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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF SAN DIEGO

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

14 Plaintiff,

15 vs.

16 BENIHANA NATIONAL CORP., a Delaware
corporation; BENIHANA BEVERLY HILLS
CORP., a Florida corporation; BENIHANA
17 CARLSBAD CORP., a Delaware corporation;
BENIHANA DOWNEY CORP., a Florida
18 corporation; BENIHANA ENCINO CORP., a
California corporation; BENIHANA
19 INTERNATIONAL, INC., a Delaware
corporation; BENIHANA MARINA CORP., a
20 California corporation; BENIHANA
MONTEREY CORPORATION, a Delaware
21 corporation; BENIHANA OF PUENTE HILLS
CORP., a Delaware corporation; BENIHANA
22 ONTARIO CORP., a Delaware corporation;
BENIHANA SANTA ANITA CORP., a
23 Delaware corporation; BENIHANA SUNRISE
CORPORATION, a Delaware corporation; and
24 DOES 1 through 10, inclusive,

25 Defendants

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

Assigned for all purposes to Judge Earl H. Maas III,
Dept. N-28

**NOTICE OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: March 19, 2021
Time: 1:30 p.m.
Place: Department N-28

1 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on March 19, 2021 at 1:30 p.m., or as soon thereafter as
3 counsel may be heard, in Department N-28 of the above-captioned court, located at 325 South Melrose
4 Dr., Vista, California 92081, the Honorable Earl H. Maas III presiding, Plaintiff Ari Gold will, and
5 hereby does, move this Court to:

- 6 1. Preliminarily approve the settlement set forth in the Joint Stipulation of Class Action and
7 PAGA Settlement and Release, attached as Exhibit 1 to the Declaration of Raul Perez;
- 8 2. Conditionally certify the proposed Settlement Class;
- 9 3. Appoint Ari Gold as the representative for the Settlement Class;
- 10 4. Appoint Capstone Law APC as Class Counsel;
- 11 5. Approve distribution of the proposed Notice of Class Action Settlement to the
12 Settlement Class;
- 13 6. Appoint Simpluris, Inc. as the Settlement Administrator; and
- 14 7. Set a hearing date for final approval of the settlement.

15 This Motion is based upon: (1) this Notice of Motion and Motion; (2) the Memorandum of
16 Points and Authorities in support of Motion for Preliminary Approval of Class Action and PAGA
17 Settlement; (3) the Declaration of Raul Perez; (4) the Joint Stipulation of Class Action and PAGA
18 Settlement and Release; (5) the Notice of Class Action Settlement; (6) the [Proposed] Order Granting
19 Preliminary Approval of Class Action and PAGA Settlement; (7) the records, pleadings, and papers filed
20 in this action; and (8) upon such other documentary and oral evidence or argument as may be presented
21 to the Court at or prior to the hearing of this Motion. As this Motion is unopposed, the Parties
22 respectfully request relief from the page limit requirement set by California Rules of Court, Rule
23 3.1113(d).

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Dated: February 24, 2021

Respectfully submitted,

By: _____

Raul Perez
Mark A. Ozzello
Brandon Brouillette
Joseph Hakakian
CAPSTONE LAW APC

Attorney for Plaintiff Ari Gold

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6	Conte & Newberg, <i>Newberg on Class Actions</i> (4th ed. 2002)	19, 21
7	Wright, A. Miller & M. Kane, <i>Federal Practice and Procedure</i> (2d ed. 1986).....	32

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Ari Gold (“Plaintiff”) seeks preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement and Release,¹ which if approved, would provide considerable monetary relief for approximately 9,000 current and former employees of 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” or “Benihana”) (collectively with Plaintiff, the “Parties”). The principal terms of the Settlement provide for the following:

- (1) Conditional certification of a Settlement Class defined as: All current and former non-exempt employees of Defendants in the State of California who performed work for Defendants at any time during the period from June 26, 2014 through December 31, 2020 (“Class Members”).
- (2) A **non-reversionary** Gross Settlement Amount of \$2,250,000. The Gross Settlement Amount includes:
 - (a) A Net Settlement Fund of approximately \$1,305,000,² and a PAGA Fund of \$25,000, which will be allocated to all Participating Class Members and PAGA Employees. **Because the Gross Settlement Amount is non-reversionary, 100% of the Net Settlement Fund will be paid to all Participating Class Members, and 100% of the PAGA Fund will be paid to all PAGA Employees, and without the need to submit claims for payment.**
 - (b) A \$75,000 payment to the LWDA pursuant to the Labor Code Private Attorneys

¹ Hereinafter “Settlement Agreement” or “Settlement.” Unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Settlement Agreement.

² The Gross Settlement Amount minus the requested Attorneys’ Fees and Costs, Settlement Administration Costs, the PAGA Settlement Amount, and the Class Representative Enhancement Payment. Settlement Agreement ¶ 17.

General Act of 2004 (“PAGA”).

- (c) Attorneys’ fees in the amount of one-third of the Gross Settlement Amount (or \$750,000), and litigation costs and expenses not to exceed \$50,000, to Capstone Law APC (“Plaintiff’s Counsel”).
- (d) Settlement Administration Costs of approximately \$35,000, to be paid to the jointly selected Settlement Administrator, Simpluris, Inc. (“Simpluris”).
- (e) A Class Representative Enhancement Payment of \$10,000 to Ari Gold for his service on behalf of the Settlement Class, the risks he took in bringing the action on behalf of the Class, and for a general release of all claims arising out of his employment with Defendants.

An objective evaluation of the Settlement confirms that the relief negotiated on the Settlement Class’ behalf is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at arm’s length after nearly a year of ongoing settlement negotiations following a mediation with the Hon. Carl West (Ret.), an experienced and well-respected class action mediator, and the Settlement confers substantial benefits to Class Members. This relief—averaging approximately \$145 per employee—is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases. Moreover, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendants prevailing at trial, or of Plaintiff prevailing at trial but losing on appeal.

As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval under California law and falls within the range of reasonableness. Accordingly, Plaintiff respectfully requests that this Court grant preliminary approval of the Settlement Agreement.

II. FACTS AND PROCEDURE

A. Brief Overview of the Litigation

Defendants operate and manage the leading teppanyaki restaurant chain in the United States. During the period relevant to this litigation, Defendants operated 16 Benihana restaurants in California. Defendants employed Plaintiff as an hourly, non-exempt Server from approximately June 2015 to October 2015 at their restaurant in Carlsbad, California. Plaintiff’s job duties included handing out

1 menus, serving food, bringing and re-filling drinks, removing plates, and checking out customers.

2 On June 30, 2016, Plaintiff filed this suit as an enforcement action under the PAGA to recover
3 civil penalties on behalf himself, the State of California, and all persons who worked for Defendants in
4 California as non-exempt, hourly-paid employees and against whom one or more violations of the
5 relevant divisions of the Labor Code or applicable Industrial Welfare Commission (“IWC”) Wage Order
6 were committed. (Declaration of Raul Perez [“Perez Decl.”] ¶ 2.)

7 On August 30, 2016, Benihana filed a special demurrer and motion to stay Plaintiff’s action
8 pending resolution of an overlapping action, *Wilkes v. Angelo, Gordon, & Co.*, San Diego Superior
9 Court Case no. 16-19855. The Court overruled Benihana’s demurrer but stayed the action pending
10 resolution of *Wilkes*. After *Wilkes* was dismissed, and the stay lifted, on May 18, 2017, Plaintiff filed a
11 First Amended Complaint. (Perez Decl. ¶ 3.)

12 On July 19, 2017, Benihana filed a demurrer and motion to strike on the basis that certain of
13 Plaintiff’s claims were subject to res judicata, which the Court later denied. On October 19, 2017,³
14 Benihana filed a motion for a protective order on the basis that Plaintiff should not be entitled to
15 discovery pertaining to Benihana entities that he did not work for, and concurrently opposed Plaintiff’s
16 competing motion to compel statewide discovery. The Court denied Benihana’s protective order and
17 granted Plaintiff’s motion, compelling Defendants to provide further responses including, *inter alia*, the
18 production of aggrieved employee contact information, time and payroll records, and wage statements.
19 (Perez Decl. ¶ 4.)

20 On March 23, 2018, Benihana filed a Motion for Judgment on the Pleadings on the basis that
21 Plaintiff’s action was unmanageable, which the Court later denied ruling in Plaintiff’s favor. Also on
22 March 23, 2018, Benihana filed a Motion for Summary Judgment on the basis that the Benihana
23 Defendants other than Benihana Carlsbad (where Plaintiff worked) could not be held liable under a joint
24 employer and/or alter ego liability. The hearing date for this Motion for Summary Judgment was
25 continued several times, and the motion remained pending as of the date the Parties reached an
26 agreement to settle this action. (Perez Decl. ¶ 5.)

27
28 ³ Amended and re-filed on December 22, 2017.

1 On October 22, 2018, with the other summary judgment motion still pending, Benihana filed a
2 second Motion for Summary Judgment and Summary Adjudication on the bases that (1) Plaintiff was an
3 inadequate representative; (2) Plaintiff could not represent aggrieved employees for harms he did not
4 personally suffer, and (3) that Plaintiff's representative claims were not manageable. The Court denied
5 Benihana's motion in its entirety. (Perez Decl. ¶ 6.)

6 On June 13, 2019, the Parties participated in a full-day mediation before Hon. Carl West of
7 JAMS. While the case did not settle on the date of the mediation, the Parties engaged in extensive
8 negotiations through Judge West for about 16 months thereafter. (Perez Decl. ¶ 7.)

9 On January 10, 2020, Plaintiff filed a Motion for Summary Judgment on his wage statement
10 claim on the basis that Benihana's wage statements failed to list the correct employer name in violation
11 of Labor Code section 226(a)(8). (Perez Decl. ¶ 8.)

12 With Benihana's Motion for Summary Judgment re joint employer and/or alter ego liability and
13 Plaintiff's Motion for Summary Judgment re wage statement claim fully briefed, but yet to be heard, the
14 Parties engaged in several weeks of negotiations in the fall of 2020 that resulted in a settlement. (Perez
15 Decl. ¶ 9.)

16 **B. Plaintiff's Counsel Conducted a Thorough Investigation of the Factual and Legal**
17 **Issues and Were Thus Able to Objectively Assess the Settlement's Reasonableness**

18 Plaintiff's Counsel conducted a thorough investigation into the factual and legal issues
19 implicated by Plaintiff's claims, and were able to objectively assess the settlement's reasonableness. For
20 example, prior to filing the action, Plaintiff contacted Plaintiff's Counsel to discuss the factual bases for
21 pursuing an action against Defendants for Labor Code violations. During those interviews, Plaintiff
22 explained his understanding of how the policies and practices were instituted and provided valuable
23 insight into his contention that they gave rise to the alleged Labor Code violations. Based on these
24 interviews with Plaintiff, Plaintiff's Counsel determined that there were legally sufficient grounds for
25 pursuing an action against Defendants. (Perez Decl. ¶ 10.)

26 Plaintiff's Counsel also prepared a detailed letter (11 pages, single-spaced) to notify the LWDA
27 of Plaintiff's intent to seek civil penalties and other available relief recoverable under PAGA for Labor
28 Code violations. Plaintiff's Counsel subsequently prepared and filed a revised PAGA Notice that

1 included additional details relevant to Plaintiff's claims. Significant research and effort were expended to
2 prepare the PAGA Notices that were consistent with the developing legal requirements so as to
3 withstand any challenge from Defendants regarding the notices' sufficiency. (Perez Decl. ¶ 11.)

4 In preparation for drafting the complaint, Plaintiff's Counsel conducted their own preliminary
5 investigation into the factual bases for Plaintiff's claims, which entailed, *inter alia*, a careful examination
6 of Plaintiff's personnel file and associated records. (Perez Decl. ¶ 12.)

7 In response to Plaintiff's discovery requests, Plaintiff's Counsel received a considerable amount
8 of documents and data, including employee demographic data, time and pay records, and Defendants'
9 policies and procedures manuals. The document and data exchanges allowed Plaintiff's Counsel to fully
10 assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, and
11 ultimately enabled Plaintiff's Counsel to make an independent assessment of the reasonableness of the
12 settlement's terms. (Perez Decl. ¶ 13.)

13 Following the production of the Class Members' contact information, Plaintiff's Counsel also
14 interviewed numerous employee witnesses to determine their view of the extent and frequency of the
15 alleged Labor Code violations and to learn more about the day-to-day circumstances giving rise to the
16 alleged violations. (Perez Decl. ¶ 14.)

17 In addition to written discovery, Plaintiff's Counsel deposed Defendants' corporate witnesses
18 (including several general managers and regional managers, as well as two Person Most Knowledgeable
19 depositions) and defended Plaintiff's deposition. These depositions provided considerable evidence
20 concerning, *inter alia*, the strengths and weaknesses of the claims. Plaintiff's Counsel also defended
21 Plaintiff's deposition. (Perez Decl. ¶ 15.)

22 In summary, Plaintiff's Counsel performed a thorough investigation into the claims at issue,
23 which included: (1) determining Plaintiff's suitability as a representative through interviews,
24 background investigations, and analyses of his employment files and related records; (2) evaluating all of
25 Plaintiff's potential representative claims; (3) researching similar wage and hour class actions as to the
26 claims brought, the nature of the positions, and the type of employer; (4) analyzing employees' time and
27 wage records; (5) reviewing Defendants' employment policies and practices; (6) researching settlements
28 in similar cases; (7) evaluating Plaintiff's claims and estimating Defendants' liability for purposes of

1 settlement; (8) drafting the mediation brief; and (9) participating in the mediation. (Perez Decl. ¶ 16.)

2 By engaging in such a thorough investigation and evaluation of Plaintiff's claims, Plaintiff's
3 Counsel can opine that the Settlement, for the consideration and on the terms set forth in the Settlement
4 Agreement, is fair, reasonable, an adequate, and is in the best interests of Class Members in light of all
5 known facts and circumstances, including the risk of significant delay and uncertainty associated with
6 litigation, and various defenses asserted by Defendants. (Perez Decl. ¶ 17.)

7 **C. The Parties Settled After Protracted Negotiations Following Mediation**

8 On June 13, 2019, the Parties participated in full-day mediation with the Hon. Carl West (Ret.),
9 an experienced mediator of wage and hour class actions. Judge West helped to manage the Parties'
10 expectations and provided a useful, neutral analysis of the issues and risks to both sides. Although the
11 Parties did not settle at mediation, Judge West helped to narrow the gap between the Parties' respective
12 positions. Following more than a year of ongoing negotiations, the Parties were eventually able to
13 negotiate a complete settlement of Plaintiff's claims. The terms of the settlement are now set forth in
14 complete and final form in the Joint Stipulation of Class Action and PAGA Settlement and Release.
15 (Perez Decl. ¶ 18.) At all times, the Parties' negotiations were adversarial and non-collusive. The
16 Settlement therefore constitutes a fair, adequate, and reasonable compromise of the claims at issue.

17 **D. The Proposed Settlement Fully Resolves Plaintiff's Claims**

18 **1. Composition of the Settlement Class and PAGA Employees**

19 The proposed Settlement Class consists of all current and former non-exempt employees of
20 Defendants in the State of California who performed work for Defendants at any time during the period
21 from June 26, 2014 through December 31, 2020. (Settlement Agreement ¶ 6.) There are approximately
22 9,000 Class Members.

23 Those Class Members who worked at any time during the period from June 30, 2015 through
24 December 31, 2020 are also PAGA Employees who are entitled to a portion of the PAGA Settlement
25 Amount. (Settlement Agreement ¶ 20.)

26 **2. Settlement Consideration**

27 Plaintiff and Defendants have agreed to settle the underlying class claims in exchange for the
28 Gross Settlement Amount of \$2,250,000. The Gross Settlement Amount includes: (1) automatic

1 payments to all Participating Class Members—meaning, all Class Members except those who submit
2 timely and valid Requests for Exclusion—from the Net Settlement Fund; (2) \$750,000 in attorneys’ fees
3 (i.e., one-third of the common fund) and up to \$50,000 in litigation costs to Plaintiff’s Counsel; (3)
4 Settlement Administration Costs of approximately \$35,000; (4) a PAGA Settlement Amount of
5 \$100,000, of which 75% (\$75,000) will be paid to the LWDA, and 25% (\$25,000) will be distributed to
6 PAGA Employees; and (5) a Class Representative Enhancement Payment of \$10,000 for Plaintiff’s
7 service on behalf of the Settlement Class, the risks he took in bringing his representative claims, and for
8 his release of all claims arising out of his employment with Defendants. (Settlement Agreement ¶¶ 39-
9 45.)

10 **3. Formula for Calculating Payments from the Net Settlement Fund and** 11 **PAGA Fund**

12 Individual Settlement Payments will be calculated and apportioned from the Net Settlement
13 Fund and PAGA Fund based on the number of Work Shifts Participating Class Members and PAGA
14 Employees worked during the Class Period and PAGA Period. (Settlement Agreement ¶ 47.) Specific
15 calculations of Individual Settlement Payments will be made as follows:

16 **Payments from Net Settlement Fund.** Defendants will calculate the total number of Work
17 Shifts worked by each Class Member during the Class Period and the aggregate total number of Work
18 Shifts worked by all Class Members during the Class Period. To determine each Class Member’s
19 estimated “Individual Settlement Payment” from the Net Settlement Fund, the Settlement Administrator
20 will use the following formula: The Net Settlement Fund will be divided by the aggregate total number
21 of Work Shifts, resulting in the “Work Shift Value.” Each Class Member’s “Individual Settlement
22 Payment” will be calculated by multiplying each individual Class Member’s total number of Work
23 Shifts by the Work Shift Value. The Individual Settlement Payment will be reduced by any required
24 deductions for each Participating Class Member as specifically set forth herein, including employee-side
25 tax withholdings or deductions. The entire Net Settlement Fund will be disbursed to all Class Members
26 who do not submit timely and valid Requests for Exclusion. If there are any valid and timely Requests
27 for Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement
28 Payment for each Participating Class Member according to the number of Work Shifts worked, so that

1 the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Fund.
2 (Settlement Agreement ¶ 47(a).)

3 **Payments from PAGA Fund.** Defendants will calculate the total number of Work Shifts
4 worked by each PAGA Employee during the PAGA Period and the aggregate total number of Work
5 Shifts worked by all PAGA Employees during the PAGA Period. To determine each PAGA
6 Employee's estimated "Individual Settlement Payment" from the PAGA Fund, the Settlement
7 Administrator will use the following formula: The PAGA Fund will be divided by the aggregate total
8 number of Work Shifts during the PAGA Period, resulting in the "PAGA Work Shift Value." Each
9 PAGA Employee's "Individual Settlement Payment" will be calculated by multiplying each individual
10 PAGA Employee's total number of Work Shifts during the PAGA Period by the PAGA Work Shift
11 Value. The entire PAGA Fund will be disbursed to all PAGA Employees, and regardless whether they
12 request to be excluded from the Settlement Class. (Settlement Agreement ¶ 47(b).)

13 The average Individual Settlement Payment (i.e., the average payment from the Net Settlement
14 Fund and PAGA Fund, combined) is approximately **\$145**. This average recovery is significantly higher
15 than many wage and hour class action settlements approved by California state and federal courts. *See,*
16 *e.g., Badami v. Grassroots Campaigns, Inc.*, Case No. C 07-03465 JSW (N.D. Cal. Sept. 15, 2008)
17 (average net recovery of approximately \$195); *Sandoval v. Nissho of Cal., Inc.*, Case No. 37-2009-
18 00091861 (San Diego County Super. Ct.) (average net recovery of approximately \$145); *Fukuchi v.*
19 *Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately \$120);
20 *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net
21 recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018
22 (L.A. County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*,
23 Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately
24 \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.) (average net
25 recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange
26 County Super. Ct.) (average net recovery of approximately \$35); and *Gomez v. Amadeus Salon, Inc.*,
27 Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20).
28

1 **4. Release by the Settlement Class**

2 In exchange for the Gross Settlement Amount, Plaintiff and Participating Class Members will
3 agree to release the Released Claims during the Class Period:

4 All claims by the Class Members alleged in the initial and Amended Complaints
5 and PAGA Letters, or that could have been alleged based on the facts asserted
6 therein, including but not limited to claims under the Fair Labor Standards Act
7 based on the facts asserted. This release expressly includes: Any and all claims,
8 debts, rights, demands, obligations or liabilities of every nature and description,
9 whether known or unknown, for damages, penalties, liquidated damages,
10 punitive damages, interest, attorneys' fees, litigation costs, restitution, or
11 equitable relief pled in the initial and Amended Complaints and PAGA Letters or
12 claims that could have been pled related to or arising out of the allegations set
13 forth in the initial and Amended Complaints and PAGA Letters or arising from
14 the same or similar facts, including but not limited to: (i) all claims for the failure
15 to pay wages, the failure to calculate and pay overtime and minimum wages,
16 including claims pursuant to California Labor Code sections 210, 221, 223, 224,
17 225.5, 351, 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198 or 1199 and
18 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.*

19 (Settlement Agreement ¶ 29.)

20 **5. Release by the PAGA Employees**

21 In exchange for the PAGA Settlement Amount, Plaintiff and all Aggrieved Employees will
22 agree to release the Released PAGA Claims during the PAGA Period:

23 All claims for PAGA civil penalties that were pled or could have been pled by
24 PAGA Employees arising out of or related to the allegations set forth in the initial
25 and Amended Complaints and PAGA Letters during the PAGA Period,
26 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.

27 (Settlement Agreement ¶ 30.)
28

III. ARGUMENT

A. The Court Should Preliminarily Approve the Proposed Class Action Settlement

1. Courts Review Class Action Settlements to Ensure that the Terms Are Fair, Adequate, and Reasonable

California Rule of Court (“Rule”), Rule 3.769 requires litigants to obtain court approval of class action settlements. Approval occurs in two steps: (1) an early “preliminary” review by the trial court; and (2) a subsequent “final” review after notice of the settlement has been distributed to class members for their comments and objections. Cal. R. Ct. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the court first “preliminarily approves the settlement” and later “conducts a final approval hearing to inquire into the fairness of the proposed settlement”). The motion for preliminary approval must be accompanied by (1) the settlement agreement, (2) proposed notice to the class, and (3) the proposed order. *Id.* at 3.769(c). The motion must also identify any agreement concerning the payment of attorneys’ fees. *Id.* at 3.769(b).

If the trial court grants preliminary approval of a settlement, Rule 3.769(f) requires the court to (1) schedule a final approval hearing and (2) approve the method by which the parties are to provide notice to the class of the hearing and “an explanation of the proposed settlement.” The court must also approve a procedure for class members to file objections to the settlement. *Id.* at 3.769(f). At the final approval hearing, the court must conduct an inquiry into the fairness of the proposed settlement. *Id.* at 3.769(g).

Although Rule 3.769 does not provide detail as to the scope of review of the proposed settlement, preliminary approval is warranted if the settlement falls within a “reasonable range.” *See North County Contractor’s Assn., Inc. v. Touchstone Ins. Services*, 27 Cal. App. 4th 1085, 1089-90 (1994); Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002) (“Newberg”).

Reasonableness and fairness are presumed where, as here: (1) the settlement is reached through “arms-length bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to act intelligently;” (3) counsel is “experienced in similar litigation;” and (4) the percentage of objectors

“is small” (collectively, “*Dunk* Factors”). *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996).⁴

2. Plaintiff’s Counsel Conducted a Thorough Investigation of the Factual and Legal Issues and Were Thus Able to Objectively Assess the Settlement’s Reasonableness

As set forth in greater detail above, based amongst other things on their analysis of documents and class data produced by Defendants (including Defendants’ written labor policies and procedures), Plaintiff’s Counsel were able to realistically assess the value of Plaintiff’s claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. (Perez Decl. ¶¶ 10-15.)

By engaging in a thorough investigation and evaluation of Plaintiff’s claims, Plaintiff’s Counsel can opine that the Settlement, for the consideration and on the terms set forth in the Settlement Agreement, is fair, reasonable, and adequate, and is in the best interests of Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendants. (Perez Decl. ¶ 16.)

3. The Settlement Was Reached Through Arm’s-Length Bargaining in which All Parties Were Represented by Experienced Counsel

“[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed settlement’s fairness.” *State of Cal. v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482 (1986). Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption that settlement negotiations are conducted in good faith. Newberg, §

⁴ The presumption of fairness is consistent with California’s public policy goal of favoring settlements. *Stambaugh v. Super. Ct.*, 62 Cal. App. 3d 231, 236 (1976) (“the law wisely favors settlements”); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1118 (“public policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) (“voluntary conciliation and settlement are the preferred means of dispute resolution . . . [t]his is especially true in complex class action litigation”); *Skulnick v. Roberts Express, Inc.*, 2 Cal. App. 4th 884, 891 (1992) (“public policy strongly discourages litigation and encourages settlement [because settlements] can produce peace and goodwill in the community while reducing the expense and persistency of litigation”). Additionally, in reviewing the fairness of a class action settlement, due regard should be given to what is “otherwise a private consensual agreement between the parties.” *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1117. The inquiry “must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.* at 1118.

11.51.

As explained above, prior to negotiating the settlement, Parties had participated in a mediation with the Hon. Carl West (Ret.), an experienced mediator of wage and hour class actions. Judge West helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. *See In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (the presence of a neutral mediator is a factor weighing in favor of finding of no collusion); *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any inference of a collusive settlement); *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure."); *Villegas v. J.P. Morgan Chase & Co.*, No. 09-00261, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (participation in mediation "tends to support the conclusion that the settlement process was not collusive"); *Ogbuehi v. Comcast of California/Colorado/Fla./Oregon, Inc.*, 303 F.R.D. 337, 350 (E.D. Cal. 2014) (participation in mediation "tends to support the conclusion that the settlement process was not collusive"). At all times, the Parties' negotiations were adversarial and non-collusive. (Perez Decl. ¶ 18.)

The Parties were represented by experienced class action counsel throughout the negotiations resulting in this Settlement. Plaintiff is represented by Capstone Law APC. Plaintiff's Counsel employ seasoned class action attorneys who regularly litigate wage and hour claims through certification and on the merits, and have considerable experience settling wage and hour class actions. (Perez Decl. ¶¶ 19-21, Ex. 2.)

Defendants are represented by Seyfarth Shaw LLP, a respected defense firm.

**4. The Consideration Provided for the Class Claims Is Fair and Reasonable
in Light of the Amount in Controversy Discounted by the Risks of
Continued Litigation**

In seeking approval, a settling party must provide sufficient information to "enable the court to make an independent assessment of the adequacy of the settlement terms." *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 131-32 (2008). However, "[i]t is well-settled law that a cash settlement

amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair.” See *Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982). “The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.” *Id.* at 625. “Estimates of a fair settlement figure are tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years).” *In re Toys R Us-Delaware, Inc.--Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014). In other words, in valuing the claims within a realistic *range* of outcomes, the settling plaintiff should discount the value of the settled claims for risks such as changes in the law, the probability of success, and other factors.⁵

Settling parties are not, however, required to partake in a hypothetical accounting exercise: “**Kullar does not ... require any such explicit statement of [maximum] value;** it requires a record which allows ‘an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.’” *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal. App. 4th 399, 409-10 (2010) (quoting *Kullar*, 168 Cal. App. 4th at 120 (emphasis added)). Overall, “the most important factor” in determining “whether a settlement is fair and reasonable” is the “strength of the case for plaintiffs on the merits, balanced against the amount offered in the settlement.” *Id.* at 409 n.6 (quoting *Kullar*, 168 Cal. App. 4th at 130).

As explained in detail below, the Gross Settlement Amount is within the range of reasonableness

⁵ Federal district courts also recognize that there is an inherent “range of reasonableness” in determining whether to approve a settlement “which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion.” *Id.* at 188, quoting *Newman v. Stein*, 464 F. 2d 689, 693 (2d Cir.). See *In re Omnivision Tech., Inc.*, 559 F. Supp. 2d 1036 (N.D. Cal. 2008); see also *Nat’l Rural Telecomm. Coop. v. Directv, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“well settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery”); *In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436, 460 (S.D.N.Y. 2004) (“settlement amount’s ratio to the maximum potential recovery need not be the sole, or even dominant, consideration when assessing settlement’s fairness”); *In re IKON Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 184 (E.D. Pa. 2000) (“the fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in itself, weigh against the settlement; rather the percentage should be considered in light of strength of the claims”); *Officers for Justice v. Civil Serv. Comm.*, 688 F. 2d 615, 628 (C.A. Cal. 1982) (it is “the complete package, taken as a whole rather than the individual component parts, that must be examined for overall fairness”).

in light of the nature and magnitude of the claims being settled and the various potential impediments to recovery:

Defendants' Potential Exposure for the Class Claims	
Unpaid Wage Claims	\$970,000.00
Unlawful Deduction Claim	\$635,910.00
Meal & Rest Period Claims	\$9,700,000.00
Wage Statement Claim	\$3,604,250.00
Final Pay Claim	\$6,750,000.00
Total	\$21,660,160.00

Accounting for the risks of continued litigation and impediments to discovery, Plaintiff determined that a settlement amounting to approximately 10% of the estimated value of the class' claims was fair and reasonable, and courts have routinely approved settlements that provided a similar discounted range of the maximum potential recovery. *See, e.g., In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 256-58 (D. Del. 2002) (recognizing that a reasonable settlement amount can be 1.6% to 14% of the total estimated damages); *In Re Armored Car Antitrust Litig.*, 472 F. Supp. 1357, 1373 (N.D. Ga. 1979) (settlements with a value of 1% to 8% of the estimated total damages were approved); *In Re Four Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8% of damages); *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014) (finding that settlement which amounted to 8% of maximum recovery "[fell] within the range of possible initial approval based on the strength of plaintiff's case and the risk and expense of continued litigation."); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement of 6% to 8% of estimated damages).⁶

⁶ *See also In re Uber FCRA Litig.*, No. 14-cv-05200-EMC, 2017 U.S. Dist. LEXIS 101552, at *23- 24 (N.D. Cal. June 29, 2017) (granting preliminary approval to class action settlement where gross settlement fund, prior to deducting attorneys' fees and services awards, was valued at 7.5% or less of total possible verdict); *Viceral v. Mistras Grp., Inc.*, No. 15-cv-02198-EMC, 2016 U.S. Dist. LEXIS 140759, at *21 (N.D. Cal. Oct. 11, 2016) (granting preliminary approval to class action settlement representing "8.1% of the full verdict value" with net settlement amount representing approximately 5.3% of full verdict value); *Stovall-Gusman v. W.W. Granger, Inc.*, No. 13-cv-02540-HSG, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) (granting final approval to settlement with net recovery to Plaintiffs valued at 7.3% of potential maximum recovery); *Cruz v. Sky Chefs, Inc.*, No. 12-cv-02705-DMR, 2014 WL 7247065, at *5 (N.D. Cal. Dec. 19, 2014) (granting final approval where gross settlement amount represented 8.6% of the maximum potential recovery from the class claims and estimated amount distributable to class after accounting for attorneys' fees and other deductions represented approximately 6.1% of maximum potential recovery); *In re LDK Solar Sec. Litig.*, No. 07-

1 It should be noted that Defendants contended the potential recovery was much lower than
2 Plaintiff's estimate. Defendants argued that Plaintiff, who worked in "one position at one Benihana
3 restaurant for one of the Defendants," would have had difficulty establishing manageability as to the
4 claims of all non-exempt employees who worked in various different positions at restaurants across
5 California that were operated by different Defendants. Further, at the time the Parties agreed upon a
6 settlement, Defendants had a Motion for Summary Judgment pending. That Motion, if granted in whole
7 or in part, would have substantially reduced the scope of the potential class, possibly limiting this action
8 to workers at a single restaurant operated by Benihana Carlsbad Corp. Finally, Defendants vigorously
9 disputed the merits of Plaintiff's claims, and argued that their employment practices complied with the
10 law.

11 **B. The Court Should Preliminarily Approve the PAGA Settlement**

12 Pursuant to the Settlement Agreement, \$100,000 from the Gross Settlement Amount shall be
13 allocated to the resolution of the PAGA claim, of which 75% (\$75,000) will be paid directly to the
14 LWDA, and the remaining 25% (\$25,000) will be paid to PAGA Employees. (Settlement Agreement ¶
15 43.)

16 This result was reached after good-faith negotiation between the parties. The amount was valued
17 as follows: Based on information and evidence produced by Defendants during discovery, Plaintiff's
18 Counsel determined that PAGA Employees worked a combined total of approximately 240,000 pay
19 periods during the PAGA statute of limitations period ("PAGA Period"). Statutory penalties would be
20 calculated according to Labor Code section 2699(f)(2): If, at the time of the alleged violation, the person
21 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
22 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
23 employee per pay period for each subsequent violation.

24 However, a number of courts have found that the "subsequent" penalty under PAGA applies
25 only after a court or the Labor Commissioner determines that the employer has violated the Labor Code.

26
27

cv-05182-WHA, 2010 WL 3001384, at *2 (N.D. Cal. July 29, 2010) (granting final approving where
28 "[t]he proposed settlement amount is [. . .] only about five percent of the estimated damages before fee
and costs—even before any reduction thereof for attorney's fees and costs.").

1 See *Vieyara-Flores v. Sika Corp.*, No. EDCV19606JVSKKX, 2019 WL 2436998, at *5 (C.D. Cal. June
2 10, 2019) (“employers are not subject to heightened penalties . . . until a court or commissioner notifies
3 the employer that it is in violation of the Labor Code . . . [Plaintiff] has not offered evidence that the
4 Labor Commission or a court has notified them of PAGA violations [thus] PAGA’s heightened penalty
5 of \$200 for subsequent violations will not be calculated to determine the amount in controversy”);
6 *Steenhuyse v. UBS Fin. Servs., Inc.*, 317 F. Supp. 3d 1062, 1067 (N.D. Cal. 2018) (same); *Chen v.*
7 *Morgan Stanley Smith Barney, LLC*, No. 8:14-CV-01077 ODW (FFMx), 2014 WL 4961182 (C.D. Cal.,
8 October 2, 2014) (“Under the Labor Code, if an employer does not have notice that they are committing
9 a violation, they are not subject to the heightened penalties.”); *Willis v. Xerox Bus. Servs., LLC*, No. No.
10 1:13-cv-01353-LJO-JLT, 2013 WL 6053831, at *6 (E.D. Cal. Nov. 15, 2013) (same); *Allen v. Utiliquest,*
11 *LLC*, No. C 13-00049 SBA, 2013 WL 4033673, at *8 (N.D. Cal. Aug. 1, 2013) (same); *Jimenez v.*
12 *Menzies Aviation, Inc.*, No. C 10-03477 SBA, 2013 WL 1411228, at *4 (N.D. Cal. Apr. 8, 2013) (same);
13 *Trang v. Turbine Engine Components Technologies Corp.*, No. CV 12–07658 DDP (RZx), 2012 WL
14 6618854 (C.D. Cal. Dec. 19, 2012) (“courts have held that employers are not subject to heightened
15 penalties for subsequent violations unless and until a court or commissioner notifies the employer that it
16 is in violation of the Labor Code”), citing *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157 (2008).
17 Under this line of cases, Defendants’ exposure would be approximately \$24 million = 240,000 violative
18 pay periods × \$100.

19 It should be noted that PAGA gives the Court wide latitude to reduce the amount of civil
20 penalties “based on the facts and circumstances of a particular case” when “to do otherwise would result
21 in an award that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code § 2699(h). In
22 reducing PAGA penalties, courts have considered issues including whether the employees suffered
23 actual injury from the violations, whether the defendant was aware of the violations, and the employer’s
24 willingness to fix the violation. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018)
25 (awarding PAGA penalties of only 0.2% of the maximum); see also *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d
26 1030, 1037 (N.D. Cal. 2016); *Fleming v. Covidien Inc.*, No. ED CV 10-01487 RGK (OPX), 2011 WL
27 7563047, at *4 (C.D. Cal. Aug. 12, 2011).

28 For example, during the penalty phase of trial in *Carrington*, the plaintiff requested PAGA

1 penalties in the amount of approximately \$70 million. The trial court instead awarded only \$150,000—
2 **or 0.21% of the maximum**—and stated that this reduction was warranted because imposing the
3 maximum penalty would be “unjust, arbitrary, and oppressive” based on Starbucks’s “good faith
4 attempts” to comply with meal period obligations and because the court found the violations were
5 minimal. *Carrington*, 30 Cal. App. 5th at 517. The Court of Appeal affirmed the lower court’s reduced
6 award of a \$150,000 penalty under PAGA. *Id.* at 529. If a similar reduction had been applied here,
7 Plaintiff would have recovered only approximately \$50,400 (\$24 million × 0.0021 reduction).

8 Likewise, in *Covidien*, the Court reduced the potential penalties by over 82%, awarding
9 \$500,000 instead of maximum penalties of \$2.8 million. *Covidien*, 2011 WL 7563047 at *4; *see also*
10 *Thurman v. Bayshore Transit Mgmt.*, 203 Cal. App. 4th 1112, 1135-36 (2012) (affirming 30% reduction
11 under specified PAGA claim where the employer produced evidence that it took its obligations
12 seriously); *Elder v. Schwan Food Co.*, No. B223911, 2011 WL 1797254, at *5-*7 (Cal. Ct. App. May
13 12, 2011) (reversing trial court decision denying any civil penalties where violations had been proven,
14 remanding for the trial court to exercise discretion to reduce, but not wholly deny, civil penalties); *Li v. A*
15 *Perfect Day Franchise, Inc.*, No. 5:10-CV-01189-LHK, 2012 WL 2236752, at *17 (N.D. Cal. June 15,
16 2012) (denying PAGA penalties for violation of California Labor Code section 226 as redundant with
17 recovery on a class basis pursuant to California Labor Code section 226, directly); *Aguirre v. Genesis*
18 *Logistics*, No. SACV 12-00687 JVS (ANx), 2013 WL 10936035 at *2-*3 (C.D. Cal. Dec. 30, 2013)
19 (reducing penalty for past PAGA violations from \$1.8 million to \$500,000, after rejecting numerous
20 other PAGA claims).

21 Plaintiff therefore determined an appropriate range of settlement for PAGA penalties as a
22 percentage of the settlement range that was consistent with other hybrid class/PAGA settlements
23 approved by California courts.⁷ Where PAGA penalties are negotiated in good faith and “there is no
24

25 ⁷ *Dearaujo v. Regis Corp.*, No. 2:14-cv-01408-KJM-AC, 2016 WL 3549473 at *3 (E.D. Cal.
26 June 29, 2016) (preliminarily approving \$1.95 million settlement containing \$10,000 PAGA penalties
27 with \$7,500 paid to LWDA); *Garcia v. Gordon Trucking, Inc.*, No. 1:10-CV-0324 AWI SKO, 2012
28 WL 5364575 at *7 (E.D. Cal. Oct. 31, 2012) (approving \$3.7 million settlement containing \$10,000
PAGA penalties with \$7,500 paid to LWDA); *Chu v. Wells Fargo Invst., LLC*, No. C 05-4526 MHP,
2011 WL 672645 at *1 (N.D. Cal. Feb. 16, 2011) (approving \$6.9 million settlement containing \$10,000
PAGA penalties with \$7,500 paid to LWDA); *Guerrero v. R.R. Donnelley & Sons Co.*, Case No. RIC

1 indication that [the] amount was the result of self-interest at the expense of other Class Members,” such
2 amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, Case No. 08-00844, 2009
3 U.S. Dist. LEXIS 33900, at *24 (N.D. Cal. Apr. 3, 2009); *see, e.g., Nordstrom Com. Cases*, 186 Cal.
4 App. 4th 576, 579 (2010) (“[T]rial court did not abuse its discretion in approving a settlement which
5 does not allocate any damages to the PAGA claims.”).

6 **C. The Court Should Preliminarily Approve the Negotiated Class Representative**
7 **Enhancement Payment**

8 Enhancement payments “are fairly typical in class action cases.” *Cellphone Termination Fee*
9 *Cases*, 186 Cal. App. 4th 1380, 1393 (2010) (affirming incentive awards of \$10,000); *Rodriguez v. West*
10 *Publishing Corp.*, 563 F.3d 948, 958 (9th Cir. 2009), citing 4 Newberg on Class Actions (4th ed. 2002) §
11 11:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
12 UCLA L. Rev. 1303 (2006). Enhancement payments “are intended to compensate class representatives
13 for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
14 the action, and, sometimes, to recognize their willingness to act as a private attorney general.”
15 *Rodriguez*, 563 F.3d at 958–59. “[T]he rationale for making enhancement or incentive awards to named
16 plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a
17 benefit on other members of the class.” *Clark v. American Residential Services LLC*, 175 Cal. App. 4th
18 785, 806 (2009).

19 Approximately 9,000 current and former employees will share a \$2,250,000 settlement fund due
20 to the effort and commitment of Ari Gold. Subject to Court approval, therefore, the Settlement provides
21

22 10005196 (Riverside County Super. Ct. July 16, 2013; Judge Matthew C. Perantoni) (gross settlement
23 fund of \$1,100,000, of which \$3,000 (or 0.3%) was allocated to the settlement of PAGA penalties);
24 *Parra v. Aero Port Services, Inc.*, No. BC483451 (L.A. County Super. Ct. April 20, 2015; Judge Jane
25 Johnson) (gross settlement fund of approximately \$1,458,900, of which \$5,000 (or 0.3%) was allocated
26 to the settlement of PAGA penalties); *Thompson v. Smart & Final, Inc.*, No. BC497198 (L.A. County
27 Super. Ct. Nov. 18, 2014; Judge William F. Highberger) (gross settlement fund of \$3,095,000, of which
28 approximately \$13,333 (or 0.4%) was allocated to the settlement of PAGA penalties); *Chavez v. Vallarta*
Food Enterprises, Inc., No. BC490630 (L.A. County Super. Ct. Nov. 10, 2014; Judge William F.
Highberger) (gross settlement fund of \$1,545,900, of which \$10,000 (or 0.6%) was allocated to the
settlement of PAGA penalties); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County
Super. Ct. Oct. 3, 2013; Judge Kenneth R. Freeman) (gross settlement fund of \$1,535,000, of which
\$1,000 (or 0.1%) was allocated to the settlement of PAGA penalties).

1 for a Class Representative Enhancement Payment of \$10,000.⁸ The Class Representative Enhancement
2 Payment is fair and reasonable compensation for Plaintiff's effort in pursuing the action, serving as a
3 private attorney general under PAGA, assisting counsel with the litigation and settlement, being deposed,
4 regularly conferring with counsel on the status of his case and the strategies for prosecuting the claims,
5 and reviewing the proposed settlement to ensure that its terms are fair and provide adequate relief for the
6 Settlement Class.

7 Plaintiff will file a formal motion for the negotiated Class Representative Enhancement Payment
8 once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above
9 showing is sufficient for preliminary approval of the negotiated Class Representative Enhancement
10 Payment.

11
12
13 ⁸ Such amounts are reasonable by reference to the amounts that California courts (both federal
14 and state) have repeatedly found to be reasonable for wage and hour class action settlements: *See Carter*
15 *v. GMRI Inc.*, No. RIC 1506085 (Riverside County Super. Ct. Jan. 10, 2017) (awarding \$10,000
16 enhancement payments to the named plaintiffs); *Crook v. Barton Healthcare System*, No. SC20150146
17 (El Dorado County Super. Ct. Dec. 9, 2016) (awarding \$10,000 enhancement payment to the named
18 plaintiff); *Singh v. American Building Supply, Inc.*, No. 34-2015-00179889-CU-OE-GDS (Sacramento
19 County Super. Ct. Oct. 3, 2016) (awarding \$10,000 enhancement payment to the named plaintiff);
20 *Alvarez v. MAC Cosmetics Inc.*, No. CIVDS1513177 (San Bernardino County Super. Ct. July 29, 2016)
21 (awarding \$10,000 enhancement payments to the named plaintiffs); *Coffey v. Beverages & More, Inc.*,
22 No. BC477269 (L.A. County Super. Ct. July 26, 2016) (awarding \$10,000 enhancement payment to the
23 named plaintiff); *Restoration Hardware Wage and Hour Cases*, No. JCCP4794 (L.A. County Super. Ct.
24 April 28, 2016) (awarding \$10,000 enhancement payments to the named plaintiffs); *Cook v. United*
25 *Insurance Co. of Amer.*, No. CIVMSC10-00425 (Contra Costa County Super. Ct. April 15, 2016)
26 (awarding \$10,000 enhancement payments to the named plaintiffs); *Quintana v. Claire's Boutiques, Inc.*,
27 No. 5:13-cv-00368-PSG (N.D. Cal. Dec. 1, 2015) (awarding \$10,000 enhancement payments to the
28 named plaintiffs); *Paredes v. American Family Care, Inc.*, No. 34-2014-00167060-CU-OE-GDS
(Sacramento County Super. Ct. Nov. 17, 2015) (awarding \$10,000 enhancement payment to the named
plaintiff); *Hoagland v. Brooks Brothers Group, Inc.*, No. BC511534 (L.A. County Super. Ct. July 16,
2015) (awarding \$10,000 enhancement payment to the named plaintiff); *Baker v. L.A. Fitness Int'l, LLC*,
No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012) (awarding \$10,000 enhancement payments to
three of the named plaintiffs); *Blue v. Coldwell Banker Residential Brokerage Co.*, No. BC417335 (L.A.
County Super. Ct. Mar. 21, 2011) (awarding \$10,000 enhancement payment); *Buckmire v. Jo-Ann*
Stores, Inc., No. BC394795 (L.A. County Super. Ct. June 11, 2010) (awarding \$10,000 enhancement
payments to the named plaintiffs); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County
Super. Ct. Oct. 3, 2013) (awarding \$10,000 enhancement payment); *Ethridge v. Universal Health*
Services, Inc., No. BC391958 (L.A. County Super. Ct. May 27, 2011) (awarding \$10,000 enhancement
payment); *Hickson v. South Coast Auto Insurance Marketing, Inc.*, No. BC390395 (L.A. County Super.
Ct. Mar. 27, 2012) (awarding \$10,000 enhancement payment); *Hill v. Sunglass Hut Int'l, Inc.*, No.
BC422934 (L.A. County Super. Ct. July 2, 2012) (awarding \$10,000 enhancement payments to the
named plaintiffs).

1 **D. The Court Should Preliminarily Approve the Negotiated Attorneys’ Fees and**
2 **Costs**

3 The purpose of an attorneys’ fee award in class action litigation is to reward counsel who took
4 the risk of non-payment and invested in a case that achieved a substantial positive result for the class.
5 California courts routinely award attorneys’ fees equalling one-third or more of the potential value of the
6 common fund. *See Laffitte v. Robert Half, Inc.*, 1 Cal. 5th 480 (2016) (affirming a fee award representing
7 one-third of the common fund); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008) (“Empirical
8 studies show that, regardless whether the percentage method or the lodestar method is used, fee awards
9 in class actions average around one-third of the recovery.”). At final approval, Plaintiff will seek Court-
10 approval of attorneys’ fees of \$750,000 (one-third of the Gross Settlement Amount) and up to \$50,000 in
11 litigation costs.

12 **E. California Law Authorizes Provisional Certification for Settlement Purposes**

13 **1. The California Standard for Class Certification**

14 Class actions are statutorily authorized “when the question is one of common or general interest,
15 of many persons, or when the parties are numerous, and it is impracticable to bring them all before the
16 court.” Cal. Civ. Proc. Code § 382; *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1332 (2008). Class
17 certification is appropriate when there is an “ascertainable class and a well-defined community of interest
18 among class members.” *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 326 (2004). Class
19 treatment is appropriate even if class members at some point may be required to make an individual
20 showing as to eligibility for recovery. *Bufl v. Dollar Financial Group, Inc.*, 162 Cal. App. 4th 1193,
21 1207 (2008); *Sav-On*, 34 Cal. 4th at 333.

22 Conditional certification of the proposed Settlement Class is particularly warranted here given
23 the relatively relaxed standard for certification at the preliminary approval stage. *See Dunk v. Ford Motor*
24 *Co.*, 48 Cal. App. 4th 1794 (1996) (courts can apply a “lesser standard of scrutiny” for class certification
25 in settlement cases).⁹ In *Dunk*, the California Court of Appeal specifically rejected the argument that the

26
27 ⁹ *See also* Newberg on Class Actions § 13:18 (5th ed.) (courts “declin[e] to treat formal class
28 certification as a prerequisite for preliminary approval and undertak[e] a more cursory class certification
analysis at the preliminary approval stage.”); *Dearaujo v. Regis Corp.*, No. 2:14-CV- 01408-KJM-AC,

1 standard for certifying a class for purposes of settlement is identical to the standard for certifying the
2 same class for purposes of litigation:

3 Geer argues the court must use the same standard under Federal Rules of Civil
4 Procedure, rule 23 (28 U.S.C.) to determine the propriety of both settlement and litigation
5 class certifications . . . That rule is contrary to the Ninth Circuit rule, stated in *Officers for*
6 *Justice v. Civil Service Com. supra*, 688 F.2d at p. 633, and the position of the leading
7 commentators (Newberg & Conte, *supra*, § 11.28 at p. 11–58), which allow a lesser
8 standard of scrutiny for settlement cases . . . We agree with the latter. The two basic
9 purposes for the Rule 23 certification requirements, as they relate to questions of a
nationwide class, are: (1) to keep the lawsuit manageable for trial; and (2) to protect the
interests of the non-representative class members. The first purpose is inapposite in the
settlement context, and the second, as it relates to commonality of issues, only makes a
difference if the non-representative class members would do much better by litigating on
their own or in their own jurisdiction. The second category concerns are protected by the
trial court’s fairness review of the settlement.

10 *Id.* at n19.

11 **2. The Proposed Settlement Class Is Ascertainable and There Is a Well-** 12 **Defined Community of Interest Among Class Members**

13 Whether a class is “ascertainable” within the meaning of Code of Civil Procedure section 382 is
14 “determined by examining (1) the class definition, (2) the size of the class, and (3) the means available
15 for identifying class members.” *Lee*, 166 Cal. App. 4th at 1334. Class members are ascertainable where
16 they may be readily identified without unreasonable expense or time by reference to official records. *Id.*

17 The community of interest requirement embodies three factors: (1) predominant common
18 questions of law or fact; (2) a class representative with claims or defenses typical of the class; and (3) a
19 class representative and counsel who can adequately represent the class. Cal. Civ. Proc. Code § 382.

20 In April of 2012, the California Supreme Court expounded on the element of predominance:

21 The “ultimate question” the element of predominance presents is whether “the
22 issues which may be jointly tried, when compared with those requiring separate
23 adjudication, are so numerous or substantial that the maintenance of a class
action would be advantageous to the judicial process and to the litigants.”

24 2016 WL 3549473, at *6 (E.D. Cal. June 30, 2016) (“[D]espite the Supreme Court’s cautions in
25 *Amchem* . . . , a cursory approach appears the norm.”); *In re Amtrak Train Derailment in Philadelphia,*
26 *Pennsylvania*, No. 15-MD-2654, 2016 WL 1359725, at *4 (E.D. Pa. Apr. 6, 2016) (“[A] settlement class
27 can be preliminarily certified based on a less rigorous analysis than that necessary for final
28 certification.”); *In re Processed Egg Prod. Antitrust Litig.*, No. 08-MD-2002, 2014 WL 828083, at *2
(E.D. Pa. Feb. 28, 2014) (at the preliminary approval stage, “the Court must determine whether the
proposed class should be conditionally certified, and leave the final certification decision for the Fairness
Hearing.”).

1 *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1021 (2012) (citations omitted).

2 The proposed Settlement Class consists of: All current and former non-exempt employees of
3 Defendants in the State of California who performed work for Defendants at any time during the period
4 from June 26, 2014 through December 31, 2020. Because all Class Members are either current or former
5 employees of Defendants, the class is readily ascertainable from Defendants' regular business records.

6 Here, common issues of fact and law predominate because the California statutes relating to
7 each of Plaintiff's claims, and Defendants' defenses thereto, apply with equal force and effect to all Class
8 Members. Factually, Plaintiff contends that Defendants' policies and practices apply class-wide and
9 Defendants' liability can be determined by facts common to all members of the class. The wage and hour
10 issues are both numerous and substantial, and a class action is the most advantageous method of dealing
11 with the claims of the Settlement Class Members.

12 Plaintiff's wage and hour claims are typical of the proposed Settlement Class because they arise
13 from the same factual bases and are based on the same legal theories applicable to the other Class
14 Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Class. Plaintiff
15 maintains that he was injured by the same company-wide practices to which the proposed Settlement
16 Class was subject and seeks the same relief. Plaintiff has already demonstrated his ability to advocate for
17 the interests of the Class by initiating this litigation, undertaking representative discovery, and evaluating
18 the proposed settlement to assure that it is fair.

19 Additionally, Plaintiff is represented by competent counsel who have extensive experience in
20 litigating wage and hour class action cases. (Perez Decl. ¶¶ 19-21, Ex. 2.) Plaintiff's Counsel have
21 successfully briefed, argued, certified, and gained state and federal court settlement approval of the same
22 class-wide causes of action that are at issue in this case. (*Id.*) Plaintiff's Counsel's wage and hour class
23 action expertise establishes that they are well qualified to represent the interests of this Class.

24 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
25 each individual Class Member's claim, Class Members likely have little incentive to litigate their claims
26 on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate
27
28

each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication.

3. The Proposed Notice Properly Informs Class Members about the Case and the Settlement

Class members are entitled to the best practical notice under the circumstances. *Kass v. Young*, 67 Cal. App. 3d 100, 106 (1977). The purpose of the notice is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. *Trotsky v. Los Angeles Fed. Savings & Loan Assn.*, 48 Cal. App. 3d 143, 151-52 (1975). The notice must advise class members “that they may be excluded from the class if they so request and that they will be bound by the judgment, whether favorable or not, if they do not request exclusion.” *Kass*, 67 Cal. App. 3d at 106. In a case such as this involving a significant number of class members, California authorities generally require service of the class notice by mail or similar reliable means. *Chance v. Super. Ct.*, 58 Cal. 2d 275, 290 (1962); *Cartt v. Super. Ct.*, 50 Cal. App. 3d 960, 972 (1975).¹⁰

The Parties have jointly drafted the Notice of Class Action Settlement (“Class Notice”) which fairly and neutrally informs Class Members of their rights and remedies in this action. The proposed Class Notice will be mailed to all Class Members by First Class mail and will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class definition, the PAGA Employee definition, the procedure and time period within which to submit Requests for Exclusions or objections to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the Released Claims. (Settlement Agreement, Exhibit A.)

In the event Class Notices are returned as undeliverable, the Settlement Administrator will attempt to locate a current address using, among other resources, a skip-trace search. (Settlement

¹⁰ Due process does not require that each Class Member actually receive a notice, but rather a procedure reasonably certain to reach Class Members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986). If appropriate notice is given, Class Members will be bound by the judgment even if they never actually receive the notice. *Fontana v. Elrod*, 826 F.2d 729, 732 (7th Cir. 1987).

1 Agreement ¶ 52.)

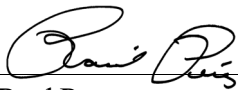
2 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice
3 satisfy due process and the requirements of California law. *See* Cal. R. Ct. 3.776(e)-(f); *State of Cal. v.*
4 *Levi Strauss*, 41 Cal. 3d 460, 485 (1986) (the class notice must “fairly apprise the class members of the
5 terms of the proposed compromise and of the options open to dissenting class members.”).

6 **IV. CONCLUSION**

7 The Parties have negotiated a fair and reasonable settlement of claims. Having appropriately
8 presented the materials and information necessary for preliminary approval, the Parties request that the
9 Court preliminarily approve the settlement.

10
11 Dated: February 24, 2021

Respectfully submitted,

12 By:  _____

13 Raul Perez
14 Mark A. Ozzello
15 Brandon Brouillette
16 Joseph Hakakian
17 **CAPSTONE LAW APC**

18 Attorney for Plaintiff Ari Gold
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Telephone: (310) 556-4811
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8 Attorneys for Plaintiff Ari Gold

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF SAN DIEGO

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

13 Plaintiff,

14 vs.

15 BENIHANA NATIONAL CORP., a Delaware
16 corporation; BENIHANA BEVERLY HILLS
CORP., a Florida corporation; BENIHANA
17 CARLSBAD CORP., a Delaware corporation;
BENIHANA DOWNEY CORP., a Florida
18 corporation; BENIHANA ENCINO CORP., a
California corporation; BENIHANA
19 INTERNATIONAL, INC., a Delaware
corporation; BENIHANA MARINA CORP., a
20 California corporation; BENIHANA
MONTEREY CORPORATION, a Delaware
21 corporation; BENIHANA OF PUENTE HILLS
CORP., a Delaware corporation; BENIHANA
22 ONTARIO CORP., a Delaware corporation;
BENIHANA SANTA ANITA CORP., a
23 Delaware corporation; BENIHANA SUNRISE
CORPORATION, a Delaware corporation; and
24 DOES 1 through 10, inclusive,

25 Defendants

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

Assigned for all purposes to Judge Earl H. Maas III,
Dept. N-28

**DECLARATION OF RAUL PEREZ IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: March 19, 2021
Time: 1:30 p.m.
Place: Department N-28

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1 5. On March 23, 2018, Benihana filed a Motion for Judgment on the Pleadings on the basis
2 that Plaintiff's action was unmanageable, which the Court later denied ruling in Plaintiff's favor. Also on
3 March 23, 2018, Benihana filed a Motion for Summary Judgment on the basis that the Benihana
4 Defendants other than Benihana Carlsbad (where Plaintiff worked) could not be held liable under a joint
5 employer and/or alter ego liability. The hearing date for this Motion for Summary Judgment was
6 continued several times, and the motion remained pending as of the date the Parties reached an
7 agreement to settle this action.

8 6. On October 22, 2018, with the other summary judgment motion still pending, Benihana
9 filed a second Motion for Summary Judgment and Summary Adjudication on the bases that (1) Plaintiff
10 was an inadequate representative; (2) Plaintiff could not represent aggrieved employees for harms he did
11 not personally suffer, and (3) that Plaintiff's representative claims were not manageable. The Court
12 denied Benihana's motion in its entirety.

13 7. On June 13, 2019, the Parties participated in a full-day mediation before Hon. Carl West
14 of JAMS. While the case did not settle on the date of the mediation, the Parties engaged in extensive
15 negotiations through Judge West for about 16 months thereafter.

16 8. On January 10, 2020, Plaintiff filed a Motion for Summary Judgment on his wage
17 statement claim on the basis that Benihana's wage statements failed to list the correct employer name in
18 violation of Labor Code section 226(a)(8).

19 9. With Benihana's Motion for Summary Judgment re joint employer and/or alter ego
20 liability and Plaintiff's Motion for Summary Judgment re wage statement claim fully briefed, but yet to
21 be heard, the Parties engaged in several weeks of negotiations in the fall of 2020 that resulted in a
22 settlement.

23 **PLAINTIFF'S COUNSEL CONDUCTED A THOROUGH INVESTIGATION OF THE FACTUAL AND LEGAL**
24 **ISSUES AND WERE THUS ABLE TO OBJECTIVELY ASSESS THE SETTLEMENT'S REASONABLENESS**

25 10. Plaintiff's Counsel conducted a thorough investigation into the factual and legal issues
26 implicated by Plaintiff's claims, and were able to objectively assess the settlement's reasonableness. For
27 example, prior to filing the action, Plaintiff contacted Plaintiff's Counsel to discuss the factual bases for
28 pursuing an action against Defendants for Labor Code violations. During those interviews, Plaintiff

1 explained his understanding of how the policies and practices were instituted, and provided valuable
2 insight into his contention that they gave rise to the alleged Labor Code violations. Based on these
3 interviews with Plaintiff, Plaintiff's Counsel determined that there were legally sufficient grounds for
4 pursuing an action against Defendants.

5 11. Plaintiff's Counsel also prepared a detailed letter (11 pages, single-spaced) to notify the
6 LWDA of Plaintiff's intent to seek civil penalties and other available relief recoverable under PAGA for
7 Labor Code violations. Plaintiff's Counsel subsequently prepared and filed a revised PAGA Notice that
8 included additional details relevant to Plaintiff's claims. Significant research and effort were expended to
9 prepare the PAGA Notices that were consistent with the developing legal requirements so as to
10 withstand any challenge from Defendants regarding the notices' sufficiency.

11 12. In preparation for drafting the complaint, Plaintiff's Counsel conducted their own
12 preliminary investigation into the factual bases for Plaintiff's claims, which entailed, *inter alia*, a careful
13 examination of Plaintiff's personnel file and associated records.

14 13. In response to Plaintiff's discovery requests, Plaintiff's Counsel received a considerable
15 amount of documents and data, including employee demographic data, time and pay records, and
16 Defendants' policies and procedures manuals. The document and data exchanges allowed Plaintiff's
17 Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments
18 to recovery, and ultimately enabled Plaintiff's Counsel to make an independent assessment of the
19 reasonableness of the settlement's terms.

20 14. Following the production of the Class Members' contact information, Plaintiff's
21 Counsel also interviewed numerous employee witnesses to determine their view of the extent and
22 frequency of the alleged Labor Code violations and to learn more about the day-to-day circumstances
23 giving rise to the alleged violations.

24 15. In addition to written discovery, Plaintiff's Counsel deposed Defendants' corporate
25 witnesses (including several general managers and regional managers, as well as two Person Most
26 Knowledgeable depositions) and defended Plaintiff's deposition. These depositions provided
27 considerable evidence concerning, *inter alia*, the strengths and weaknesses of the claims. Plaintiff's
28 Counsel also defended Plaintiff's deposition.

1 16. In summary, Plaintiff's Counsel performed a thorough investigation into the claims at
2 issue, which included: (1) determining Plaintiff's suitability as a representative through interviews,
3 background investigations, and analyses of his employment files and related records; (2) evaluating all of
4 Plaintiff's potential representative claims; (3) researching similar wage and hour class actions as to the
5 claims brought, the nature of the positions, and the type of employer; (4) analyzing employees' time and
6 wage records; (5) reviewing Defendants' employment policies and practices; (6) researching settlements
7 in similar cases; (7) evaluating Plaintiff's claims and estimating Defendants' liability for purposes of
8 settlement; (8) drafting the mediation brief; and (9) participating in the mediation.

9 17. By engaging in such a thorough investigation and evaluation of Plaintiff's claims,
10 Plaintiff's Counsel can opine that the Settlement, for the consideration and on the terms set forth in the
11 Settlement Agreement, is fair, reasonable, an adequate, and is in the best interests of Class Members in
12 light of all known facts and circumstances, including the risk of significant delay and uncertainty
13 associated with litigation, and various defenses asserted by Defendants.

14 **THE PARTIES SETTLED AFTER PROTRACTED NEGOTIATIONS FOLLOWING MEDIATION**

15 18. On June 13, 2019, the Parties participated in full-day mediation with the Hon. Carl West
16 (Ret.), an experienced mediator of wage and hour class actions. Judge West helped to manage the
17 Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides.
18 Although the Parties did not settle at mediation, Judge West helped to narrow the gap between the
19 Parties' respective positions. Following more than a year of ongoing negotiations, the Parties were
20 eventually able to negotiate a complete settlement of Plaintiff's claims. The terms of the settlement are
21 now set forth in complete and final form in the Joint Stipulation of Class Action and PAGA Settlement
22 and Release, attached as Exhibit 1 (a copy of which has been provided to the LWDA). At all times, the
23 Parties' negotiations were adversarial and non-collusive. The Settlement therefore constitutes a fair,
24 adequate, and reasonable compromise of the claims at issue.

25 **CAPSTONE LAW APC FIRM PROFILE**

26 19. Capstone is one of California's largest plaintiff-only labor and consumer law firms. With
27 over twenty-five seasoned attorneys, Capstone has the experience, resources, and expertise to
28 successfully prosecute complex employment and consumer actions.

20. Since its founding in 2012, Capstone has emerged as a major force in aggregate litigation, making law on cutting-edge issues and obtaining over \$200 million in recovery for employees and consumers. The firm's accomplishments include:

- a. In February 2015, Ryan H. Wu and I were honored with the prestigious California Lawyer of the Year (CLAY) award in labor and employment for our work in the landmark case *Iskanian v. CLS Transportation Los Angeles*, 59 Cal. 4th 348 (2014), which preserved the right of California workers to bring representative actions under the Labor Code Private Attorneys General Act (“PAGA”) notwithstanding a representative action waiver in an arbitration agreement.
- b. Recognized as a leading firm in the prosecution of PAGA enforcement actions, Capstone is responsible for some of the most important decisions in this area. In *Williams v. Superior Court (Marshalls of Calif.)*, 2017 WL 2980258, Capstone attorneys achieved a landmark decision before the California Supreme Court as to the broad scope of discovery in PAGA actions. In *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117 (9th Cir. 2014), a case of first impression, Capstone attorneys successfully argued that PAGA actions are state enforcement actions not covered by the Class Action Fairness Act.

21. Attached as Exhibit 2 is a true and correct copy of Capstone's firm resume.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 25th day of February, 2021, at Los Angeles, California.


Raul Perez

Exhibit 1

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

from Defendants' payroll records.

TERMS OF AGREEMENT

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

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

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

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

41. Class Representative Enhancement Payment. In exchange for a general release, and in 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

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

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

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

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

13 **READ CAREFULLY BEFORE SIGNING**

14 **PLAINTIFF**

15
16 Dated: _____

17 _____
18 Ari Gold

19 **DEFENDANTS BENIHANA NATIONAL**
20 **CORP., BENIHANA BEVERLY HILLS CORP.,**
21 **BENIHANA CARLSBAD CORP., BENIHANA**
22 **DOWNEY CORP., BENIHANA ENCINO**
23 **CORP., BENIHANA INTERNATIONAL, INC.,**
24 **BENIHANA MARINA CORP., BENIHANA**
25 **MONTEREY CORP., BENIHANA OF**
26 **PUENTE HILLS CORP., BENIHANA**
27 **ONTARIO CORP., BENIHANA SANTA**
28 **ANITA CORP., BENIHANA SUNRISE CORP,**
AND BENIHANA, INC.

25 Dated: February 22, 2021
26 _____

27 *Cristina L. Mendoza*
28 _____

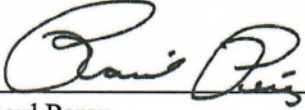
Please Print Name of Authorized Signatory

CRISTINA L. MENDOZA
Secretary

APPROVED AS TO FORM

CAPSTONE LAW APC

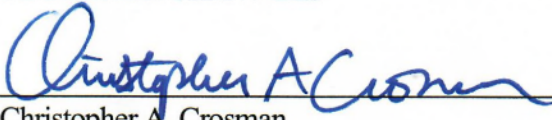
Dated: February 19, 2021

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.

Exhibit 2

FIRM PROFILE

Capstone Law APC is one of California's largest plaintiff-only labor and consumer law firms. With over twenty-five seasoned attorneys, many formerly with prominent class action or defense firms, Capstone has the experience, resources, and expertise to successfully prosecute complex employment and consumer actions.

Since its founding in 2012, Capstone has emerged as a major force in aggregate litigation, making law on cutting-edge issues and obtaining over a hundred million dollars in recovery for employees and consumers:

- In February, 2015, Capstone attorneys Raul Perez and Ryan H. Wu were honored with the *California Lawyer* Attorney of the Year (CLAY) award in labor and employment for their work in the landmark case *Iskanian v. CLS Transportation Los Angeles*, 59 Cal.4th 348 (2014), which preserved the right of California workers to bring representative actions under the Labor Code Private Attorneys General Act ("PAGA") notwithstanding a representative action waiver in an arbitration agreement.
- Recognized as a leading firm in the prosecution of PAGA enforcement actions, Capstone is responsible for some of the most important decisions in this area. In *Williams v. Superior Court (Marshall's of Calif.)*, 3 Cal.5th 531 (2017), Capstone attorneys achieved a watershed decision before the California Supreme Court as to the broad scope of discovery in PAGA actions. In *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117 (9th Cir. 2014), a case of first impression, Capstone successfully argued that PAGA actions are state enforcement actions not covered by the Class Action Fairness Act.
- Capstone has made important contributions to consumer protection law. In *McGill v. Citibank N.A.*, 2 Cal. 5th 945 (2017), Capstone represented plaintiffs in a major decision holding that the right to seek public injunctive relief under the state's consumer protection laws cannot be waived and that consumers need not satisfy class certification requirements to enjoin unfair business practices on behalf of the public. In *Nguyen v. Nissan N.A.*, 726 F.3d 811 (9th Cir. 2019), Capstone attorneys reversed a denial of class certification, making law that clarified the use of "benefit of the bargain" damages models in consumer class actions.
- Capstone served as class counsel in a number of significant wage and hour settlements, including \$12 million on behalf of a nationwide class of in *Hightower v. JPMorgan Chase Bank*, Case No. 11-01802 (C.D. Cal.), over \$10 million on behalf of non-exempt hourly workers in *Zamora v. Balboa Life & Casualty LLC*, Case No. BC360026 (L.A. Super. Ct.); and \$9 million on behalf of pharmacists in *Dittmar v. Costco Wholesale Corp.*, No. 14-1156 (S.D. Cal.). In *Vorise v. 24 Hour Fitness USA, Inc.*, No. C 15-02051 (Contra Costa Super. Ct.), Capstone and co-counsel negotiated an \$11 million PAGA settlement on behalf of over 36,000 employees for Labor Code violations.
- Capstone has an established practice in automotive defect class actions and is currently appointed sole class counsel, following contested class certification, in *Victorino v. FCA US, LLC*, No. 16-1617-GPC, 2019 WL 5268670 (S.D. Cal. Oct. 17, 2019) and *Salas v. Toyota Motor Sales, U.S.A., Inc.*, No. 15-8629-FMO, 2019 WL 1940619 (C.D. Cal. Mar. 27, 2019).

SUMMARY OF SIGNIFICANT SETTLEMENTS

Since its founding, Capstone has settled over 100 high-stakes class and representative actions totaling well over \$200 million dollars. Capstone's settlements have directly compensated hundreds of thousands of California workers and consumers. Capstone's actions have also forced employers to modify their policies for the benefit of employees, including changing the compensation structure for commissioned employees and changing practices to ensure that workers will be able to take timely rest and meal breaks. A leader in prosecuting PAGA enforcement actions, Capstone has secured millions of dollars in civil penalties for the State of California.

The following is a representative sample of Capstone's settlements:

- *Hightower et al v. Washington Mutual Bank*, No. 2:11-cv-01802-PSG-PLA (N.D. Cal.): gross settlement of \$12 million on behalf of approximately 150,000 personal bankers, tellers, sales associates, and assistant branch manager trainees for wage and hour violations;
- *Vargas v. Ford Motor Co.*, 12-08388-AB (C.D. Cal.): providing cash payments and unique buyback program for nearly 2 million consumers;
- *Moore v. PetSmart, Inc.*, No. 5:12-cv-03577-EJD (N.D. Cal.): gross settlement of \$10 million on behalf of over 19,000 non-exempt PetSmart employees for wage and hour violations;
- *Dittmar v. Costco Wholesale Corp.*, No. 14-1156 (S.D. Cal.): gross settlement of \$9 million on behalf of approximately 1,200 pharmacists for wage and hour violations;
- *Perrin v. Nabors Well Services Co.*, No. 56-2007-00288718 (Ventura Super. Ct.): gross settlement of over \$6.5 million on behalf of oil rig workers for sleep time and other wage violations;
- *Cook v. United Insurance Co.*, No. C 10-00425 (Contra Costa Super. Ct.): gross settlement of \$5.7 million on behalf of approximately 650 sales representatives;
- *Alvarez v. MAC Cosmetics, Inc.*, No. CIVDS1513177 (San Bernardino Super. Ct.): gross settlement of \$5.5 million for approximately 5,500 non-exempt employees.
- *Aceves v. AutoZone, Inc.*, No. 14-2032 (C.D. Cal.): gross settlement of \$5.4 million in a case alleging FCRA violations;
- *Berry v. Urban Outfitters Wholesale, Inc.*, No. 13-02628 (N.D. Cal.): gross settlement of \$5 million on behalf of over 12,000 nonexempt employees;
- *The Children's Place Retail Stores Wage & Hour Cases*, No. JCCP 4790: gross settlement of \$5 million on behalf of 15,000 nonexempt employees;
- *York v. Starbucks Corp.*, Case No. 08-07919 (C.D. Cal.): gross settlement of nearly \$5 million on behalf of over 100,000 non-exempt workers for meal break and wage statement claims;
- *Rodriguez v. Swissport USA*, No. BC 441173 (Los Angeles Super. Ct.): gross settlement of nearly \$5 million on behalf of 2,700 non-exempt employees following contested certification;
- *Asghari v. Volkswagen Group of North America*, Case No. 13-02529 (C.D. Cal.): Settlement providing complementary repairs of oil consumption defect, reimbursement for repairs, and extended warranty coverage of certain Audi vehicles valued at over \$20 million;
- *Klee v. Nissan of North America*, Case No. 12-08238 (C.D. Cal.): Settlement providing complimentary electric vehicle charging cards and extending warranty coverage for the electric battery on the Nissan Leaf valued at over \$10 million.

PROFESSIONAL BIOGRAPHIES

Partners

Rebecca Labat. Rebecca Labat is co-managing partner of Capstone Law APC, supervising the litigation for all of the firm's cases. She also manages the firm's co-counsel relationships and assists the firm's other partners and senior counsel with case management and litigation strategy. Under Ms. Labat's leadership, Capstone has successfully settled over 100 cases, delivering hundreds millions of dollars to California employees and consumers while earning statewide recognition for its cutting-edge work in developing new law.

Ms. Labat's career accomplishments representing consumers and employees in class actions include the certification of a class of approximately 3,200 current and former automobile technicians and shop employees for the miscalculation of the regular rate for purposes of paying premiums for missed meal and rest breaks.

Before her work representing plaintiffs in class and representative actions, Ms. Labat was an attorney with Wilson Elser and represented life, health, and disability insurers in litigation throughout California in both state and federal courts. She graduated from the University of California, Hastings College of the Law in 2002, where she was a member of the Hastings Civil Justice Clinic, served as a mediator in Small Claims Court for the City and County of San Francisco, and received the CALI Award for Excellence in Alternative Dispute Resolution. She received her undergraduate degree from the University of California, Los Angeles. Ms. Labat is a member of the National Employment Lawyers Association (NELA), the Consumer Attorneys Association of Los Angeles (CAALA), and the Beverly Hills Bar Association.

Raul Perez. Raul Perez is co-managing partner at Capstone, and has focused exclusively on wage and hour and consumer class litigation since 2011. Mr. Perez is the lead negotiator on numerous large settlements that have resulted in hundreds of millions to low-wage workers across California, including many of the most valuable settlements reached by Capstone.

During his career, Mr. Perez has successfully certified by way of contested motion and/or been appointed Lead Counsel or Interim Lead Counsel in several cases, including: *Lopes v. Kohl's Department Stores, Inc.*, Case No. RG08380189 (Alameda Super. Ct.); *Hightower v. JPMorgan Chase Bank*, Case No. 11-01802 (C.D. Cal.); *Tameifuna v. Sunrise Senior Living Managements, Inc.*, Case No. 13-02171 (C.D. Cal.) (certified class of over 10,000 hourly-paid employees); and *Berry v. Urban Outfitters Wholesale, Inc.*, Case No. 13-02628 (N.D. Cal.) (appointed lead counsel in a class action involving over 10,000 non-exempt employees). As the lead trial attorney in *Iskanian v. CLS Transportation Los Angeles*, 59 Cal. 4th 348 (2014), Mr. Perez, along with Mr. Wu, received the 2015 CLAY Award in labor and employment.

Mr. Perez received both his undergraduate degree and his law degree from Harvard University and was admitted to the California Bar in December 1994. Earlier in his career, Mr. Perez handled a variety of complex litigation matters, including wrongful termination and other employment related actions, for corporate clients while employed by some of the more established law firms in the State of California, including Morgan, Lewis & Bockius; Manatt Phelps & Phillips; and Akin Gump Strauss Hauer & Feld. Before Capstone, Mr. Perez was a partner at another large plaintiff's firm, helping to deliver millions of dollars in relief to California workers.

Melissa Grant. Melissa Grant is a partner at Capstone. Ms. Grant is responsible for litigating many of the firm's most contentious and high-stakes class actions. The author of numerous successful motions for class certification, Ms. Grant is the lead or co-lead attorney on multiplied certified class actions currently on track for trial, representing over 140,000 California employees in pursuing their wage and hour claims. She is also at the forefront in developing the law on PAGA, including administrative exhaustion, standing, the nature of PAGA violations, the scope of discovery, and trials.

Prior to joining Capstone, Ms. Grant worked at the Securities and Exchange Commission as a staff attorney in the Enforcement Division, investigating ongoing violations of federal securities regulations and statutes and for Quinn Emanuel Urquhart & Sullivan, LLP, where she was an associate on the trial team that prosecuted the *Mattel v. Bratz* case. Ms. Grant began her legal career as a law clerk to the Honorable Harry Pregerson, Justice of the Ninth Circuit Court of Appeals before joining Sidley & Austin as an associate. She graduated from Southwestern Law School in 1999, where she served as editor-in-chief of the Law Review, and graduated *summa cum laude* and first in her class. Ms. Grant earned her undergraduate degree from Cornell University, where she received the JFK Public Service Award and the Outstanding Senior Award. Her published articles include: *Battling for ERISA Benefits in the Ninth Circuit: Overcoming Abuse of Discretion Review*, 28 Sw. U. L. Rev. 93 (1998), and CLE Class Actions Conference (SF) CAFA: *Early Decisions on Commencement and Removal of Actions* (2006).

Ryan H. Wu. Ryan H. Wu is a partner at Capstone and is primarily responsible for complex motion work and supervising court approval of class action settlements. Mr. Wu handles many of the most challenging legal issues facing Capstone's clients, including the scope and operation of PAGA, contested attorneys' fees motions, responding to objectors, and high-impact appeals. Mr. Wu is responsible for the merits briefing in *McGill v. Citibank, N.A.*, 2 Cal. 5th 945 (2017), where the California Supreme Court unanimously held that consumers' right to pursue public injunctive relief cannot be impeded by a contractual waiver or class certification requirements. He briefed the closely-watched *Williams v. Superior Court (Marshall's of CA LLC)*, 3 Cal.5th 531 (2017), an important pro-employee ruling that broadened the scope of discovery in PAGA actions and resolved a longstanding conflict regarding third-party constitutional privacy rights. He also authored the briefs in *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117 (9th Cir. 2014), where, on an issue of first impression, the Ninth Circuit sided with Plaintiffs in holding that PAGA actions are state enforcement actions not covered by the CAFA. In February 2015, Mr. Wu, along with Mr. Perez, received the prestigious CLAY award for his successful appellate work, including briefing to the California Supreme Court, in *Iskanian*. Mr. Wu recently achieved an important consumer victory in *Nguyen v. Nissan N.A.*, 932 F.3d 811 (9th Cir. 2019), which clarified the use of "benefit of the bargain" damages models in consumer class actions.

Mr. Wu graduated from the University of Michigan Law School in 2001, where he was an associate editor of the *Michigan Journal of Law Reform* and contributor to the law school newspaper. He received his undergraduate degree in political science with honors from the University of California, Berkeley. He began his career litigating international commercial disputes and commercial actions governed by the Uniform Commercial Code. Mr. Wu is co-author of "*Williams v. Superior Court: Employees' Perspective*" and "*Iskanian v. CLS Transportation: Employees' Perspective*," both published in the *California Labor & Employment Law Review*.

Robert Drexler. Robert Drexler is a partner with Capstone Law where he leads one of the firm's litigation teams prosecuting wage-and-hour class actions. He has more than 25 years of experience representing clients in wage-and-hour and consumer rights class actions and other complex litigation in state and federal courts. Over the course of his career, Mr. Drexler has successfully certified dozens of employee classes for claims

such as misclassification, meal and rest breaks, and off-the-clock work, ultimately resulting in multi-million dollar settlements. He has also arbitrated and tried wage-and-hour and complex insurance cases. Mr. Drexler has been selected as one of Southern California's "Super Lawyers" every year from 2009 through 2020.

Before joining Capstone, Mr. Drexler was head of the Class Action Work Group at Khorrami Boucher, LLP and led the class action team at The Quisenberry Law Firm. Mr. Drexler graduated from Case Western Reserve University School of Law, where he served as Managing Editor of the Case Western Reserve Law Review and authored *Defective Prosthetic Devices: Strict Tort Liability for the Hospital?* 32 CASE W. RES. L. REV. 929 (1982). He received his undergraduate degree in Finance at Ohio State University where he graduated *cum laude*. Mr. Drexler is a member of Consumer Attorneys of California (CAOC) and Consumer Attorneys of Los Angeles (CAALA). He has been a featured speaker at class action and employment litigation seminars, and has published articles in CAOC's Forum Magazine and The Daily Journal.

Jamie Greene. is a partner with Capstone Law, where she leads the firm's business development and case generation team. Ms. Greene is responsible for evaluating all potential new cases and referrals, developing new claims, and managing the firm's client and cocounseling relationships. She also supervises the pre-litigation phase for all cases, including investigation, analysis, and client consultation.

Before joining Capstone, Ms. Greene began her legal career at Makarem & Associates representing clients in a wide array of cases ranging from wrongful death, insurance bad faith, employment, personal injury, construction defect, consumer protection, and privacy law. Ms. Greene is a graduate of the University of Southern California Gould School of Law and earned her bachelor's degree from Scripps College in Claremont, California.

Senior Counsel

Theresa Carroll. Theresa Carroll is a senior counsel at Capstone Law. Her practice is devoted to the Appeals & Complex Motions team, working on various settlement and approval projects.

Prior to joining Capstone, Ms. Carroll was an associate with Parker Stanbury, LLP, advising small business owners on various employment matters and worked as an associate attorney for O'Donnell & Mandell litigating employment discrimination and sexual harassment cases. In 1995, she graduated from Southwestern University School of Law where she was on the trial advocacy team and was awarded the prestigious Trial Advocate of the Year award sponsored by the American Board of Trial Advocates (ABOTA) for Southwestern University School of Law. Ms. Carroll received her Bachelor of Science degree in speech with an emphasis in theatre from Iowa State University.

Liana Carter. Liana Carter is a senior counsel with Capstone Law APC, specializing in complex motions, writs, and appeals. Her work on recent appeals has included reversing a denial of class certification decision in *Brown v. Cinemark USA, Inc.*, No. 16-15377, 2017 WL 6047613 (9th Cir. Dec. 7, 2017), affirming a denial of a motion to compel arbitration in *Jacoby v. Islands Rests., L.P.*, 2014 Cal. App. Unpub. LEXIS 4366 (2014) and reversal of a dismissal of class claims in *Rivers v. Cedars-Sinai Med. Care Found.*, 2015 Cal. App. Unpub. LEXIS 287 (Jan. 13, 2015). Ms. Carter was responsible for drafting the successful petition for review in *McGill v. Citibank N.A.*, as well as the petition for review and briefing on the merits in *Williams v. Superior Court*, 2017 WL 2980258. Ms. Carter also has extensive prior experience in overseeing settlement negotiations and obtaining court approval of class action settlements.

Ms. Carter was admitted to the California bar in 1999 after graduating from the University of Southern California Gould School of Law, where she was an Articles Editor on the board of the *Southern California Law Review*. She received her undergraduate degree with honors from the University of California, Irvine.

Anthony Castillo. Anthony Castillo is a senior counsel with Capstone Law. His practice focuses on analyzing and developing pre-litigation wage-and-hour and consumer claims, including PAGA representative actions and class actions for failure to pay overtime and minimum wages, meal and rest period violations, and claims under the Fair Labor Standards Act and the Investigative Consumer Reporting Agency Act. Prior to joining Capstone, he was an associate at a California bankruptcy practice, where he represented individual and business debtors in liquidations and re-organizations as well as various debt and foreclosure defense-related issues.

Mr. Castillo graduated from Loyola Law School, Los Angeles in 2009, where he volunteered with the Disability Rights Legal Center. He attended Stanford University for his undergraduate degree, majoring in Political Science and minoring in History. Anthony is admitted to practice law in California and Washington and before the United States District Court for the Central and Southern Districts of California.

Molly DeSario. Molly DeSario is a senior counsel with Capstone Law, specializing in employment class action litigation. Ms. DeSario's practice focuses primarily on wage-and-hour class action and Private Attorneys General Act litigation on behalf of employees for failure to pay overtime and minimum wages, provide meal and rest breaks, and provide compensation for off-the-clock work. She has experience briefing and arguing a multitude of dispositive motions in state and federal court and has successfully certified and settled numerous classes for claims such as exempt misclassifications, unpaid wages, missed meal and rest breaks, and unreimbursed business expenses.

Ms. DeSario began her career as a general practice litigation associate with Sandler & Mercer in Rockville, Maryland, handling a wide range of civil and criminal matters. Since 2005, she has primarily litigated class action cases and, for the last seven years, has focused on representing employees and consumers in class and collective actions across California and the nation, helping them recover millions of dollars in unpaid wages, restitution, and penalties. Molly graduated from Northeastern University School of Law in 2002. During law school, she interned for the U.S. Attorney's Office in Boston, Massachusetts, and the Honorable Paul L. Friedman at the U.S. District Court for the District of Columbia. She received her undergraduate degree in Marketing and International Business from the University of Cincinnati, where she graduated summa cum laude.

Robert Friedl. Robert Friedl is a senior counsel at Capstone, where he devotes most of his time to the briefing and litigation strategy of consumer protection cases. Mr. Friedl has over 20 years of experience representing plaintiffs and defendants in consumer class actions, insurance coverage and defense, employment law, and personal injury. His lengthy service as an appellate attorney has yielded several published cases, including successful outcomes in *Goldstein v. Ralphs*, 122 Cal. App. 4th 229 (2004), *Morgan v. AT&T*, 177 Cal. App. 4th 1235 (2009), and *Hecimovich v. Encinal School Parent Teacher Organization*, 203 Cal. App. 4th 450 (2012). At Capstone, Mr. Friedl was responsible for the appellate win in *Grant v. Unifund CCR, LLC*, 577 Fed. Appx. 693 (9th Cir. 2014).

Prior to joining Capstone, Mr. Friedl was a partner at civil litigation boutique, where he handled the firm's most complex briefing. He is a graduate of the University of Connecticut, and received his law degree from Southwestern School of Law, where he earned an American Jurisprudence Book Award.

Daniel Jonathan. Daniel Jonathan is a senior counsel at Capstone Law. His practice primarily involves wage-and-hour class actions and PAGA litigation on behalf of employees for the failure to pay overtime and minimum wages, failure to provide meal and rest breaks, claims under the Fair Labor Standards Act, and other California Labor Code violations.

Prior to joining Capstone, Mr. Jonathan began his career as an associate at Kirkland & Ellis representing Fortune 500 clients in high-stakes litigation in various matters, including class action defense and plaintiff's actions for accounting fraud. Following that, he was a senior counsel at a boutique litigation firm where he successfully first-chaired several trials. Mr. Jonathan graduated from the Northwestern University School of Law. He received his undergraduate degree in Accounting from the University of Southern California, where he graduated cum laude. He has passed the CPA examination and worked as an auditor at Deloitte before attending law school.

Jonathan Lee. A senior counsel with Capstone, Jonathan Lee primarily litigates employment class actions. At Capstone, Mr. Lee has worked on several major successful class certification motions, and his work has contributed to multi-million dollar class settlements against various employers, including restaurant chains, retail stores, airport staffing companies, and hospitals. Prior to joining Capstone, Mr. Lee defended employers and insurance companies in workers' compensation actions throughout California.

Mr. Lee graduated in 2009 from Pepperdine University School of Law, where he served as an editor for the Journal of Business, Entrepreneurship and the Law; he received his undergraduate degree from UCLA.

Mark A. Ozzello. Mark A. Ozzello is a senior counsel with Capstone Law, where he leads the firm's consumer team. He is a nationally recognized and respected consumer and employment attorney who has litigated those issues throughout the country. He has always been at the forefront of consumer rights, sitting on the Board of Governors for the Consumer Attorneys of California and regularly appearing as a featured speaker on consumer rights issues nationwide.

Mr. Ozzello is a former partner of Arias Ozzello & Gignac and, most recently, was Of Counsel to Markun Zusman Freniere & Compton, LLP. In his capacity as a litigator, he has obtained results for his clients in excess of \$200 million dollars. Mark has also achieved consistent success in the California Courts of Appeal, and several judicial opinions regularly cite to his matters as authority for class certification issues. He has also argued appellate issues in several Circuit Courts of Appeals with great success. Mr. Ozzello attended Pepperdine University School of Law where he was an Editor to the Law Review, publishing several articles during his tenure in that capacity. He received his undergraduate degree from Georgetown University.

Mr. Ozzello has always strived to be an integral part of local communities. He has established educational scholarship programs at several charitable organizations, including El Centro De Amistad in Los Angeles and St. Bonaventure Indian Mission and School in Thoreau, New Mexico, and presides over a legal clinic in Los Angeles which provides pro bono legal assistance to non-English speaking individuals.

Bevin Allen Pike. Bevin Allen Pike is a senior counsel with Capstone Law where she focuses primarily on wage-and-hour class actions. Ms. Pike has spent her entire legal career representing employees and consumers in wage-and-hour and consumer rights class actions. Over the course of her career, Ms. Pike has successfully certified dozens of employee and consumer classes for claims such as meal and rest breaks, unpaid overtime, off-the-clock work, and false advertising.

Before joining Capstone, Ms. Pike's experience included class and representative action work on behalf of employees and consumers at some of the leading plaintiffs' firms in California. Ms. Pike graduated from Loyola Law School, Los Angeles, where she was an Editor for the International and Comparative Law Review. She received her undergraduate degree from the University of Southern California. Ms. Pike has been selected as one of Southern California's "Super Lawyers – Rising Stars" every year from 2012 through 2015.

Eduardo Santos. Eduardo Santos is a senior counsel at Capstone Law, and concentrates his practice on managing and obtaining court approval of many of Capstone's wage-and-hour, consumer, and PAGA settlements, from the initial contract drafting phase to motion practice, including contested motion practice on attorneys' fees. Over the course of his career, Mr. Santos has helped to secure court approval of over one hundred high-stakes class and representative action settlements totaling over \$100 million.

Before joining Capstone, Mr. Santos began his career at a prominent plaintiff's firm in Los Angeles specializing in mass torts litigation, with a focus on complex pharmaceutical cases. Most notably, he was involved in the national Vioxx settlement, which secured a total of \$4.85 billion for thousands of individuals with claims of injuries caused by taking Vioxx. Mr. Santos graduated from Loyola Law School, Los Angeles, where he was a recipient of a full-tuition scholarship awarded in recognition of academic excellence. While in law school, Mr. Santos served as an extern for the Honorable Thomas L. Willhite, Jr. of the California Court of Appeal. He graduated magna cum laude from UCLA and was a recipient of the Ralph J. Bunche Scholarship for academic achievement.

Mao Shiokura. Mao Shiokura is a senior counsel with Capstone. Her practice focuses on identifying, evaluating, and developing new claims, including PAGA representative actions and class actions for wage-and-hour violations and consumer actions under the Consumers Legal Remedies Act, False Advertising Law, Unfair Competition Law, and other consumer protection statutes. Prior to joining Capstone, Ms. Shiokura was an associate at a California lemon law firm, where she represented consumers in Song-Beverly, Magnuson-Moss, and fraud actions against automobile manufacturers and dealerships.

Ms. Shiokura graduated from Loyola Law School, Los Angeles in 2009, where she served as a staff member of Loyola of Los Angeles Law Review. She earned her undergraduate degree from the University of Southern California, where she was a Presidential Scholar and majored in Business Administration, with an emphasis in Cinema-Television and Finance.

John Stobart. John Stobart is a senior counsel with Capstone Law. He focuses on appellate issues in state and federal courts and contributes to the firm's amicus curiae efforts to protect and expand the legal rights of California employees and consumers. Mr. Stobart has significant appellate experience having drafted over two dozen writs, appeals and petitions, and having argued before the Second, Fourth, and Fifth Districts of the California Court of Appeal.

Prior to joining Capstone, Mr. Stobart was a law and motion attorney who defended against civil liability in catastrophic injury and wrongful death cases brought against his clients, which included the railroad, public schools, small businesses, and commercial and residential landowners. He has drafted and argued scores of dispositive motions at the trial court level and had success in upholding judgments and verdicts on appeal. He graduated cum laude from Thomas Jefferson School of Law where he was on the mock trial competition team and earned his undergraduate degree from the Ohio State University.

Orlando Villalba. Orlando Villalba is a senior counsel at Capstone Law. His practice primarily involves wage-and-hour class actions and PAGA litigation on behalf of employees for the failure to pay overtime and minimum wages, failure to provide meal and rest breaks, claims under the Fair Labor Standards Act, and other California Labor Code violations.

Mr. Villalba began his career at Kirkland & Ellis where he handled a wide range of business litigation matters, including transnational contract disputes, insurance-related tort claims, developer litigation, and civil rights actions. He also has extensive plaintiff-side experience representing government agencies and note-holders in the pursuit of mortgage and other fraud losses. Mr. Villalba graduated from Stanford Law School, where he served as an articles editor on the Stanford Journal of Law, Business & Finance. After law school, he clerked for the Honorable Warren Matthews of the Alaska Supreme Court. Orlando received his bachelor's degree in International Business from the University of Southern California.

Steven Weinmann. Steven Weinmann is a senior counsel with Capstone Law and leads the consumer rights team. His practice encompasses complex and class action litigation, including consumer product and services cases under California's Unfair Competition Law (UCL), data privacy breach cases, and a special emphasis on vehicle defect litigation. He has a background in securities litigation, antitrust, environmental law, and consumer class action cases.

Prior to joining Capstone, Steven's experience included litigating class actions on behalf of employees and consumers, in addition to representing individuals and small and large companies in various types of litigation, from business disputes to personal injury, financial fraud, construction defects, and products liability. Steven has been instrumental in achieving favorable results for numerous certified classes, including cases against Home Depot USA (for wage and hour and UCL claims); LegalZoom.com, Inc. (claims involving illegal practice of law); Wells Fargo Bank, N.A. (UCL, CLRA, federal Truth in Lending Act [TILA] claims). Steven briefed and help bring about numerous reported decisions including *Fraleigh v. Facebook*, 830 F.Supp.2d 785 (N.D. Cal. 2011) (defeating a motion to dismiss on claims involving the right to publicity); *Ceja v. Rudolph & Sletten*, 194 Cal.App.4th 584 (Sixth Appellate Div. 2011), affirmed, California Supreme Court, 56 Cal. 4th 1113 (2013) (confirming the test for determining putative spouse status is a subjective one). He also helped brief and obtained a decision favorable to plaintiffs in a seminal case under California's UCL, *McAdams v. Monier, Inc.*, 182 Cal.App.4th 174 (2010) (deciding only the named class representative needed to satisfy Proposition 64 standing requirements). He received his J.D. with distinction from the Hofstra University School of Law, where he was an associate editor on the Hofstra Law Review, and earned his undergraduate degree in English Literature and Political Science from Rutgers University.

Tarek Zohdy. A senior counsel with Capstone Law, Tarek Zohdy develops, investigates and litigates automotive defect class actions, along with other consumer class actions for breach of warranty and consumer fraud. At Capstone, he has worked on several large-scale automotive class actions from investigation through settlements that have provided significant relief to millions of defrauded car owners. Before joining Capstone, Mr. Zohdy spent several years representing individual consumers in their actions against automobile manufacturers and dealerships for breaches of express and implied warranties pursuant to the Song-Beverly Consumer Warranty Act and the Magnuson-Moss Warranty Act, commonly referred to together as "Lemon Law." He also handled fraudulent misrepresentation and omission cases pursuant to the Consumers Legal Remedies Act. Mr. Zohdy graduated from Louisiana State University *magna cum laude* in 2003, and Boston University School of Law in 2006, where he was a member of the criminal clinic representing underprivileged criminal defendants.

Associates

Brandon Brouillette. Brandon Brouillette is an associate with Capstone Law, where his practice focuses on representing employees and consumers in complex litigation, primarily wage-and-hour class actions and PAGA representative actions. Mr. Brouillette's entire legal career has been devoted to representing individual and class representative plaintiffs against large corporate entities. Prior to joining Capstone, he served as an associate at Boucher LLP where he managed the firm's wage-and-hour class actions. He earned his Juris Doctor from Loyola Law School, Los Angeles, where he spent a summer interning for the legal clearance and corporate legal departments at Warner Bros. He received his undergraduate degree from the University of Southern California, where he majored in Business Administration and spent a semester abroad in Budapest, Hungary. In 2016, Brandon was selected as one of Super Lawyers' "Rising Stars" in Southern California.

Joseph Hakakian. Joseph Hakakian is an associate with Capstone Law. His practice focuses on prosecuting wage-and-hour class and representative actions in state and federal court. Prior to joining Capstone Law, Mr. Hakakian served as a summer clerk for Mark Ozzello at Markun Zusman Freniere & Compton, LLP, working on various actions including wage-and-hour claims, unpaid overtime, false advertising, and unfair competition. He graduated from UCLA School of Law, with a business law specialization, where he served as a staff editor for the Journal of Environmental Law and Policy and worked as a law clerk with the Consumer Protection Division of the Los Angeles District Attorney's Office. Prior to attending law school, Mr. Hakakian received his undergraduate degree from University of California, Los Angeles, in 2013, where he graduated summa cum laude, Dean's Honor List, and College Honors, and received scholastic achievement awards from Golden Key Honor Society and Phi Alpha Theta Honor Society. Joseph is an active member of the Consumer Attorneys Association of Los Angeles (CAALA), Consumer Attorneys of California (CAOC), and Beverly Hills, Los Angeles County, and Santa Monica Bar Associations.

Michelle Kennedy. Michelle Kennedy is an associate with Capstone Law. Her practice focuses on analyzing pre-litigation wage-and-hour and consumer claims, including claims for overtime wages, meal and rest periods, and off-the-clock work violations. She began her career as a contract attorney in the Utah Attorney General's Civil Litigation Division handling torts, civil rights, and employment law matters. She later founded her own firm handling business and intellectual property matters, where she settled a copyright infringement suit. Prior to moving to Southern California, Ms. Kennedy was recognized by Super Lawyers as a Mountain States Rising Star in 2017 and 2018. She also served as President of the Utah Minority Bar Association and as an Ex-Officio Member of the Utah State Bar Commission. Michelle graduated from the University of Utah S.J. Quinney College of Law in 2013, where she served as President of the Art Law Alliance and Vice President of the Minority Law Caucus. She earned her undergraduate degree from Brigham Young University in 2010, where she majored in Philosophy. Ms. Kennedy is an active member of the Consumer Attorneys Association of Los Angeles (CAALA) and the Los Angeles County Bar Association. Michelle is admitted to practice law in Utah and California.

Alexander Lima. Alexander Lima is an associate with Capstone Law. His practice focuses on evaluating pre-litigation wage-and-hour claims, including potential violations of overtime and minimum wage law, meal and rest period requirements, and off-the-clock work issues, as well as consumer protection claims. Previously, Mr. Lima was an associate at a California civil litigation practice representing individuals and entities in real estate disputes. He graduated from Santa Clara University, School of Law in 2018, where he served as an Executive Board Member of the Honors Moot Court and was selected as a regional finalist for the American

Bar Association Negotiation Competition. He received his undergraduate degree from the University of California, Riverside in 2014.

Trisha Monesi. Trisha Monesi is an associate with Capstone. Her practice focuses on prosecuting consumer class actions in state and federal court. Ms. Monesi graduated from Loyola Law School, Los Angeles in 2014, where she served as an editor of the Loyola of Los Angeles Entertainment Law Review and was a certified law clerk at the Center for Juvenile Law and Policy. She earned her undergraduate degree from Boston University in 2011, where she majored in Political Science and International Relations. She is an active member of the Women Lawyers Association of Los Angeles, and the Los Angeles County and Beverly Hills Bar Associations.

Cody Padgett. An associate with Capstone, Cody Padgett's practice focuses on prosecuting automotive defect and other consumer class action cases in state and federal court. He handles consumer cases at all stages of litigation, and has contributed to major settlements of automobile defect actions valued in the tens of millions. Prior to joining Capstone Law, Mr. Padgett was a certified legal intern with the San Diego County Public Defender's Office. During law school, Mr. Padgett served as a judicial extern to the Honorable C. Leroy Hansen, United States District Court for the District of New Mexico. He graduated from California Western School of Law in the top 10% of his class and received his undergraduate degree from the University of Southern California, where he graduated *cum laude*.

Julian Quattlebaum. Julian Quattlebaum is an associate with Capstone. His practice focuses on analyzing pre-litigation wage-and-hour and consumer claims, including claims for overtime wages, meal and rest periods, and off-the-clock work violations. He began his career at an entertainment law firm, handling intellectual property matters, copyright infringement disputes, and contract litigation. During his time at the firm, he authored an amicus brief that was quoted in oral argument before the Ninth Circuit Court of Appeals during en banc review. Later, he helped author an appellate brief regarding the rights to the storyline of a successful Disney film franchise. Mr. Quattlebaum graduated from Emory University School of Law in 2019. While there, he was a member of the Moot Court Society, representing the school at the NYU Immigration Law competition in his second year, and the National Competition in his third year. He was given the Society's Award for Excellence in Oral Advocacy and was inducted into the Order of Emory Advocates. He earned his undergraduate degree from the University of Colorado Boulder in 2015, where he majored in Evolutionary Biology.

OUTREACH AND EDUCATION

To increase public awareness about the issues affecting class action and other representative litigation in the consumer and employment areas, Capstone publishes the Impact Litigation Journal (www.impactlitigation.com). Readers have access to news bulletins, op-ed pieces, and legal resources. By taking advantage of social media, Capstone hopes to spread the word about consumer protection and employee rights to a larger audience than has typically been reached by traditional print sources, and to thereby contribute to the enforcement of California's consumer and workplace protection laws.

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF SAN DIEGO

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

13 Plaintiff,

14 vs.

15 BENIHANA NATIONAL CORP., a Delaware
16 corporation; BENIHANA BEVERLY HILLS
CORP., a Florida corporation; BENIHANA
17 CARLSBAD CORP., a Delaware corporation;
BENIHANA DOWNEY CORP., a Florida
18 corporation; BENIHANA ENCINO CORP., a
California corporation; BENIHANA
19 INTERNATIONAL, INC., a Delaware
corporation; BENIHANA MARINA CORP., a
20 California corporation; BENIHANA
MONTEREY CORPORATION, a Delaware
21 corporation; BENIHANA OF PUENTE HILLS
CORP., a Delaware corporation; BENIHANA
22 ONTARIO CORP., a Delaware corporation;
BENIHANA SANTA ANITA CORP., a
23 Delaware corporation; BENIHANA SUNRISE
CORPORATION, a Delaware corporation; and
24 DOES 1 through 10, inclusive,

25 Defendants

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

Assigned for all purposes to Judge Earl H. Maas III,
Dept. N-28

**[PROPOSED] ORDER GRANTING MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA SETTLEMENT**

Date: March 19, 2021
Time: 1:30 p.m.
Place: Department N-28

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1. This Order incorporates by reference the Settlement Agreement, and unless indicated otherwise, all capitalized terms used herein will have the same meaning as set forth in the Settlement Agreement.

3. The settlement set forth in the Settlement Agreement, entered into among the Parties and their counsel, is preliminarily approved as it appears to be proper, to fall within the range of reasonableness, to be the product of arm's-length and informed negotiations, to treat all Class Members fairly, and to be presumptively valid, subject only to any objections that may be raised by Class Members to the Class Settlement at or before the final approval hearing.

5. The Court also finds that settlement now will avoid additional and potentially substantial litigation costs, as well as delay and risks if the Parties were to continue to litigate the Action.

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ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

7. Except as otherwise provided by Paragraph 44 of the Settlement Agreement, the rights of any potential dissenters to the proposed Settlement are adequately protected in that they may exclude themselves from the Settlement and proceed with any alleged claims they may have against Defendants, or they may object to the Settlement and appear before this Court. However, to do so they must follow the procedures outlined in the Settlement Agreement and Notice of Class Action Settlement.

8. The Court approves, as to form and content, the proposed Notice of Class Action Settlement (“Notice Packet”).

9. The Court directs the mailing, by First-Class U.S. mail, of the Notice Packets to Class Members in accordance with the schedule set forth below and the other procedures described in the Settlement Agreement. The Court finds that the method selected for communicating the preliminary approval of the Settlement Agreement to Class Members is the best notice practicable under the circumstances, constitutes due and sufficient notice to all persons entitled to notice, and thereby satisfies due process.

10. The Court appoints Plaintiff Ari Gold as the representative for the Settlement Class conditionally certified by this Order.

11. The Court appoints Capstone Law APC as Class Counsel. The Court finds that counsel have demonstrable experience litigating, certifying, and settling class actions, and will serve as adequate counsel for the Class conditionally certified by this Order.

12. The Court approves and appoints Simpluris, Inc. as the Settlement Administrator.

13. The following dates shall govern for purposes of this Settlement:

Date	Event
April 8, 2021 (or not later than 20 calendar days after the Court grants preliminary approval of the Settlement Agreement, if later)	Last day for Defendants to produce the Class List to the Settlement Administrator.
April 19, 2021 (or not later than 10 calendar days after Defendants produce the Class List, if later)	Last day for the Settlement Administrator to mail Notice Packets to all Class Members.
June 3, 2021 (or not later than 45 calendar days after the Settlement Administrator mails the Notice Packets, if later)	Last day for Class Members to submit Requests for Exclusion or Objections to the class settlement (but not the PAGA settlement).
June 25, 2021	Last day for Plaintiff to file the Motion for Final Approval of Class Action Settlement and Motion for Attorneys’ Fees, Costs, and a Class Representative Enhancement Payment.

Date	Event
July 23, 2021 at 1:30 p.m.	Hearing on Motion for Final Approval of Class Action Settlement and Motion for Attorneys' Fees, Costs, and a Class Representative Enhancement Payment.

14. The Court expressly reserves the right to continue or adjourn the final approval hearing without further notice to the Class Members.

IT IS SO ORDERED.

Dated: _____

Hon. Earl H. Maas III
San Diego Superior Court Judge