counsel will be responsible for drafting all documents necessary to obtain final approval. Class Counsel
8 will also be responsible for drafting the attorneys' fees and costs application to be heard at the final
9 approval hearing.

10 76. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by the
11 Court or after the final fairness hearing, the Parties will present the Judgment to the Court for its
12 approval. After entry of the Judgment, the Court will have continuing jurisdiction solely for purposes of
13 addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) Settlement
14 administration matters, and (iii) such post-Judgment matters as may be appropriate under court rules or
15 as set forth in this Settlement Agreement.

16 77. Release by Plaintiff. Upon the Effective Date, in addition to the claims being released by
17 all Participating Class Members, Plaintiff will release and forever discharge the Released Parties, to the
18 fullest extent permitted by law, of and from any and all claims, known and unknown, asserted and not
19 asserted, which Plaintiff has or may have against the Released Parties as of the date of execution of this
20 Settlement Agreement. To the extent the foregoing release is a release to which Section 1542 of the
21 California Civil Code or similar provisions of other applicable law may apply, Plaintiff expressly waives
22 any and all rights and benefits conferred upon him by the provisions of Section 1542 of the California
23 Civil Code or similar provisions of applicable law which are as follows:

24 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
25 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
26 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE
27 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
28 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED

PARTY.

78. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein. Any Exhibits to this Settlement Agreement are an integral part of the Settlement.

79. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements may be deemed binding on the Parties. The Parties expressly recognize California Civil Code Section 1625 and California Code of Civil Procedure Section 1856(a), which provide that a written agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written representations or terms will modify, vary or contradict the terms of this Settlement Agreement.

80. Amendment or Modification. No amendment, change, or modification to this Settlement Agreement will be valid unless in writing and signed by the Parties and their counsel.

81. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

82. Binding on Successors and Assigns. This Settlement Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

83. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto will be governed by and interpreted according to the laws of the State of California.

84. Execution and Counterparts. This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All

executed counterparts and each of them, including electronic (e.g., DocuSign), facsimile, and scanned copies of the signature page, will be deemed to be one and the same instrument.

85. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this Settlement Agreement is a fair, adequate and reasonable settlement of the Action and have arrived at this Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into account all relevant factors, present and potential. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

86. Invalidity of Any Provision. Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

87. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class certification for purposes of this Settlement only; except, however, that Plaintiff or Class Counsel may appeal any reduction to the Attorneys' Fees and Costs below the amount they request from the Court, and either party may appeal any court order that otherwise materially alters the Settlement Agreement's terms.

88. Class Action Certification for Settlement Purposes Only. The Parties agree to stipulate to class action certification for purposes of the Settlement only. If, for any reason, the Settlement is not approved, the stipulation to certification will be void. The Parties further agree that certification for purposes of the Settlement is not an admission that class action certification is proper under the standards applied to contested certification motions and that this Settlement Agreement will not be admissible in this or any other proceeding as evidence that either (i) a class action should be certified or (ii) Defendants are liable to Plaintiff or any Class Member, other than according to the Settlement's terms.

89. Non-Admission of Liability. The Parties enter into this Settlement to resolve the dispute that has arisen between them and to avoid the burden, expense and risk of continued litigation. In entering into this Settlement, Defendants do not admit, and specifically deny, that they violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or

any other applicable laws, regulations or legal requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to their employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, will be construed as an admission or concession by Defendants of any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Settlement, this Settlement Agreement and its terms and provisions will not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendants or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local or other applicable law.

90. No Public Comment: Class Counsel and Plaintiff shall not publicize or communicate the fact or terms of the settlement on any social media, internet site, print media, or marketing/advertising materials. The Honorable Earl H. Maas, III shall have the power to enjoin violations of this provision and the prevailing party shall be entitled to its attorneys' fees and costs.

91. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

92. Enforcement Actions. In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

93. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

94. Representation By Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and

that this Settlement Agreement has been executed with the consent and advice of counsel. Further, Plaintiff and Class Counsel warrant and represent that there are no liens on the Settlement Agreement.

95. All Terms Subject to Final Court Approval. All amounts and procedures described in this Settlement Agreement herein will be subject to final Court approval.

96. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

97. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: 2/19/2021 _____

DocuSigned by:

Ari Gold

7421C1556FB448E...

Ari Gold

DEFENDANTS BENIHANA NATIONAL CORP., BENIHANA BEVERLY HILLS CORP., BENIHANA CARLSBAD CORP., BENIHANA DOWNEY CORP., BENIHANA ENCINO CORP., BENIHANA INTERNATIONAL, INC., BENIHANA MARINA CORP., BENIHANA MONTEREY CORP., BENIHANA OF PUENTE HILLS CORP., BENIHANA ONTARIO CORP., BENIHANA SANTA ANITA CORP., BENIHANA SUNRISE CORP, AND BENIHANA, INC.

Dated: _____

Please Print Name of Authorized Signatory

that this Settlement Agreement has been executed with the consent and advice of counsel. Further, Plaintiff and Class Counsel warrant and represent that there are no liens on the Settlement Agreement.

95. All Terms Subject to Final Court Approval. All amounts and procedures described in this Settlement Agreement herein will be subject to final Court approval.

96. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

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READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: _____

Ari Gold

DEFENDANTS BENIHANA NATIONAL
CORP., BENIHANA BEVERLY HILLS CORP.,
BENIHANA CARLSBAD CORP., BENIHANA
DOWNEY CORP., BENIHANA ENCINO
CORP., BENIHANA INTERNATIONAL, INC.,
BENIHANA MARINA CORP., BENIHANA
MONTEREY CORP., BENIHANA OF
PUENTE HILLS CORP., BENIHANA
ONTARIO CORP., BENIHANA SANTA
ANITA CORP., BENIHANA SUNRISE CORP,
AND BENIHANA, INC.

Dated: February 22, 2021

Cristina L. Mendoza

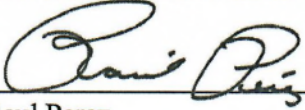
Please Print Name of Authorized Signatory

CRISTINA L. MENDOZA
Secretary

APPROVED AS TO FORM

CAPSTONE LAW APC

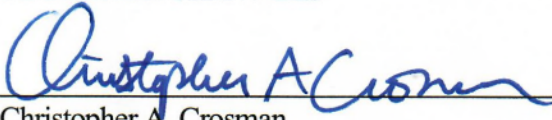
Dated: February 19, 2021

By: 
Raul Perez

Attorneys for Plaintiff Ari Gold

SEYFARTH SHAW LLP

Dated: February 22, 2021

By: 
Christopher A. Crosman

Attorneys for Defendants Benihana National Corp.,
Benihana Beverly Hills Corp., Benihana Carlsbad
Corp., Benihana Downey Corp., Benihana Encino
Corp., Benihana International, Inc., Benihana Marina
Corp., Benihana Monterey Corp., Benihana of Puente
Hills Corp., Benihana Ontario Corp., Benihana Santa
Anita Corp., Benihana Sunrise Corp, and Benihana,
Inc.

Exhibit A

Ari Gold v. Benihana National Corp., et al., No. 37-2016-00022320-CU-OE-NC
SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF SAN DIEGO
NOTICE OF CLASS ACTION SETTLEMENT

You are not being sued. This notice affects your rights. Please read it carefully
*Si desea una traducción al Español de este Aviso, por favor llame al administrador al [(**) ***)-****]*

To: All current and former non-exempt employees of Defendants Benihana¹ et al. (“Defendants”) in the State of California during the period from June 26, 2014 through December 31, 2020 (“Class Members” or “Settlement Class”).

On _____, 2021, the Honorable Earl H. Maas III of the San Diego County Superior Court granted preliminary approval of this class, representative and collective action settlement and ordered the litigants to notify all Class Members of the settlement. **You have received this notice because Defendants’ records indicate that you are a Class Member, and therefore entitled to a payment from the settlement.**

Unless you choose to opt out of the settlement by following the procedures described below, you will be deemed a Class Member and, if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement fund. The Final Fairness Hearing on the adequacy, reasonableness, and fairness of the settlement will be held at ____:00 ____m. on _____, 2021 in Department N-28 of the San Diego County Superior Court located at 325 South Melrose Dr., Vista, California 92081. You are not required to attend the hearing.

Summary of the Litigation

Plaintiff Ari Gold, on his behalf and on behalf of other current and former non-exempt employees, alleges that Defendants violated California state labor laws and the federal Fair Labor Standards Act as a result of their alleged failure to, among other things: pay minimum and overtime wages to employees for all hours worked; provide employees with meal and rest breaks; timely pay all wages owed to employees during each pay period and upon termination of their employment; and provide employees with accurate, itemized wage statements.

After the exchange of relevant information and evidence, the parties agreed to enter into settlement negotiations in an attempt to informally resolve the claims in the case. The parties were able to negotiate a complete settlement of Plaintiff’s claims.

Counsel for Plaintiff, and the attorneys appointed by the Court to represent the class, Capstone Law APC (“Class Counsel”), have investigated and researched the facts and circumstances underlying the issues raised in the case and the applicable law. While Class Counsel believe that the claims alleged in this lawsuit have merit, Class Counsel also recognize that the risk and expense of continued litigation justify settlement. Based on the foregoing, Class Counsel believe the proposed settlement is fair, adequate, reasonable, and in the best interests of Class Members.

Defendants have denied, and continue to deny the factual and legal allegations in the case and believe that they have valid defenses to Plaintiff’s claims. By agreeing to settle, Defendants are not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action. Defendants have agreed to settle the case as part of a compromise with Plaintiff and the Settlement Class.

Summary of The Proposed Settlement Terms

Plaintiff and Defendants have agreed to settle the underlying class, representative and collective claims in exchange for a Gross Settlement Amount of \$2,250,000.00. This amount is inclusive of: (1) payments to all current and former non-exempt employees covered by the settlement; (2) a Class Representative Enhancement Payment of \$10,000.00 to Ari

¹ Benihana National Corp., Benihana Beverly Hills Corp., Benihana Carlsbad Corp., Benihana Downey Corp., Benihana Encino Corp., Benihana International, Inc., Benihana Marina Corp., Benihana Monterey Corp., Benihana of Puente Hills Corp., Benihana Ontario Corp., Benihana Santa Anita Corp., Benihana Sunrise Corp, and Benihana, Inc.

Gold for his services on behalf of the class and for a general release of all claims arising out of his employment with Defendants; (3) \$750,000.00 in attorneys' fees and up to \$50,000.00 in litigation costs and expenses; (4) a \$100,000.00 settlement of claims under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), inclusive of a \$75,000.00 payment to the California Labor and Workforce Development Agency ("LWDA") in compliance with the PAGA, and \$25,000.00 payment ("PAGA Fund") to those Class Members who worked during the period from June 30, 2015 through December 31, 2020 ("PAGA Employees"); and (5) reasonable Settlement Administrator's fees and expenses currently estimated at \$ _____. After deducting the above payments, a total of approximately \$ _____ will be allocated to Class Members **who do not opt out of the Settlement Class** ("Net Settlement Fund"). Additionally, all PAGA Employees will receive a proportional share of the \$25,000.00 PAGA Fund, regardless whether they opt out of the Settlement Class.

Payments from Net Settlement Fund. Defendants will calculate the total number of Shifts worked by each Class Member from June 26, 2014 through December 31, 2020 ("Class Period") and the aggregate total number of Shifts worked by all Class Members during the Class Period. To determine each Class Member's estimated share of the Net Settlement Fund, the Settlement Administrator will use the following formula: The Net Settlement Fund will be divided by the aggregate total number of Shifts, resulting in the "Shifts Value." Each Class Member's share of the Net Settlement Fund will be calculated by multiplying each individual Class Member's total number of Shifts by the Shifts Value. The Individual Settlement Payment will be reduced by any required deductions for each Class Members as specifically set forth herein, including employee-side tax withholdings or deductions. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionately increase each Participating Class Member's share of the Net Settlement Fund according to the number of Shifts worked, so that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Fund.

According to Defendants' records, you worked during the Class Period in a non-exempt position for a total of ____ Shifts. Accordingly, your estimated payment from the Net Settlement Fund is approximately \$ _____.

Payments from PAGA Fund. Defendants will calculate the total number of Shifts worked by each PAGA Employee from June 30, 2015 through December 31, 2020 ("PAGA Period") and the aggregate total number of Shifts worked by all PAGA Employees during the PAGA Period. To determine each PAGA Employee's estimated share of the PAGA Fund, the Settlement Administrator will use the following formula: The PAGA Fund will be divided by the aggregate total number of Shifts, resulting in the "PAGA Shift Value." Each PAGA Employee's share of the PAGA Fund will be calculated by multiplying each individual Participating PAGA Employee's total number of Shifts by the PAGA Shift Value. A Request for Exclusion will not exclude a PAGA Employee from the release of claims under California Labor Code §§ 2698, *et seq.* and the PAGA Employee will receive their portion of the PAGA fund even if he or she submits a valid Request for Exclusion.

According to Defendants' records, you worked during the PAGA Period in a non-exempt position for a total of ____ Shifts. Accordingly, your estimated payment from the PAGA Fund is approximately \$ _____.

Your Estimated Payment: Based on the above, your estimated total payment from the settlement is approximately \$ _____. If you believe the Shift information set forth above is incorrect, please contact the Settlement Administrator to dispute the calculation. You must attach all documentation in support of your dispute (such as check stubs, W2s, or letters from HR). All disputes must be postmarked or faxed on or before [insert date of Response Deadline] and must be sent to:

Settlement Administrator
c/o _____
Fax No. _____

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

If you dispute the information stated above, Defendants' records will control unless you are able to provide documentation that establishes otherwise.

Taxes on Settlement Payments. IRS Forms W-2 and 1099 will be distributed to participating Class Members, and Forms 1099 will be distributed to all PAGA Employees, and also to the appropriate taxing authorities, reflecting the payments made under the settlement. Class Members should consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement. For purposes of this Settlement, 20% of each payment from the Net Settlement Fund will be allocated as wages for which IRS Forms W-2 will be issued, and 80% will be allocated as non-wages for which IRS Forms 1099-MISC will be issued. All payments from the PAGA Fund will be allocated as non-wages for which IRS Forms 1099-MISC will be issued.

Your Options Under the Settlement

Option 1 – Automatically Receive a Payment from the Net Settlement Fund

If want to receive your payment from the Net Settlement Fund, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator, if and when the settlement receives final approval by the Court.

If you choose **Option 1**, and if the Court grants final approval of the settlement, you will be mailed a check for your share of the Net Settlement fund. In addition, you will be deemed to have released or waived all Released Class Claims during the Class Period, Released FLSA Claims during the Class Period and Released PAGA Claims during the PAGA Period:

Released Class Claims: All claims by the Class Members alleged in the initial and Amended Complaints or that could have been alleged based on the facts asserted therein, including but not limited to claims under the Fair Labor Standards Act based on the facts asserted. The release expressly includes: Any and all claims, debts, rights, demands, obligations or liabilities of every nature and description, whether known or unknown, for damages, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief pled in the initial and Amended Complaints and PAGA Letters or claims that could have been pled related to or arising out of the allegations set forth in the initial and Amended Complaints and PAGA Letters or arise from the same or similar facts, including but not limited to: (i) all claims for the failure to pay wages, the failure to calculate and pay overtime and minimum wages, including claims pursuant to California Labor Code sections 210, 221, 223, 224, 225.5, 351, 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198 or 1199 and claims under the Fair Labor Standards Act ("FLSA"); (ii) all claims for meal period and rest break violations and premiums pursuant to California Labor Code sections 226.7, 512, 1198 and applicable IWC Wage Order(s); (iii) all claims for failure to timely pay wages upon termination pursuant to California Labor Code sections 201, 202, or 203; (iv) all claims for failure to timely pay wages during employment pursuant to California Labor Code section 204; (v) all claims for inaccurate or improper itemized wage statements, failure to maintain records concerning hours worked or wages paid pursuant to California Labor Code sections 226, 226.3, 1174, 1174.5 or 2810.5; (vi) all claims for failure to pay reporting time pay pursuant to California Labor Code section 1198 or California Code of Regulations, Title 8, section 11050(5); (vii) all claims for failure to pay split shift pay pursuant to California Labor Code section 1198 or California Code of Regulations, Title 8, section 11050(4)(C); a (viii) all incorporated or related claims arising out of the preceding alleged violations pursuant to California Business and Professions Code sections 17200, *et seq.*

Released FLSA Claims: To the extent required by law, Class Members who cash their settlement checks shall be deemed to have opted-in to the FLSA collective action for purposes of releasing any claims predicated under the FLSA that could have been alleged under the same or similar facts, allegations and/or claims as pleaded in the initial and Amended Complaints and PAGA Letters.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

Released PAGA Claims: All claims for PAGA civil penalties that were pled or could have been pled arising out of or related to the allegations set forth in the initial and Amended Complaints and PAGA Letters during the PAGA Period, including without limitation all claims for PAGA penalties based on alleged violations of Labor Code sections 201, 202, 203, 204, 210, 221, 223, 224, 225.5, 226, 226.3, 226.7, 351, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2810.5.

Option 2 – Opt Out of the Settlement

If you do not wish to participate in the settlement, you may exclude yourself from participating by submitting a written request to the Settlement Administrator expressly and clearly indicating that you have decided not to participate in the settlement and desire to be excluded from the settlement (“Request for Exclusion”). Note that PAGA Employees may not request exclusion from that portion of the settlement covering the Released PAGA Claims. The written Request for Exclusion must also include your name, signature, address, telephone number, and last four digits of your Social Security Number. Sign, date, and mail the request for exclusion by facsimile or mail, to the address below.

Settlement Administrator
c/o _____

The Request for Exclusion must be postmarked or faxed not later than _____, 2021. If you submit a Request for Exclusion which is not postmarked or faxed by _____, 2021, your Request for Exclusion will be rejected, and you will be included in the Settlement Class.

If you choose **Option 2**, you will no longer be a Class Member, and you will:

- Not Receive a Payment from the Net Settlement Fund.
- Not release the Released Class Claims or the Released FLSA Claims.
- You will, however, release the Released PAGA Claims, and will receive a payment from the PAGA Fund.

Option 3 – Object to the Settlement

If you decide to object to the settlement because you find it unfair or unreasonable, you must submit an objection stating why you object to the settlement (“Notice of Objection”). Your Notice of Objection must provide: (1) your full name, signature, address, and telephone number, (2) a written statement of all grounds for the objection accompanied by any legal support for such objection; (3) copies of any papers, briefs, or other documents upon which the objection is based; and (4) a statement about whether you intend to appear at the Final Fairness Hearing. The objection must be mailed to the administrator at **administrator’s address**. Note that PAGA Employees may not object to that portion of the settlement covering the Released PAGA Claims.

All objections must be received by the Settlement Administrator by not later than _____ 2021. Late objections will not be considered. By submitting an objection, you are not excluding yourself from the settlement. To exclude yourself from the settlement, you must follow the directions described above in **Option 2**. Please note that you cannot both object to the settlement and exclude yourself. You must choose one option only.

You may also, if you wish, appear at the Final Fairness Hearing set for _____ at _____ a.m./p.m. in the Superior Court of the State of California, for the County of San Diego and discuss your objection with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the hearing.

If you choose **Option 3**, you will still be entitled to the money from the settlement. If the Court overrules your objection, you will be deemed to have released the Released Class Claims and Released FLSA Claims. Regardless of whether or not the Court sustains your objection, you will be deemed to have released the Released PAGA Claims.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

Additional Information

This Notice of Class Action Settlement is only a summary of the case and the settlement. For a more detailed statement of the matters involved in the case and the settlement, you may refer to the pleadings, the settlement agreement, and other papers filed in the case. All inquiries by Class Members regarding this Class Notice and/or the settlement should be directed to the Settlement Administrator or Class Counsel:

Raul Perez

Capstone Law APC

1875 Century Park E., Suite 1000

Los Angeles, CA 90067

Phone: 1 (888) 352-1845

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, OR DEFENDANTS' ATTORNEYS WITH INQUIRIES.