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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

DANGELO RANDLE-TATUM an individual,
on behalf of himself and others similarly
situated

PLAINTIFF,

v.

HOPDODDY BURGER BAR, INC.; and
DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 21STCV21015

[Case Assigned for All Purposes to the Hon.
Yvette M. Palazuelos in Dept. 9]

**DECLARATION OF KELSEY M.
SZAMET IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

*[Filed concurrently with Motion for
Preliminary Approval of Settlement and
[Proposed] Order Thereon]*

Date: October 19, 2022

Time: 10:00 a.m.

Dept.: 9

Complaint Filed: June 4, 2021
SAC Filed: May 31, 2022
Trial Date: None Scheduled

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I, Kelsey M. Szamet, state and declare as follows:

1. I am an attorney admitted before all courts of the State of California and a partner in the law firm of Kingsley & Kingsley, APC, counsel of record for Plaintiff in this action. I am completely familiar with the present litigation, including the pleadings, discovery, and filings submitted in this matter. I make this Declaration from my own personal knowledge, and, if called upon, I could and would competently testify to the following.

2. I graduated cum laude from the University of California, San Diego in 2004 with a degree in Human Development. I graduated from the University of California, Los Angeles School of Law in 2008. I am admitted to practice before the following Courts: United States Supreme Court; United States District Court, Northern, Eastern, Southern and Central of California; all California State Courts.

3. I make this Declaration in support of Plaintiff's Motion for Preliminary Approval of the Class Action Settlement in the above-captioned case.

RELEVANT PROCEDURAL HISTORY

4. Defendant is a fast-casual burger restaurant and bar with four locations in California. Plaintiff, Settlement Class members, and PAGA Settlement Class members are current and former non-exempt employees employed by Defendant who earn hourly wages.

5. On June 4, 2021, Plaintiff gave written notice by online filing to the LWDA, setting forth the facts and theories of the violations alleged against Defendant, paid the filing fee, and received an e-filing confirmation.

6. On June 4, 2021, Plaintiff filed a Complaint for Damages against Defendant in the Los Angeles Superior Court, Case No. 21STCV21015 entitled *DANGELO RANDLE-TATUM, an individual, on behalf of himself and others similarly situated, Plaintiff, v. HOPDODDY BURGER BAR, INC.; and DOES 1 thru 50, inclusive, Defendants* on June 4, 2021.

7. On September 16, 2021, pursuant to Labor Code § 2699.3(a)(2)(A), after the sixty-five-day waiting period to commence a representative action as though the LWDA had not chosen to investigate under PAGA lapsed, Plaintiff filed a First Amended Complaint to add a respective

PAGA claim as a matter of right (*see* Labor Code section 2699.3(2)(c))¹.

8. The amended complaint alleges causes of action for: (1) Failure to Pay Wages and Overtime Pursuant to Labor Code §§ 510, 1194, and 1199; (2) Failure to Provide Rest Periods under Labor Code § 226.7; (3) Failure to Reimburse Expenses Pursuant to Labor Code §2802; (4) Waiting Time Penalties Pursuant to Labor Code § 203; (5) Unfair Competition Pursuant to Business & Professions Code § 17200; and (6) Penalties Pursuant to Labor Code § 2699, *et seq.*

THE DISCOVERY PROCESS AND MEDIATION

9. After the matter was at issue, the Parties began to engage in extensive informal discovery to understand the nature of the allegations and the scope of potential liability.

10. Defendant provided Plaintiff's counsel with pertinent data for the Class Members and PAGA Members so that the Parties could fully-investigate the claims at issue and understand their strengths and weaknesses. Specifically, Defendant provided Plaintiff's Counsel with Plaintiff's personnel file, time records, payroll records, and relevant policies.

11. On March 8, 2022, the Parties attended a full-day Zoom mediation with experienced mediator Steve Rottman.

12. The Parties reached a settlement that day to settle all claims that were or could have been asserted in the operative complaint on a class and representative-wide basis.

13. As part of the settlement, the Parties agreed to permit Plaintiff to submit an amended PAGA notice to the LWDA and file a Second Amended Complaint, adding additional claims for meal breaks under Cal. Lab. Code section 226.7 and 512 and wage statements under Cal. Lab. Code section 226(a).

14. On March 24, 2022, Plaintiff submitted an amended PAGA notice to the LWDA and on May 31, 2022, Plaintiff filed his Second Amended Complaint.

15. Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, disputes the damages and penalties claimed by Plaintiff, and further contends

¹ "Notwithstanding any other provision of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising under this part at any time within 60 days of the time periods specified in this part."

1 that, for any purpose other than settlement, Plaintiff's claims are not appropriate for class or
2 representative action treatment. Defendant contends, among other things, that, at all times, it has
3 complied with the California Labor Code and the Industrial Wage Commission Orders.

4 16. Based on their own independent investigation and evaluation, I am of the opinion
5 that the Settlement with Defendant is fair, reasonable and adequate, and in the best interest of the
6 settlement classes in light of all known facts and circumstances, including the risk of significant
7 delay, defenses asserted by Defendant, uncertainties regarding a class and representative action
8 trial on the merits, and numerous potential appellate issues. Although Defendant denies any
9 liability, Defendant is agreeing to this Settlement solely to avoid the cost of litigation.
10 Accordingly, the Parties and their counsel desire to fully, finally, and forever settle, compromise
11 and discharge all disputes and claims arising from or relating to the Action on the terms set forth
12 in the Settlement Agreement and detailed herein.

13 **CERTIFICATION FOR SETTLEMENT PURPOSES**

14 17. Plaintiff maintains that the proposed Settlement Class is ascertainable for several
15 reasons: First, Defendant has agreed in the Settlement to provide a class list to the Settlement
16 Administrator containing the full name; last known address; last known home telephone number;
17 social security number; dates of employment, and Compensable Work Weeks for all putative class
18 members after issuance of the preliminary approval order.

19 18. Class Members consist of Defendant's non-exempt employees, and Defendant is
20 required to keep records of its non-exempt employees' names, home addresses, and social security
21 numbers.

22 19. Defendant informally produced Plaintiff's personnel file and wage statements,
23 relevant policies, and a sampling of time and pay data, which confirms that Class Members may
24 be readily identified based on Defendant's records.

25 20. Plaintiff is confident he will be able to establish that the proposed Settlement Class
26 is ascertainable and sufficiently numerous.

27 21. Plaintiff argues that there are questions of law and fact common to the proposed
28 Settlement Class that predominate over any questions affecting only individual Class Members.

22. Plaintiff contends that these common questions include:

- 1) Whether Defendant failed to pay all wages and/or overtime compensation;
- 2) Whether Defendant failed to provide lawfully required meal periods and/or failed to compensate employees one (1) hour's wages in lieu thereof;
- 3) Whether Defendant failed to provide lawfully required rest periods and/or failed to compensate employees one (1) hour's wages in lieu thereof;
- 4) Whether Defendant failed to reimburse business-related expenses;
- 5) Whether Defendant failed to provide accurate itemized wage statements;
- 6) Whether Defendant failed to pay compensation due and owing upon termination of employment;
- 7) Whether Defendant engaged in unfair competition; and,
- 8) Whether Defendant violated § 2699, et seq. of the Labor Code by engaging in the acts previously alleged.

23. Plaintiff contends that his challenge to Defendant's allegedly uniform policies and practices involves common factual and legal issues that are amenable to class treatment.

24. Plaintiff maintains that the proposed Class Members suffered the same injuries, in the same manner: (1) Class Members did not receive all wages and/or overtime; (2) Class Members did not receive their meal and rest periods as required; (3) Class Members were not reimbursed for business-related expenses; (4) Class Members were not provided accurate itemized wage statements; and (5) Class Members were not paid all wages owed upon termination/resignation.

25. Class Counsel contend that the evidence reviewed demonstrates that common policies applied to the proposed Class Members and certification for settlement purposes is appropriate.

26. Plaintiff worked as a dishwasher and burger builder for Defendant from approximately April 2019 to June 14, 2020, earning approximately \$13.70 per hour.

27. Plaintiff alleges that he: (1) worked without being paid all wages and/or overtime; (2) worked without being provided meal/rest periods as required by law; (3) worked without being reimbursed for costs associated with personal cell-phone usage; (4) worked without being provided

1 accurate itemized wage statements; and (5) worked without being paid all wages due upon
2 separation. He also alleges that he experienced derivative claims for unfair business competition
3 (B&P Code §17200) and Labor Code §2699, et seq.

4 28. Plaintiff also contends that his claims are typical of those of the Settlement Class.

5 29. Plaintiff believes that he is capable of fairly representing and adequately protecting
6 the interests of the proposed Class Members.

7 30. The members of the proposed Settlement Class all worked for Defendant during
8 the relevant time period and incurred the same type of alleged damages with regard to Defendant's
9 alleged violations of the law.

10 31. Plaintiff has agreed to serve as Named Plaintiff and has retained qualified Counsel
11 who is experienced in prosecuting wage and hour class actions.

12 32. This demonstrates his commitment to bringing about the best possible results for
13 the benefit of the proposed Settlement Class.

14 33. Plaintiff has provided his Counsel with all necessary and pertinent information.

15 34. He has been a very active participant in the litigation including having frequent
16 contact with Class Members and working closely with Class Counsel to develop the theories of
17 liability.

18 35. Plaintiff has provided his Counsel with all necessary and pertinent information.

19 36. Plaintiff believes that he has and will continue to adequately represent the proposed
20 Class Members.

21 37. Plaintiff has provided his Counsel with all necessary and pertinent information.

22 38. In this regard, the superiority of class treatment is evident here because individual
23 pursuit of class members' claims may not be economically viable.

24 39. Plaintiff contends that the only alternative to certification would be to force
25 employees with over 35,675 work weeks combined to join this action, file individual, uniform
26 actions, or abandon their legal rights altogether.

27 40. Plaintiff maintains that this economic reality would result in a windfall for
28 Defendant if this case were not certified.

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42. The Class Period is June 4, 2017 through May 8, 2022.

43. Based on documents and other information produced by Defendant, there are approximately 35,675 work weeks at issue.

45. The Net Settlement Amount is the Gross Settlement Amount, less Court-approved Class Counsel Award, Enhancement Payment, PAGA Payment, and Settlement Administrator costs.

46. This discovery permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation.

48. Throughout the relevant period, Plaintiff contends that he and other Class Members were subject to the control of Defendant without being compensated for those “hours worked.”

50. Despite being off the clock, Plaintiff contends that managers posted and sent messages on the phone applications to Plaintiff and Class Members and required employees to review and respond to these postings and messages.

51. Plaintiff contends that this was a daily requirement for the benefit of the employer, as creating and discussing work schedules was necessary to ensure that shifts were covered at all

1 times.

2 52. Plaintiff contends that this was done with the knowledge and direction of
3 Defendant, thus Plaintiff and Class Members are certainly entitled to be compensated for this time
4 worked.

5 53. There are certainly risks associated with this claim, however.

6 54. “Off the clock” claims can be difficult to prove because there are no time and pay
7 records associated with the alleged unpaid time.

8 55. This can present significant hurdles to establishing classwide liability.

9 56. Defendant will further contend that Plaintiff’s allegations can only be proven
10 through testimonial evidence and you would have to talk to each class member and determine
11 whether they were in fact required to perform any work off the clock.

12 57. Defendant will argue that this could easily devolve into a series of mini-trials that
13 would defeat the purpose of class certification altogether.

14 58. While Plaintiff disagrees with this analysis and believes that the claim could be
15 proven through survey evidence, Plaintiff certainly had to acknowledge that there are risks
16 associated with establishing liability.

17 59. Because there was uncertainty associated with this claim, Plaintiffs ultimately
18 believed that a discount was appropriate.

19 60. Plaintiff contends that Defendant violated California’s meal break laws by not
20 allowing Plaintiff and other similarly situated Class Members, to take daily meal breaks, including
21 second meal periods.

22 61. Due to the hectic nature of the job, Plaintiff alleged that he was frequently unable
23 to take a meal break at all and, when they were able, meal breaks were generally less than 30
24 minutes.

25 62. Plaintiff alleges that Defendant violated California’s meal period laws by not
26 paying Plaintiff and other similarly situated Class Members one (1) hour of pay at the employees’
27 regular rate of compensation for each workday that the first meal period was not provided within
28 the first (5) hours of the shift.

63. Defendant vehemently denies the alleged meal break claim.

64. Defendant contends that Plaintiff and all Class Members were provided with all required meal periods and that Defendant automatically paid meal period premiums based on time records in an abundance of caution regardless of whether the employee chose to waive his or her meal break.

65. Plaintiff was aware that this would be a hotly contested issue and had to acknowledge that there was certainly some risk associated with this claim.

66. Plaintiff and the Class' rest period claims arise from an alleged common course of conduct wherein Defendant did not provide employees with the opportunity to take a second 10-minute rest break for shifts between 6-8 hours in compliance with California law.

67. Plaintiff contends that he and the Class Members consistently worked shifts of 6+ hours and were not authorized or permitted to take second rest breaks.

68. For each rest period Plaintiff and the Class Members allege they were not provided with, Plaintiff contends that Defendant is liable for one (1) additional hour of pay at the employee's regular rate of compensation.

69. Defendant argued that it maintained a facially compliant policy that "provided" all required rest periods, it never interfered with Plaintiff's or any Class Members' ability to take all compliant rest periods, and there was regularly downtime available to take all necessary rest breaks.

70. Plaintiff acknowledges that rest period claims can be difficult to prove on a classwide basis due to the lack of records.

71. This is especially true when an employer maintains a facially compliant rest period policy.

72. Defendant maintained that this would devolve into a series of mini-trials where the trier of fact would be entitled to hear from each class member as to whether they were in fact provided the opportunity to take all required rest periods each day.

73. Defendant argued this would defeat class certification and make it nearly impossible to prove this claim on a classwide basis.

1 74. Based on this significant risk, Plaintiff believed it was appropriate to significantly
2 discount this claim.

3 75. Plaintiff alleges that Defendant failed to reimburse him and all Class Members for
4 use of their personal cell phones, necessary in executing Class Members' duties under Defendant's
5 employ.

6 76. Plaintiff contends that Class Members used their cell phones daily to view their
7 schedules and communicate with their managers while off the clock as discussed above.

8 77. Pursuant to Labor Code section 2802, Plaintiff maintains that Defendant is required
9 to reimburse Plaintiff and the Class for a proportion of their cell phones, respective cell phone
10 bills, and any/all purchased applications.

11 78. Defendant denied this claim and argued that Plaintiff and all Class Members were
12 not required to use their personal cellphones for work at all.

13 79. Defendant argued that it provided employees' schedules in store and there were
14 computers readily available in store to view their schedules and communicate with supervisors, as
15 needed.

16 80. If a class member chose to use his/her cellphone, it was an available option for
17 convenience for the user, but not a requirement by Defendant.

18 81. Defendant argued that even assuming Plaintiff were to prevail, the potential
19 damages are extremely minimal since employees maintained personal cell phones anyway and
20 only a very small fraction of their phone plan could potentially be attributed to Defendant.

21 82. Plaintiff contends that he and all Class Members are issued wage statements that
22 do not include all applicable hourly rates in effect during the pay period and the corresponding
23 number of hours worked at each hourly rate by the employee in violation of the Labor Code.

24 83. Plaintiff alleged that he and the Class Members are issued wage statements that do
25 not include meal and rest premiums as a result of the claims alleged above and when they do, they
26 are not at the accurate rate.

27 84. Plaintiff maintains Defendant's failure to provide accurate itemized wages
28 statements according to Labor Code § 226(a) was all done on a regular and consistent basis.

1 85. Defendant contends that this is a derivative argument, and Plaintiffs did not plead
2 a direct violation of section 226(a).

3 86. If Defendant were to succeed on the wage claim based on the arguments set forth
4 above, then Plaintiff's section 226(a) claim would also fail.

5 87. Defendant would apply *Maldonado* to argue that a potential mistake on a wage
6 statement cannot give rise to section 226(a) liability, only completely missing information that is
7 required to be shown.

8 88. Many Class Members, including Plaintiff, are no longer employed by Defendant.

9 89. Plaintiff contends that Defendant has failed to pay employees wages immediately
10 or within 72 hours of termination and/or resignation by not paying all wages and overtime owed.

11 90. Plaintiff contends that "waiting time" penalties would be triggered for each former
12 employee in the class.

13 91. Defendant argues that a good-faith belief applies here and that its actions were not
14 willful.

15 92. The well-settled meaning of "willful," as used in Labor Code section 203, is that
16 an employer has intentionally failed or refused to perform an act which was required to be done.

17 93. Plaintiff contends that Defendant knew wages were owed but failed to pay them.

18 94. Plaintiff gave the requisite notice on June 4, 2021, and the LWDA did not timely
19 respond to Plaintiff's letter.

20 95. Plaintiff then filed a Complaint in Superior Court for the alleged violations.

21 96. The 65-day period elapsed that Plaintiff was required to wait from June 4, 2021 (the
22 date of the PAGA Letter) to amend the Complaint to add a cause of action for penalties pursuant
23 to Labor Code section 2699, *et seq.*

24 97. Plaintiff has therefore exhausted his administrative requirements necessary to bring
25 an action to recover civil penalties as specified in section 2699, subdivision (f)(2).

26 98. Plaintiff contends that he may therefore prevail on this PAGA claim without
27 demonstrating any injury; the failure to comply with the Labor Code is sufficient to establish a
28 violation and recover civil penalties.

1 99. Plaintiff contends that he is an “aggrieved employee,” as defined by section 2699,
2 subdivision (c), because he is a person who was employed by the alleged violator and against
3 whom one or more of the alleged violations was committed.

4 100. Prior to bringing this action, Plaintiff exhausted the administrative remedies set
5 forth in Labor Code section 2699.3.

6 101. There is significant expense associated with the class certification process, which
7 the Parties can avoid by entering into the contemplated Settlement now.

8 102. If the Court did eventually certify the class, trial of a case involving approximately
9 35,675 work weeks would require the retention of expensive expert witnesses, the accrual of
10 extensive litigation costs, and a significant time overlay by the parties.

11 103. Given the complexity and unsettled nature of the issues in this case it is likely that
12 any outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result
13 in further delay for the Class Members who are waiting for a resolution in this matter.

14 104. This case has not been certified to be tried as a class action. While Plaintiff believes
15 there is strong evidence to support certification of several possible subclasses, certification is
16 always hard fought and subject to judicial discretion. Moreover, in class actions, decertification
17 is always a possibility. In attempting to certify a class, the parties would need to conduct multiple
18 depositions, including of the Named Plaintiff and of several person(s) most knowledgeable
19 regarding Defendant’s policies. There is a risk for both sides as to what these depositions will
20 reveal and whether they will support class certification to the extent expected.

21 105. It was very difficult for the Parties to reach this Settlement of \$650,000.00.

22 106. This Settlement is the result of adversarial, non-collusive, and arms-length
23 negotiations. The Parties arrived at it after extensive investigation and the exchange of a
24 significant amount of data and information, careful evaluation of the law, risks, and all information
25 substantiating the amount of penalties reasonably likely to be awarded to the class were the trier
26 of fact to find Defendant liable, and the assistance of an experienced wage and hour class action
27 and PAGA mediator Steve Rottman.

28 107. Plaintiff assessed full value of the wage/overtime claim, without any discount, at

1 approximately \$352,752.

2 108. This calculation assumed 30 minutes per week of off the clock time based on the
3 allegations discussed above.

4 109. Defendant provided time and pay data for 660 employees.

5 110. Working with an expert and analyzing the data, which covered years 2017-2021,
6 Class Counsel was able to determine the number of total shifts and workweeks at issue, average
7 rates of pay, and pay periods at issue for the class of 703 individuals.

8 111. Using the same data set, Counsel assessed full value of the meal period claim,
9 without any discount, at approximately \$845,485.

10 112. This calculation assumes a 100% violation rate for all shifts over 6 hours in length.

11 113. Class Counsel assessed full value of the rest period claim, without any discount, at
12 approximately \$845,485.

13 114. Just as with meal periods, this calculation assumes a 100% violation rate for all
14 shifts over 6 hours in length.

15 115. With regard to the reimbursement claim analysis, Plaintiff believed that it was
16 reasonable to value assume damages of \$25/month per employee for reimbursement of personal
17 cell phone usage for work purposes. This brought the maximum potential damages for this claim
18 to \$281,203.

19 116. Plaintiff valued the wage statement claim, without discount, at \$573,750.

20 117. Plaintiff used \$50 for the initial and \$100 for each subsequent wage statement
21 issued with a cap of \$4,000.

22 118. Due to the risk discussed above that 226(a) liability wouldn't attach under
23 *Maldonado*, Plaintiff determined that a steep discount of this claim was fair for settlement
24 purposes.

25 119. Plaintiff valued the waiting time claim at \$1,137,740.

26 120. Considering the derivative nature of Labor Code § 203, the state of the law at the time
27 under *Naranjo*, and the dispute over whether class members were owed any wages, Plaintiff
28 determined that accepting a discount on this claim was appropriate.

1 121. Plaintiff calculated the value of the PAGA claim at \$615,400 for Class Members
2 (using \$100 per pay period).

3 122. The main risk taken into account with PAGA is the discretionary nature of the
4 penalty award.

5 123. A judge can award the statutory maximum of \$100 for the initial violation and \$200
6 thereafter or – in theory – one cent per wage statement.

7 124. While there is a dearth of available authority, in Plaintiff's view, were he to succeed
8 on any of the underlying Labor Code violations, it is not likely that a Judge would also award a
9 large amount of penalties of top of any damages recovered.

10 125. Per Plaintiff's assessment, the maximum potential value of all of Plaintiff's and the
11 Class Members' claims was approximately \$4,651,815.

12 126. However, there are significant risks associated with the merits as discussed above.

13 127. Plaintiff's assumptions for exposure purposes certainly may be overstated.

14 128. If the assumptions associated with the off the clock wages were changed from 30
15 minutes per week to 10 minutes per week, the maximum exposure would decrease from \$352,752
16 to \$117,584.

17 129. If the assumptions associated with the meal and rest breaks were reduced from a
18 100% violation rate to 25%, this would reduce the combined exposure from \$1,690,970 to
19 \$422,742.50.

20 130. If the assumption associated with the reimbursement claim was reduced from
21 \$25/month to \$5/month, the exposure decreases to \$56,240.60.

22 131. At the time of settlement, *Naranjo* was undecided so it was reasonable to consider
23 the risk associated with the derivative Labor Code 226(a) claim.

24 132. If Plaintiff lost that claim altogether as there was no standalone violation pled and
25 it was reduced to \$0, the total exposure is reduced further.

26 133. It is certainly possible that a Court could reduce the PAGA exposure greatly.

27 134. If a court were to award 20% of the maximum penalty exposure, that amount is
28 reduced from \$615,400 to \$123,080.

1 135. Taking all of these reductions together, the maximum exposure figure is reduced to
2 \$1,857,387.

3 136. Class Counsel believes this is a more realistic exposure estimated to measure the
4 proposed settlement against.

5 137. Taking these discounts together with the risks articulated above, Class Counsel
6 believes the Gross Settlement Amount of \$650,000.00 is fair and reasonable.

7 **ATTORNEY COMPETENCE**

8 138. Kingsley & Kingsley is very experienced in prosecuting employment litigation, and
9 since 2000 we have focused our practice on wage, hour, and working condition violations. My
10 firm is extremely well versed in class action litigation and has diligently and aggressively pursued
11 this action. Kingsley & Kingsley currently serves as class counsel for several dozens of pending
12 class action lawsuits in Northern, Central, Eastern, and Southern California in both State and
13 Federal Court. Below is a small, but representative sampling of wage and hour cases handled by
14 my firm:

- 15 a. *Goodman v. Crystal Ventures, Inc.* (No. BC245561, L.A. Super. Ct.) In January
16 2002, Hon. Anthony Mohr granted final approval of settlement in the gross amount
17 of \$255,000 and the court approved the attorneys' fee request of 33 1/3%.
- 18 b. *Johnston v. The Cheesecake Factory* (No. BC316180, L.A. Super. Ct.) In
19 December 2005, Honorable Rita Miller granted final approval of Settlement in the
20 gross amount of \$4,000,000 and the court granted attorneys' fees request of 30%.
- 21 c. *Tumino v. HOB Entertainment* (No. BC327962, L.A. Super. Ct.) In May 2006, the
22 Honorable Conrad R. Aragon granted final approval of Settlement in the gross
23 amount of \$1,000,000 and the court granted attorneys' fees request of 30%.
- 24 d. *Ryan v. Hilton Hotels Corporation*, (No. BC364260, L.A. Super. Ct.) In March
25 2008, the Honorable Mary Thornton House granted final approval of Settlement in
26 the gross amount of \$1,675,000.00 and the court granted attorneys' fees request of
27 33 1/3%.
- 28 e. *Gerritson v. Styles For Less, Inc.*, (No. BC402921, L.A. Super. Ct.) In September

2010, the Hon. Kenneth R. Freeman granted final approval of Settlement in the gross amount of \$2,000,000.00, and the court granted attorneys' fees request of 33.3%.

f. *Lewis v. Collabrus, Inc., et al.*, (No. 109CV-142927, Santa Clara Super. Ct.) In March 2012, the Honorable James P. Kleinberg granted final approval of Settlement in the gross amount of \$2,000,000.00, and the court granted attorneys' fees request of 33.3%.

g. *Hirschinger v. Blue Cross of California*, Los Angeles Superior Court (No. BC402739, L.A. Super. Ct.) In June 2013, the Honorable Lee Smally Edmund granted final approval of Settlement in the gross amount of \$4,700,000.00, and the court granted attorneys' fees request of 38%.

h. *Anderson v. Total Renal Care, Inc.*, (No. BC388335, L.A. Super. Ct.) In January 2014, the Honorable William F. Highberger granted final approval of Settlement in the gross amount of \$1,500,000.00 and the court granted attorneys' fees request of 33.33%.

i. *Rojas, et al. v. Sunview Vineyards of California, Inc.*, Eastern District (1:09-cv-00705 AWIJLT). This certified class action was approved for final settlement by the Honorable Anthony W. Ishii in October 2015, in the gross amount of \$4,550,000.00, with attorneys' fees approved in the amount of \$1,137,500.00.

j. *Westbrook v. International Surfacing Systems*, (No. RG10510015, Alameda Super. Ct.) In August 2015, the Hon. Wynne Carvill granted final approval of Settlement in the gross amount of \$995,000.00, and the court granted attorney's fees request of 33.33%.

k. *Kane et al. v. Valley Slurry Seal*, (No. CV08-2483, Yolo Super. Ct.) In March 2016 after a class trial with a verdict in the class's favor, the Honorable Daniel P. Maguire, awarded Kingsley & Kingsley and co-counsel \$996,232.72 in attorney's fees.

l. *Aparacio v. Abercrombie & Fitch Stores, Inc.*, (No. BC499281, L.A. Super. Ct.) In

June 2016, the Hon. Kenneth Freeman granted final approval of Settlement in the gross amount of \$2,000,000.00, and the court granted attorney's fees request of 33.33%.

m. *Isaguirre v. Guess?, Inc., Los Angeles Superior Court (BC357631)*. The matter was proposed for final settlement by the Honorable Richard L. Fruin on February 19, 2016, in the gross amount of \$5,250,000.

n. *Hirschinger v. Blue Cross of California*, Los Angeles Superior Court (BC402739). The matter was approved for final settlement by the Honorable Lee Smally Edmund in June 2013, in the gross amount of \$4,700,000.00, with attorney's fees request of 38%.

o. *Munoz, et al. v. Giumarra Vineyards Corporation*, United States District Court for the Eastern District of California (Case No.: 1:09-cv-00703 - AWI – JLT). The matter was approved for final settlement by the Honorable Anthony W. Ishii in November 2017, in the gross amount of \$6,100,000.00, plus interest, with attorney's fees benchmark award of \$1,525,000.

p. *Pineda, et al. v. Grimmway Enterprises, Inc.*, Kern County Superior Court (BCV-15-101333). The matter was approved for final settlement before the Hon. Stephen D. Schuett, Dept. 10, in January 2018, in the gross amount of \$9,000,000 with attorneys' fees request of 33.33%.

139. Kingsley & Kingsley, APC filed its first class certification motion in the year 2000 and since that time has been appointed class counsel on dozens of wage and hour class actions that have been approved for class certification. Since 2012, Kingsley & Kingsley, APC has moved for class certification in 15 matters and has successfully obtained class certification in 15 of those cases. A brief sampling of which includes:

a. *Lewis v. Collabrus, Inc., Santa Clara County Superior Court (109CV-142927)*, approved for Class Certification in 2011.

b. *Melendrez v. JK Communications*, No. BC497692, (L.A. Super. Ct., filed December 19, 2012) (court granted contested class certification and appointed

Kingsley & Kingsley as class counsel).

c. *Amaro, et al v. Gerawan Farming, Inc.*, No. 1:14-cv-00147-DAD-SAB (E.D. Cal., filed February 3, 2014) (court granted contested class certification and appointed Kingsley & Kingsley as class counsel).

d. *Suarez v. Mazatlan, Inc.*, No. 37-2015-00002978-CU-OE-CTL (S.D. Super. Ct., filed January 27, 2015) (court granted contested class certification and appointed Kingsley & Kingsley as class counsel).

e. *Ruiz v. Daniel C. Salas Harvesting, Inc.*, Kings County Superior Court (16 C 0214). contested class certification granted in June 2020.

f. *Weldon v. Geo Corrections & Detentions, LLC*, Kern County Superior Court (BCV-16-102833), contested class certification granted in 2018.

g. *Patton v. Skyler Electric*, Nevada County Superior Court, (CU17-082544), contested class certification granted in June 2020.

h. *Hameister v. Jaco Oil Company*, Kern County Superior Court (BCV-17-102876), contested class certification granted in August 2020.

140. Class Counsel is experienced in the handling of wage and hour class actions and supports this Settlement. Based on its analysis, Class Counsel believes that this settlement is fair and reasonable and in the best interest of the Class.

141. After factoring in the risks explained above, Class Counsel believes that the proposed settlement is fair and reasonable.

142. This allocation distributes Settlement funds proportionally to each class member's potential damages and should therefore be approved as fair, adequate, and reasonable.

SERVICE AWARD TO THE NAMED PLAINTIFF

143. The Named Plaintiff is entitled to an enhancement for his valiant effort and time expended in this matter. The time spent by DANGELO RANDLE-TATUM is significant and includes researching and retaining competent counsel; providing information to Class Counsel regarding the nature of the work at Defendant; compiling relevant documents; working closely with Class Counsel to develop the theories of liability and martial relevant evidence; regularly

1 discussing the status of the case with Class Counsel; discussing the case via telephone with many
2 Class Members; and responding promptly to Class Counsel's communications regarding
3 settlement.

4 144. As set forth in the Settlement, Plaintiff will also be entering into a general release
5 of liability pursuant to Civil Code Section 1542.

6 145. Class Counsel considers this to be a fair and reasonable enhancement. The
7 enhancement takes into consideration the time, effort, and expense incurred by Plaintiff in coming
8 forward to litigate this matter on behalf of all Class Members. Plaintiff will provide a detailed
9 declaration with the Final Approval Motion detailing his participation and further justification for
10 the enhancement.

11 **SUBMISSION TO THE LABOR WORKFORCE DEVELOPMENT AGENCY**

12 146. Proof of submission of Plaintiff's Motion, all related documents, and copy of the
13 email from the LWDA confirming receipt is attached hereto as Exhibit "2."

14 **EXHIBITS**

15 147. Attached hereto as Exhibit "1" is a true and correct copy of the fully executed Joint
16 Stipulation of Class and Representative Action Settlement and Release of Claims ("Settlement" or
17 "Settlement Agreement").

18 148. Attached hereto as Exhibit "2" is a true and correct copy of the proof of submission
19 of Plaintiff's Motion, all related documents, and copy of the email from the LWDA confirming
20 receipt.

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

23 This Declaration was executed this 13th day of July, 2022, in Altadena, California.

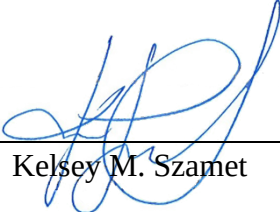
24
25 
26 _____
27 Kelsey M. Szamet
28

EXHIBIT "1"

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Attorneys for Defendant
HOPDODDY BURGER BAR, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DANGELO RANDLE-TATUM, as
individuals, on behalf of himself and others
similarly situated,

Plaintiff,

v.

HOPDODDY BURGER BAR, INC.; and
DOES 1 thru 50, inclusive,

Defendants.

CASE NO. 21STCV21015

[Case Assigned for All Purposes to The
Honorable Yvette M. Palazuelos in Dept. 9]

**JOINT STIPULATION OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT AND RELEASE OF
CLAIMS**

1 This Joint Stipulation of Class and Representative Action Settlement and Release of Claims
2 is entered into by and between Plaintiff DANGELO RANDLE-TATUM (“Plaintiff”), individually
3 and on behalf of the Class and the State of California, as a private attorney general, on the one
4 hand, and Defendant HOPDODDY BURGER BAR, INC. (“Defendant”) on the other hand
5 (Plaintiff and Defendant collectively, the “Parties”).

6 This Joint Stipulation of Class and Representative Action Settlement and Release of Claims
7 shall be binding on Plaintiff, the current and former employees he seeks to represent, the Class,
8 and on Defendant and subject to the definitions, recitals, and terms set forth herein and the approval
9 of the Court.

10 **I. DEFINITIONS**

11 **1. Action.**

12 “Action” or “Lawsuit” means the civil action entitled *Dangelo Randle-Tatum et al. v.*
13 *Hopdoddy Burger Bar, Inc.*, currently pending in Los Angeles County Superior Court, Case
14 Number 21STCV21015.

15 **2. Class Counsel.**

16 “Class Counsel” means Kingsley & Kingsley, APC and Davtyan Law Firm, Inc. who,
17 subject to Court approval, shall act as counsel for the Class.

18 **3. Class Counsel Award.**

19 “Class Counsel Award” means attorneys’ fees for Class Counsel’s litigation and resolution
20 of this Lawsuit, and Class Counsel’s expenses and legal costs incurred in connection with this
21 Lawsuit.

22 **4. Class Information.**

23 “Class Information” or “Class Data” means information regarding Class Members that
24 Defendant will in good faith compile from its records and provide to the Settlement Administrator.
25 It shall be formatted as a Microsoft Excel spreadsheet and shall include: each Class Member’s full
26 name; last known address; last known home telephone number; social security number; dates of
27 employment, and Compensable Work Weeks. The above information shall be provided through
28 data sources compiled by the Defendant.

1 **5. Class Members or Settlement Class.**

2 “Class Members” or “Settlement Class” means all current and former non-exempt
3 employees who were employed for Defendant in California at any time from June 4, 2017 through
4 May 8, 2022.

5 **6. Class Period.**

6 “Class Period” means the period from June 4, 2017 through May 8, 2022.

7 **7. Compensable Work Weeks.**

8 “Compensable Work Weeks” means an estimate of the number of work weeks in which
9 Class Member(s) performed work for Defendant in the State of California during the Class Period
10 based on Defendant’s records.

11 **8. Complaint.**

12 “Complaint” means the operative complaint, filed in the Action.

13 **9. Court.**

14 “Court” means the Superior Court for the County of Los Angeles, State of California.

15 **10. Defendant.**

16 “Defendant” means HOPDODDY BURGER BAR, INC.

17 **11. Effective Date.**

18 “Effective Date” of the Settlement means the date on which the Court’s order granting
19 Final Approval of this Joint Stipulation becomes final. Such order becomes final upon the
20 following events: (i) upon the Court issuing the Final Approval Order granting approval of this
21 Settlement Agreement if no objections to the settlement are filed, or if an objection is filed but is
22 withdrawn prior to the Court’s Final Approval Hearing; or (ii) in the event there are written
23 objections filed prior to the final approval hearing which are not thereafter withdrawn prior to the
24 hearing, the later of the following events: (a) the day after the last day by which a notice of appeal
25 of the order may be timely filed with the California Court of Appeal, and none is filed; (b) if an
26 appeal is filed and is finally disposed of by ruling, dismissal, denial, or otherwise, the day after the
27 last date for filing a request for further review of the Court of Appeal’s decision passes and no
28 further review is requested; (c) if an appeal is filed and there is a final disposition by ruling,

dismissal, denial, or otherwise by the Court of Appeal, and further review of the Court of Appeal's decision is requested, the day after the request for review is denied with prejudice and/or no further review of the order can be requested; or (d) if review is accepted, the day the Supreme Court of the State of California affirms the Settlement.

12. Enhancement Payment.

"Enhancement Payment" means the amount that the Court authorizes to be paid to Plaintiff, in addition to Plaintiff's Individual Settlement Payment, in recognition of Plaintiff's efforts and risks in assisting with the prosecution of the Lawsuit.

13. Final Approval Hearing.

"Final Approval Hearing" means the final hearing held to ascertain the fairness, reasonableness, and adequacy of the Settlement.

14. Final Approval Order.

"Final Approval Order" means the proposed order granting final approval of the Parties' settlement, in a form substantially similar to the order attached hereto as Exhibit C.

15. Final Judgment.

"Final Judgment" means a judgment issued by the Court approving this Agreement as binding upon the Parties. The Final Judgment shall constitute a judgment respecting the Parties within the meaning and for purposes of California Code of Civil Procedure sections 577, 581d, and 904.1(a), and on the PAGA claims for purposes of enforcing the rule announced in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009).

16. Gross Settlement Amount.

"Gross Settlement Amount" means the agreed upon settlement amount totaling \$650,000.00 to be paid by Defendant in full settlement of the Released Class Claims and Released PAGA Claims, and includes without limitation the Class Counsel Award, Enhancement Payment, Individual Settlement Payments, PAGA Payment, and Settlement Administrator Costs.

17. Individual Settlement Payment.

"Individual Settlement Payment" means the amount paid from the Net Settlement Amount to a Participating Class Member based upon his/her Compensable Work Weeks.

1 **18. LWDA.**

2 “LWDA” means the California Labor and Workforce Development Agency.

3 **19. Named Plaintiff or Plaintiff.**

4 “Named Plaintiff” or “Plaintiff” means Plaintiff DANGELO RANDLE-TATUM.

5 **20. Net Settlement Amount.**

6 “Net Settlement Amount” means the Gross Settlement Amount, less Court-approved Class
7 Counsel Award, Enhancement Payment, PAGA Payment, and Settlement Administrator costs.
8 The Net Settlement Amount shall be distributed to the Class Members.

9 **21. Notice of Class Action Settlement.**

10 “Notice of Class Action Settlement” means the Notice of Pendency of Class Action
11 Settlement and Hearing Date for Court Approval substantially in the form attached hereto as
12 Exhibit A, which shall include an approximation of each Class Member’s anticipated Individual
13 Settlement Payment. It is the notice approved by the Parties and subject to Court approval
14 explaining the terms of this Agreement and the settlement process, which the Settlement
15 Administrator will mail to each Class Member.

16 **22. PAGA.**

17 “PAGA” refers to the Labor Code Private Attorneys General Act of 2004, codified at Labor
18 Code §§ 2698 et seq.

19 **23. PAGA Letter.**

20 “PAGA Letter” means the letter that will be sent to the PAGA Members with their
21 individual PAGA Payments explaining the PAGA Payment.

22 **24. PAGA Member or PAGA Settlement Class.**

23 “PAGA Member(s)” or “PAGA Settlement Class” means all current and former non-
24 exempt employees who were employed by Defendant in California at any time from June 4, 2020
25 through May 8, 2022.

26 **25. PAGA Payment.**

27 “PAGA Payment” means the payment made pursuant to PAGA that shall be distributed
28 75% to the LWDA and 25% to the PAGA Members.

1 **26. PAGA Payment Ratio.**

2 “PAGA Payment Ratio” means respective work weeks during which a PAGA Member
3 performed work in proportion to the aggregate number of work weeks worked by all PAGA
4 Members during the PAGA Period.

5 **27. PAGA Period.**

6 “PAGA Period” means the period from June 4, 2020 through May 8, 2022.

7 **28. Participating Class Members.**

8 “Participating Class Members” means those Class Members who did not file a valid and
9 timely Request for Exclusion pursuant to section III, paragraph 12 of this Settlement Agreement.

10 **29. Parties.**

11 “Parties” means Plaintiff and Defendant, collectively, and “Party” shall mean either
12 Plaintiff or Defendant, individually.

13 **30. Payment Ratio.**

14 “Payment Ratio” means the respective Compensable Work Weeks during which an
15 employee worked in proportion to the aggregate number of work weeks worked by all Class
16 Members during the Class Period.

17 **31. Preliminary Approval Date.**

18 “Preliminary Approval Date” means the date on which the Court issues an order granting
19 preliminary approval of the proposed Settlement in a form substantially similar to the order
20 attached hereto as Exhibit B.

21 **32. Released Class Claims.**

22 “Released Class Claims” means any and all claims reasonably related to or arising out of
23 the factual allegations pled in the operative pleading in the Lawsuit, including all claims that have
24 been or could have been pled as wage and hour violations and related penalties and interest under
25 California law, including all claims made and that could have been made in such pleading
26 reasonably related to or arising out of the factual allegations therein during the Class Period. The
27 Released Class Claims include but are not limited to claims for any alleged or actual failures to
28 timely, fully, properly, or completely pay any minimum wages, regular wages, overtime premium

wages, meal or rest period premium wages, or other wages or premiums owed to the Settlement Class; any and all alleged or actual failures to comply with meal or rest period requirements; any alleged or actual failures to provide proper, accurate, timely, adequately descriptive, or complete wage statements or pay stubs; any and all alleged or actual failures to fully or properly reimburse or indemnify for any and all employment-related expenses; any and all alleged or actual failures to pay all wages, or compensation owed to a fired, quitting, or otherwise departing employee; any and all alleged or actual unfair business practices; and any and all alleged or actual failures to pay any interest or penalties owed as a result of any and all of the foregoing. Plaintiff and Class Members will release Defendant and the Released Parties from all remedies that could be claimed in connection with the Released Class Claims including but not limited to, statutory, constitutional, contractual damages, unpaid costs, penalties, punitive damages, interest, attorneys' fees, litigation costs, restitution, and equitable relief.

33. Released PAGA Claims.

"Released PAGA Claims" means any and all claims for civil penalties pursuant to PAGA that are reasonably related to or arising out of the factual allegations in the operative pleading in the Lawsuit and/or Plaintiff's PAGA notice to the LWDA which occurred during the PAGA Period. Plaintiff and PAGA Members will release Defendant and the Released Parties from all remedies that could be claimed in connection with the Released PAGA Claims including but not limited to, statutory, constitutional, contractual damages, unpaid costs, penalties, punitive damages, interest, attorneys' fees, litigation costs, restitution, and equitable relief.

34. Released Parties.

"Released Parties" means Defendant and any and all affiliated predecessor and successor entities, including without limitation HiBar Hospitality Operations, LLC, and each such entity's respective present and former subsidiaries, affiliates, parents, agents, employees, members, investors, partners, owners, directors, officers, attorneys, trustees, insurers, representatives, predecessors, successors and assigns.

35. Request for Exclusion.

"Request for Exclusion" means a letter from a Class Member or his/her representative

1 setting forth a Class Member's name, present address, and a simple statement electing to be
2 excluded from the Settlement.

3 **36. Response Deadline.**

4 "Response Deadline" means the date sixty (60) days after the Settlement Administrator
5 mails the Notice of Class Action Settlement to Class Members, which is the last date on which
6 Class Members may: (a) submit a Request for Exclusion; (b) file and serve objections to the
7 settlement; or (c) dispute the information contained in the Notice of Class Action Settlement.

8 **37. Settlement.**

9 "Settlement" or "Settlement Agreement" means the disposition of the Lawsuit pursuant to
10 this Joint Stipulation of Class and Representative Action Settlement and Release of Claims.

11 **38. Settlement Administrator.**

12 "Settlement Administrator" means the third-party company that the Parties have jointly
13 selected to be responsible for administering the Settlement. This Settlement Administrator is
14 ILYM Group, Inc. or such other third-party company mutually agreed to by the parties.

15 **39. Settlement Administrator Costs.**

16 "Settlement Administrator Costs" means the amount to be paid to the Settlement
17 Administrator from the Gross Settlement Amount for administration of this Settlement.

18 **II. RECITALS**

19 **1. Class Certification.**

20 The Parties stipulate to class certification for purposes of settlement only. If the Court does
21 not grant either preliminary or final approval of this Settlement, the Parties agree that this
22 stipulation regarding class certification will be revoked and the Parties will return to a point in
23 litigation prior to the execution of this Settlement Agreement.

24 **2. Procedural History.**

25 Defendant is a fast-casual burger restaurant and bar with four locations in California.¹
26 Plaintiff, Settlement Class members, and PAGA Settlement Class members are current and former
27 non-exempt employees employed by Defendant who earn hourly wages.

28 ¹ <https://www.hopdoddy.com/>

On June 4, 2021, Plaintiff gave written notice by online filing to the LWDA, setting forth the facts and theories of the violations alleged against Defendant, paid the filing fee, and received an e-filing confirmation. That same day, Plaintiff filed a Complaint for Damages against Defendant in the Los Angeles Superior Court, Case No. 21STCV21015 entitled *DANGELO RANDLE-TATUM, an individual, on behalf of himself and others similarly situated, Plaintiff, v. HOPDODDY BURGER BAR, INC.; and DOES 1 thru 50, inclusive, Defendants* on June 4, 2021.

On September 16, 2021, pursuant to Labor Code § 2699.3(a)(2)(A), after the sixty-five-day waiting period to commence a representative action as though the LWDA had not chosen to investigate under PAGA lapsed, Plaintiff filed a First Amended Complaint to add a respective PAGA claim as a matter of right (*see* Labor Code section 2699.3(2)(c))².

The amended complaint alleges causes of action for: (1) Failure to Pay Wages and Overtime Pursuant to Labor Code §§ 510, 1194, and 1199; (2) Failure to Provide Rest Periods under Labor Code § 226.7; (3) Failure to Reimburse Expenses Pursuant to Labor Code §2802; (4) Waiting Time Penalties Pursuant to Labor Code § 203; (5) Unfair Competition Pursuant to Business & Professions Code § 17200; and (6) Penalties Pursuant to Labor Code § 2699, *et seq.*

After the matter was at issue, the Parties began to engage in extensive informal discovery to understand the nature of the allegations and the scope of potential liability. Defendant provided Plaintiff's counsel with pertinent data for the Class Members and PAGA Members so that the Parties could fully-investigate the claims at issue and understand their strengths and weaknesses. Specifically, Defendant provided Plaintiff's Counsel with Plaintiff's personnel file, time records, payroll records, and relevant policies.

On March 8, 2022, the Parties attended a full-day Zoom mediation with experienced mediator Steve Rottman. The Parties reached a settlement that day, as provided herein, to settle all claims that were or could have been asserted in the operative complaint on a class and representative-wide basis. As part of the settlement, the Parties agreed to permit Plaintiff to submit an amended PAGA notice to the LWDA and file a Second Amended Complaint, adding additional

² "Notwithstanding any other provision of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising under this part at any time within 60 days of the time periods specified in this part."

1 claims for meal breaks under Cal. Lab. Code section 226.7 and 512 and wage statements under
2 Cal. Lab. Code section 226(a). On March 24, 2022, Plaintiff submitted an amended PAGA notice
3 to the LWDA and 65 days after March 24, 2022, Plaintiff will file his Second Amended Complaint.

4 Defendant denies any liability or wrongdoing of any kind associated with the claims
5 asserted in Plaintiff's Complaint, disputes the damages and penalties claimed by Plaintiff, and
6 further contends that, for any purpose other than settlement, Plaintiff's claims are not appropriate
7 for class or representative action treatment. This Stipulation is a compromise of disputed claims.
8 Nothing contained in this Stipulation, no documents referred to herein, and no action taken to carry
9 out this Stipulation, shall be construed or used as an admission by or against Defendant as to the
10 merits or lack thereof of the claims asserted in this Lawsuit. Defendant contends, among other
11 things, that, at all times, it has complied with all applicable state, federal and local laws related to
12 the Class Members' and PAGA Members' employment.

13 The Named Plaintiff is represented by Class Counsel. Class Counsel conducted an
14 investigation into the facts relevant to the Lawsuit, including reviewing documents and
15 information provided by Defendant. Based on their own investigation and evaluation, Class
16 Counsel is of the opinion that the Settlement with Defendant is fair, reasonable and adequate, and
17 in the best interest of the Settlement Class and PAGA Settlement Class in light of all known facts
18 and circumstances, including the risks of significant delay, defenses asserted by Defendant,
19 uncertainties regarding a class and representative action trial on the merits, and numerous potential
20 appellate issues. Although Defendant denies any liability, Defendant is agreeing to this Settlement
21 solely to avoid the cost of further litigation. Accordingly, the Parties and their counsel desire to
22 fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or
23 relating to the Action on the terms set forth herein.

24 **3. Benefits of Settlement to Class Members and PAGA Members.**

25 Plaintiff and Class Counsel recognize the expense and length of continued proceedings
26 necessary to litigate their disputes through trial and through any possible appeals. Plaintiff has
27 also taken into account the uncertainty and risk of the outcome of further litigation, and the
28 difficulties and delays inherent in such litigation. Plaintiff and Class Counsel are also aware of

1 the burdens of proof necessary to establish liability for the claims asserted in the Lawsuit, both
2 generally and in response to Defendant's defenses thereto, and the difficulties in establishing
3 damages for the Class Members and PAGA Members. Plaintiff and Class Counsel have also taken
4 into account Defendant's agreement to enter into a settlement that confers substantial relief upon
5 the members of the Settlement Class and PAGA Members. Based on the foregoing, Class Counsel
6 have concluded that settlement for the consideration and on the terms set forth in this Settlement
7 Agreement, is fair, reasonable, and adequate and is in the best interest of the putative classes in
8 light of all known facts and circumstances, including the risk of significant delay, defenses asserted
9 by Defendant, Defendant's financial condition, numerous potential appellate issues, and other risks
10 inherent in litigation.

11 **4. Defendant's Reasons for Settlement.**

12 Defendant has concluded that any further defense of this litigation would be protracted and
13 expensive for all Parties. Substantial amounts of Defendant's time, energy, and resources have
14 been and, unless this Settlement is completed, will continue to be devoted to, the defense of the
15 claims asserted by Plaintiff and Class Members. Defendant has also taken into account the risks
16 of further litigation in reaching its decision to enter into this Settlement. Even though Defendant
17 continues to contend that it is not liable for any of the claims set forth by Plaintiff in this Lawsuit,
18 Defendant has agreed, nonetheless, to settle in the manner and upon the terms set forth in this
19 Agreement to put to rest the claims in this Lawsuit. Defendant contends that it has complied with
20 all applicable state, federal, and local laws, and the parties agree that this Settlement does not
21 constitute an admission of liability by the Released Parties.

22 **5. Settlement of Disputed Claims.**

23 This Settlement Agreement is a compromise of disputed claims. Class Members and
24 PAGA Members have claimed and continue to claim that the Released Class Claims and Released
25 PAGA Claims do have merit and give rise to liability on the part of Defendant. Whereas Defendant
26 has claimed and continues to claim that the Released Class Claims and Released PAGA Claims
27 have no merit and do not give rise to liability. This Settlement Agreement is a compromise of
28 such disputed claims. Nothing contained in this Settlement Agreement, no documents referred to

herein, and no action taken to carry out this Settlement Agreement, may be construed or used as an admission by or against the Class Members/PAGA Members or Class Counsel as to the merits or lack thereof of the claims asserted in this Lawsuit.

III. TERMS OF AGREEMENT

1. Release as to All Participating Class Members.

As of the Effective Date, the Participating Class Members, including Plaintiff, release the Released Parties from the Released Class Claims for the Class Period.

2. Release as to All PAGA Members.

As of the Effective Date, the PAGA Members, including Plaintiff, release the Released Parties from the Released PAGA Claims for the PAGA Period.

3. Release of Claims by Plaintiff.

As of the Effective Date, Plaintiff releases the Released Parties from all of the Released Class Claims during the Class Period and Released PAGA Claims during the PAGA Period. Plaintiff, for himself and his heirs, successors and assigns, further waives, releases, acquits and forever discharges the Released Parties from any and all claims, actions, charges, complaints, grievances and causes of action, of whatever nature, whether known or unknown, which exist or may exist on Plaintiff's behalf as of the date of this Settlement Agreement, including, but not limited to, any and all tort claims, contract claims, wage claims, wrongful termination claims, disability claims, benefit claims, public policy claims, retaliation claims, statutory claims, personal injury claims, emotional distress claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit claims, and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance, including, but not limited to, claims for violation of the FLSA, the California Labor Code, the Wage Orders of California's Industrial Welfare Commission, other state wage and hour laws, the Americans with Disabilities Act, the Age Discrimination in Employment Act (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, the California Family Rights Act, the Family Medical Leave Act, California's Whistleblower Protection Act, California Business & Professions Code §§17200 et seq., and any and all claims

1 arising under any federal, state or other governmental statute, law, regulation or ordinance.

2 Plaintiff's release set forth herein include a waiver of all rights under California Civil Code
3 §1542, which provides:

4 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
5 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT**
6 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING**
7 **THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD**
8 **HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH**
9 **THE DEBTOR OR RELEASED PARTY.**

10 Plaintiff may hereafter discover claims or facts in addition to, or different from, those
11 which he now knows or believes to exist, but Plaintiff expressly agrees to fully, finally and forever
12 settle and release any and all claims against the Released Parties, known or unknown, suspected
13 or unsuspected, which exist or may exist on behalf of or against the other at the time of execution
14 of this Settlement Agreement, including, but not limited to, any and all claims relating to or arising
15 from Plaintiff's employment with Defendant.

16 **4. Tax Liability and Medicare.**

17 The Parties make no representations as to the tax treatment or legal effect of the payments
18 called for hereunder, and Class Members/PAGA Members are not relying on any statement or
19 representation by the Parties in this regard. Participating Class Members and PAGA Members
20 understand and agree that they will be responsible for the payment of taxes and penalties assessed
21 on the payments described herein and will hold the Parties free and harmless from and against any
22 claims resulting from treatment of such payments as non-taxable damages, including the treatment
23 of such payment as not subject to withholding or deduction for payroll and employment taxes.
24 Notwithstanding the foregoing, the Settlement Administrator may withhold taxes or other amounts
25 to the extent that it determines it is obligated to do so pursuant to applicable law, and its
26 determination to do so shall be final and unreviewable by the court or any person receiving
27 payment pursuant to this Agreement. Moreover, this Agreement is based upon a good faith
28 determination of the Parties to resolve a disputed claim. The Parties have not shifted responsibility
of medical treatment to Medicare in contravention of 42 U.S.C. Sec. 1395y(b), especially since
this is strictly a wage and hour case. The Parties resolved this matter in compliance with both state

1 and federal law. The Parties made every effort to adequately protect Medicare's interest and
2 incorporate such into the settlement terms. Plaintiff warrants that he is not a Medicare beneficiary
3 as of the date of this Agreement. Because Plaintiff is not a Medicare recipient as of the date of
4 this Agreement, no conditional payments have been made by Medicare.

5 **5. Circular 230 Disclaimer.**

6 Each Party to this Agreement (for purposes of this section, the "acknowledging party" and
7 each Party to this Agreement other than the acknowledging party, an "other party") acknowledges
8 and agrees that (1) no provision of this Agreement, and no written communication or disclosure
9 between or among the Parties or their attorneys and other advisers, is or was intended to be, nor
10 shall any such communication or disclosure constitute or be construed or be relied upon as, tax
11 advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10,
12 as amended); (2) the acknowledging party (a) has relied exclusively upon his, her, or its own,
13 independent legal and tax counsel for advice (including tax advice) in connection with this
14 Agreement, (b) has not entered into this Agreement based upon the recommendation of any other
15 party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any
16 communication or disclosure by any attorney or advisor to any other party to avoid any tax penalty
17 that may be imposed on the acknowledging party; and (3) no attorney or advisor to any other party
18 has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax
19 strategies (regardless of whether such limitation is legally binding) upon disclosure by the
20 acknowledging party of the tax treatment or tax structure of any transaction, including any
21 transaction contemplated by this Agreement.

22 **6. Preliminary Approval of Settlement.**

23 Plaintiff will move the Court to grant preliminary approval of this Settlement, certifying
24 the Settlement Class for settlement purposes only and setting a date for a final approval hearing.
25 All Parties agree to work diligently and cooperatively to have this Settlement presented to the
26 Court for preliminary approval. The proposed preliminary approval order shall provide for the
27 Notice of Class Action Settlement to be sent to Class Members as specified herein.

28 **7. Settlement Administrator.**

1 Within twenty (20) business days after the Court grants preliminary approval of this
2 Agreement, Defendant shall provide the Settlement Administrator with the Class Information for
3 purposes of mailing the Notice of Class Action Settlement to the Class Members. No later than
4 three (3) business days after receipt of the Class Information, the Settlement Administrator shall
5 notify counsel for the Parties that the list has been received and state the number of Class Members
6 and PAGA Members.

7 **8. Notice by First Class U.S. Mail.**

8 Upon receipt of the Class Information, the Settlement Administrator will perform a search
9 based on the National Change of Address Database to update and correct any known or identifiable
10 address changes. Within 15 (15) days of receipt of the Class Information, the Settlement
11 Administrator shall mail copies of the Notice of Class Action Settlement to all Class Members via
12 regular First-Class U.S. Mail. The Settlement Administrator shall exercise its best judgment to
13 determine the current mailing address for each Class Member, including performing a skip-trace
14 to identify any updated addresses. The address identified by the Settlement Administrator as the
15 current mailing address shall be presumed to be the best mailing address for each Class Member.

16 **9. Undeliverable Notices.**

17 Any Notice of Class Action Settlement returned to the Settlement Administrator as
18 undeliverable on or before the Response Deadline shall be re-mailed once to the forwarding
19 address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall
20 promptly attempt to determine a correct address by use of skip-tracing, or other search methods
21 consistent with reasonable business standards, using the name, address and/or social security
22 number of the Class Member whose notice was undeliverable, and shall then re-mail all returned,
23 undelivered mail within ten (10) days of receiving notice that a notice was undeliverable. Class
24 Members who receive a re-mailed Notice of Class Action Settlement shall have their Response
25 Deadline extended twenty (20) days from the original Response Deadline.

26 **10. Disputes Regarding Individual Settlement Payments.**

27 Class Members will have the opportunity, should they disagree with Defendant's records
28 regarding the dates of employment stated on their Notice of Class Action Settlement, to provide

documentation and/or an explanation to show contrary information by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this Agreement. The Settlement Administrator's determination of the eligibility for and amount of any Individual Settlement Payment shall be binding upon the Class Members and the Parties. In the absence of circumstances indicating fraud, manipulation or destruction, Defendant's records will be given a rebuttable presumption of accuracy.

11. Disputes Regarding Administration of Settlement.

Any disputes not resolved by the Settlement Administrator concerning the administration of the Settlement will be resolved by the Court, under the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties will confer in good faith to resolve the disputes without the necessity of involving the Court.

12. Exclusions.

The Notice of Class Action Settlement shall state that Class Members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion: (1) must contain the name, address, and telephone number of the Class Member requesting exclusion; (2) must contain a statement expressing that the Class Member elects to be excluded from the Settlement; (3) must be signed by the Class Member; and (4) must be postmarked or fax stamped by the Response Deadline and returned to the Settlement Administrator at the specified address or fax number. The Request for Exclusion will be deemed invalid if it does not contain a Class Member's name, address, telephone number, and signature. The date of the postmark on the return mailing envelope or fax stamp on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Class Member who requests to be excluded from the Class will not be entitled to any recovery under the Settlement and will not be bound by the terms of the Settlement or have any right to object, appeal, or comment thereon. Class Members who fail to submit a valid and timely Request for Exclusion on or before the Response Deadline shall be bound by all terms of

1 the Settlement and any Final Judgment entered in this Lawsuit if the Settlement is approved by the
2 Court. No later than seven (7) calendar days after the Response Deadline, the Settlement
3 Administrator shall provide counsel for the Parties with a complete list of all members of the Class
4 who have timely submitted a Request for Exclusion.

5 **13. Objections.**

6 The Notice of Class Action Settlement shall state that Class Members who wish to object
7 to the Settlement may do so in person at the Final Approval Hearing and/or in writing. Any written
8 objection (“Notice of Objection”) must be mailed to the Settlement Administrator by the Response
9 Deadline. The date of mailing on the envelope shall be deemed the exclusive means for
10 determining that a Notice of Objection was timely received. The Notice of Objection must be
11 signed by the Class Member and state: (1) the full name of the Class Member; (2) the dates of
12 employment of the Class Member; (3) the basis for the objection; and (4) if the Class Member
13 intends to appear at the final approval hearing. Class Counsel will ensure that any Notice of
14 Objection received by the Settlement Administrator by the Response Deadline is filed with the
15 Court along with the Motion for Final Approval. Either of the Parties may file a responsive
16 document to any objection before the Final Approval Hearing. Any attorney who will represent an
17 individual objecting to this Settlement who has not filed a written objection must file a notice of
18 appearance with the Court and serve Class Counsel and counsel for Defendant no later than the
19 Response Period Deadline. Class Counsel shall not represent any Class Members with respect to
20 any such objections.

21 Any Class Member who fails to submit a timely written objection or to present an objection
22 in person at the Final Approval Hearing shall be deemed to have waived any objections and shall
23 be foreclosed from making any objection to the Settlement whether by appeal or otherwise.

24 **14. No Solicitation of Settlement Objections or Exclusions.**

25 The Parties agree to use their best efforts to carry out the terms of this Settlement. At no
26 time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members
27 to submit either written objections to the Settlement or requests for exclusion from the Settlement,
28 or to appeal from the Court’s Final Judgment.

15. Funding and Allocation of Gross Settlement Amount.

No later than thirty (30) business days after the Effective Date, Defendant shall provide the Gross Settlement Amount to the Settlement Administrator to fund the Settlement, as set forth in this Settlement Agreement. Defendant will not be obligated to make any payments contemplated by this Settlement Agreement unless and until the Court enters the Final Approval Order and Final Judgment, and after the Effective Date of the Agreement.

16. Net Settlement Amount.

The Net Settlement Amount will be determined by the Settlement Administrator by subtracting the Class Counsel Award, Enhancement Payment, PAGA Payment, and Settlement Administrator Costs from the Gross Settlement Amount. The anticipated Net Settlement Amount is \$360,833.33. The Parties estimate the amount of the Net Settlement Amount as follows:

Gross Settlement Amount:	\$ 650,000.00
Enhancement/ General Release Payment:	\$ 7,500.00
Class Counsel Fees:	\$ 216,666.67
Class Counsel Costs (<i>Up to</i>):	\$ 15,000.00
PAGA Payment	\$ 35,000.00
	(with \$26,250.00 to the LWDA and \$8,750.00 to the PAGA Members)
Settlement Administrator Costs (<i>Up to</i>):	\$ 15,000.00
Net Settlement Amount	\$ 360,833.33

This is a non-reversionary Settlement in which Defendant is required to pay the entire Gross Settlement Amount, which includes, the Class Counsel Award, Enhancement Payment, Individual Settlement Payments, PAGA Payment, and Settlement Administrator Costs. No portion of the Gross Settlement Amount will revert to Defendant. Defendant's share of payroll taxes and other required withholdings from Individual Settlement Payments, including but not limited to Defendant's FICA and FUTA contributions, shall be paid separately from, and in addition to, the Gross Settlement Amount.

17. Individual Settlement Payments.

Individual Settlement Payments will be paid from the Net Settlement Amount and shall be paid pursuant to the settlement formula set forth herein. Individual Settlement Payments shall be

1 mailed by regular First-Class U.S. Mail to each Participating Class Member's last known mailing
2 address within seven calendar days after Defendant makes the settlement payment. All Individual
3 Settlement Payments will be allocated as follows: 10% as wages 45% as interest and 45% as
4 penalties.

5 **18. Class Member's Payment Ratio.**

6 Participating Class Members will be paid on a pro-rata basis. A Participating Class
7 Member's Individual Settlement Payment will be based on the number of Compensable Work
8 Weeks during which s/he worked in proportion to the aggregate number of Compensable Work
9 Weeks worked by all Class Members during the Class Period.

10 **19. PAGA Payments.**

11 The PAGA Payment is \$35,000.00 with 75% (\$26,250.00) allocated to the LWDA and
12 25% (\$8,750.00) allocated to the PAGA Members on a pro rata basis based on the PAGA Payment
13 Ratio. PAGA Members will not be provided with the opportunity to opt out of the Settlement and
14 will be bound by the Released PAGA Claims. If the Court approves the PAGA Payment, the
15 Settlement Administrator will mail out checks and the PAGA Letter to the PAGA Members at the
16 same time the Class Members are mailed their Individual Settlement Payments.

17 **20. Payment to Class Member.**

18 Checks shall be made payable to each Participating Class Member and each PAGA
19 Member for payment of each Participating Class Member's Individual Settlement Payment and
20 each PAGA Members' PAGA Payment as set forth in Section III, paragraphs 16-20 of this
21 Settlement Agreement.

22 **21. Form of Payment to Class Member.**

23 The Individual Settlement Payment amount due to each Participating Class Member and
24 each PAGA Member shall be paid in the form of a check.

25 **22. Unclaimed Settlement Payment(s).**

26 After one hundred and eighty (180) days of the mailing of the Individual Settlement
27 Payment checks and the PAGA Payments, funds attributable to unclaimed, undeliverable, or
28 expired Individual Settlement Payment checks will be transmitted to the California State

1 Controller's Office - Unclaimed Property Fund in the name of the Participating Class Member
2 who did not negotiate his or her Individual Settlement Payment check thereby leaving no "unpaid
3 residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

4 **23. Enhancement Payment.**

5 Plaintiff will request that the Court approve an Enhancement Payment of up to \$7,500.00.
6 Subject to Court approval for his time and effort in bringing and prosecuting this matter, Plaintiff
7 shall be paid an Enhancement Payment of up to \$7,500.00. The Enhancement Payment shall be
8 paid to Plaintiff from the Gross Settlement Amount within ten (10) calendar days after Defendant
9 makes the settlement payment. The Settlement Administrator shall issue an IRS Form 1099 –
10 MISC to Plaintiff for his respective Enhancement Payment. Plaintiff shall be solely and legally
11 responsible to pay any and all applicable taxes on his Enhancement Payment and shall hold
12 harmless Defendant and Class Counsel from any claim or liability for taxes, penalties, or interest
13 arising as a result of the Enhancement Payment. The Enhancement Payment shall be in addition
14 to the Plaintiff's Individual Settlement Payment as a Participating Class Member. Any amount
15 requested by Plaintiff for the Enhancement Payment and not granted by the Court shall return to
16 the Net Settlement Amount and be distributed to Participating Class Members as provided in this
17 Settlement Agreement. Plaintiff also enters into a general release of his claims per Section III.3
18 above.

19 **24. Class Counsel Award.**

20 Class Counsel will request that the Court approve attorneys' fees in the amount of up to
21 thirty-three and one-third percent (33.33%) of the Gross Settlement Amount which is currently
22 estimated to be \$216,666.67. Class Counsel will request that the Court approve the reimbursement
23 of any litigation costs or expenses associated with Class Counsel's prosecution of this matter from
24 the Gross Settlement Amount not to exceed \$15,000.00. Class Counsel shall be paid any Court-
25 approved fees and costs at the same time that Individual Settlement Payments are issued to
26 Participating Class Members. Class Counsel shall be solely and legally responsible to pay all
27 applicable taxes on the payment made pursuant to this paragraph. The Settlement Administrator
28 shall issue an IRS Form 1099 – MISC to Class Counsel for the payments made pursuant to this

1 paragraph. This Settlement is not contingent upon the Court awarding Class Counsel any
2 particular amount in attorneys' fees and costs. Any amount requested by Class Counsel for the
3 Class Counsel Award and not granted by the Court shall return to the Net Settlement Amount and
4 be distributed to Participating Class Members as provided in this Settlement Agreement.

5 **25. Settlement Administrator Costs.**

6 The Parties agree to allocate up to \$15,000.00 of the Gross Settlement Amount for
7 Settlement Administrator Costs. The Settlement Administrator shall have the authority and
8 obligation to make payments, credits and disbursements to Class Members and PAGA Members
9 in the manner set forth herein, calculated in accordance with the methodology set out in this
10 Settlement Agreement and orders of the Court. The Parties agree to cooperate in the Settlement
11 administration process and to make all reasonable efforts to control and minimize the cost and
12 expenses incurred in administration of the Settlement.

13 **26. Responsibilities of the Settlement Administrator.**

14 The Settlement Administrator shall be responsible for the following: processing and
15 mailing payments to Plaintiff, Class Counsel, Participating Class Members, PAGA Members, and
16 the LWDA; printing, and mailing the PAGA Letters and tax forms to the PAGA Members;
17 printing, and mailing the Notice of Class Action Settlement and tax forms to the Participating Class
18 Members as directed by the Court; receiving and reporting the requests for exclusion and
19 objections submitted by Class Members; providing declaration(s) as necessary in support of
20 preliminary and/or final approval of this Settlement; and other tasks as the Parties mutually agree
21 or the Court orders the Settlement Administrator to perform. The Settlement Administrator shall
22 keep the Parties timely apprised of the performance of all Settlement Administrator
23 responsibilities.

24 **27. Settlement Administrator Fees.**

25 The Settlement Administrator shall be paid the Settlement Administrator Costs within ten
26 (10) calendar days after Defendant makes the settlement payment.

27 **28. Payment to the LWDA.**

28 A total payment of \$35,000.00 from the Gross Settlement Amount will be allocated as the

PAGA Payment to be paid as penalties under the Labor Code Private Attorneys General Act of 2004, to the LWDA. Seventy-five percent (75%) of the PAGA Payment will be paid to the LWDA and the remaining twenty-five (25%) shall be paid to the PAGA Members.

29. Final Approval Hearing and Entry of Final Judgment.

Upon expiration of the Response Deadline, with the Court's permission, a final approval hearing shall be conducted to determine final approval of the Settlement along with the amount properly payable for: (i) the Class Counsel Award; (ii) the Enhancement Payment; (iii) Individual Settlement Payments; (iv) the Settlement Administrator Costs; and (v) PAGA Payment.

30. Final Approval Order.

Plaintiff will request, and Defendant will concur in said request, that the Court enter, after the Final Approval Hearing, a Final Approval Order in the form attached hereto as Exhibit B. Plaintiff will request that the Final Approval Order certify the Settlement Class; find that this Agreement is fair, just, adequate, and in the best interests of the Settlement Class; and require the Parties to carry out the provisions of this Agreement.

31. Nullification of Settlement Agreement.

In the event: (i) the Court denies preliminary approval of the Settlement; (ii) the Court denies final approval of the Settlement; (iii) the Court refuses to enter a Final Judgement as provided herein; or (iv) the Settlement does not become final for any other reason, this Settlement Agreement shall be null and void and any order or judgement entered by the Court in furtherance of this Settlement shall be treated as void from the beginning. To the extent the total number of opt outs exceed 5%, Defendant has the option to nullify this Settlement within ten (10) court days of the last day of the response period via a written notice to Plaintiff's counsel. If one or more of such events occur causing the Settlement Agreement to become null and void, the Parties shall proceed in all respects as if this Agreement had not been executed, except that any fees already incurred by the Settlement Administrator shall be divided equally between Plaintiffs and Defendant or Defendant will be solely responsible for the costs incurred for the settlement administration should it exercise its option to nullify this Settlement Agreement. The return of any paid Settlement funds to Defendant shall occur no later than five (5) business days after one

1 or more of the triggering events leading to nullification occurs. In the event an appeal is filed from
2 the Court's Final Judgment, or any other appellate review is sought, administration of the
3 Settlement shall be stayed pending final resolution of the appeal or other appellate review, but any
4 fees incurred by the Settlement Administrator prior to it being notified of the filing of an appeal
5 from the Court's Final Judgment, or any other appellate review, shall be paid to the Settlement
6 Administrator in equal parts by Plaintiff and Defendant within thirty (30) days of said notification.

7 **32. Increase in Workweeks or Class Members.**

8 It was represented to Class Counsel that the Class as of January 3, 2022 is estimated to
9 consist of approximately 35,675 work weeks. Upon receipt of the Class Data, the Settlement
10 Administrator shall confirm to Plaintiff that the Class Data is consistent with these representations.
11 To the extent the number of work weeks increases beyond 35,675 by more than 5%, the Gross
12 Settlement Amount will increase proportionally, or Defendant will have the option to set the Class
13 Period end date to a date at which the number of workweeks does not increase by more than 5%
14 of the number as set forth in this paragraph. For example, if the number of workweeks increases
15 by 6%, Defendant shall have the option to increase the Gross Settlement Amount by 1%. If
16 Defendant declines to pay the pro rata increase or to set the Class Period end date to a date at which
17 the number of workweeks does not increase by more than 5% of the number as set forth in this
18 paragraph, Plaintiff has the option withdraw from this Settlement and the Parties will be restored
19 to the previous positions as if this Settlement had never occurred.

20 **32. No Effect on Employee Benefits.**

21 Amounts paid to Plaintiff or other Class Members pursuant to this Settlement Agreement
22 shall be deemed not to be pensionable earnings and shall not have any effect on the eligibility for,
23 or calculation of, any of the employee benefits (e.g., vacations, holiday pay, retirement plans, etc.)
24 of Plaintiff or Class Members.

25 **33. No Admission by Defendant.**

26 Defendant denies any and all claims alleged in this Lawsuit and denies all wrongdoing
27 whatsoever. This Settlement Agreement is not a concession or admission, and shall not be used
28 against Defendant as an admission or indication with respect to any claim of any fault, concession,

1 or omission by Defendant.

2 **34. Exhibits and Headings.**

3 The terms of this Settlement Agreement include the terms set forth in any attached Exhibits,
4 which are incorporated by this reference as though fully set forth herein. Any Exhibits to this
5 Settlement Agreement are an integral part of the Settlement. The descriptive headings of any
6 paragraphs or sections of this Settlement Agreement are inserted for convenience of reference only
7 and do not constitute a part of this Settlement Agreement.

8 **35. Interim Stay of Proceedings.**

9 Upon full execution of this Settlement Agreement, the Parties agree that based upon Code
10 of Civil Procedure §583.310 (“the 5 year rule”), the Lawsuit shall be stayed in its entirety except
11 for the proceedings necessary to implement and complete the Settlement.

12 **36. Amendment or Modification.**

13 This Settlement Agreement may be amended or modified only by a written instrument
14 signed by counsel for all Parties or their successors-in-interest.

15 **37. Entire Agreement.**

16 This Settlement Agreement and any attached Exhibits constitute the entire Settlement
17 Agreement among these Parties, and no oral or written representations, warranties, or inducements
18 have been made to any Party concerning this Settlement Agreement or its Exhibits other than the
19 representations, warranties, and covenants contained and memorialized in the Settlement
20 Agreement and its Exhibits. The Parties are entering into this Settlement Agreement based solely
21 on the representations and warranties herein and not based on any promises, representation, and/or
22 warranties not found herein.

23 **38. Authorization to Enter into Settlement Agreement.**

24 Counsel for all Parties warrant and represent they are expressly authorized by the Parties
25 whom they represent to negotiate this Settlement Agreement and to take all appropriate actions
26 required or permitted to be taken by such Parties pursuant to this Settlement Agreement to
27 effectuate its terms, and to execute any other documents required to effectuate the terms of this
28 Settlement Agreement. The Parties and their counsel will cooperate with each other and use their

1 good faith efforts to effect the implementation of the Settlement. In the event the Parties are unable
2 to reach agreement on the form or content of any document needed to implement the Settlement,
3 or on any supplemental provisions that may become necessary to effectuate the terms of this
4 Settlement, the Parties may seek the assistance of the Court to resolve such disagreement. The
5 persons signing this Settlement Agreement on behalf of Defendant represent and warrant that they
6 are authorized to sign this Settlement Agreement on behalf of Defendant. Plaintiff represents and
7 warrants that he is authorized to sign this Agreement and that he has not assigned any claim, or
8 part of a claim, covered by this Settlement to a third-party.

9 **39. Binding on Successors and Assigns.**

10 This Settlement Agreement shall be binding upon, and inure to the benefit of, the
11 successors or assigns of the Parties hereto, as previously defined.

12 **40. California Law Governs.**

13 All terms of this Settlement Agreement and the Exhibits hereto shall be governed by and
14 interpreted according to the laws of the State of California.

15 **41. Counterparts.**

16 This Settlement Agreement may be executed in one or more counterparts. All executed
17 counterparts and each of them shall be deemed to be one and the same instrument.

18 **42. Jurisdiction of the Court.**

19 Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
20 jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this
21 Settlement Agreement and all orders and judgments entered in connection therewith, and the
22 Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting,
23 implementing, and enforcing the settlement embodied in this Settlement Agreement and all orders
24 and judgments entered in connection therewith. All terms of this Settlement Agreement are subject
25 to approval by the Court.

26 **43. Invalidity of Any Provision.**

27 Before declaring any provision of this Settlement Agreement invalid, the Court shall first
28 attempt to construe the provisions valid to the fullest extent possible consistent with applicable

precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

WHEREFORE, Plaintiff, on behalf of himself, the Class Members and PAGA Members, and Defendant has executed this Agreement as of the dates set forth below.

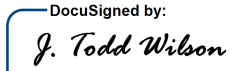
IT IS SO AGREED:

Dated: July 9, 2022

DocuSigned by:
By: 
Dangelo Randle-Tatum

Dated: 6/28/2022, 2022

HOPDODDY BURGER BAR, INC.

DocuSigned by:
By: 
C43102302FF5404...

APPROVED AS TO FORM AND CONTENT:

Dated: July 11, 2022

KINGSLEY & KINGSLEY APC

By: 
Eric B. Kingsley
Kelsey M. Szamet
Attorneys for Plaintiff, the Proposed Settlement
Class, and PAGA Settlement Class

Dated: _____, 2022

DAVIS WRIGHT TREMAINE LLP

By: _____
Janet L. Grumer
Evelyn F. Wang
Tiffanie de la Riva
Attorneys for Defendant
Hopdoddy Burger Bar, Inc.

precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

WHEREFORE, Plaintiff, on behalf of himself, the Class Members and PAGA Members, and Defendant has executed this Agreement as of the dates set forth below.

IT IS SO AGREED:

Dated: _____, 2022

By: _____
Dangelo Randle-Tatum

Dated: _____, 2022

HOPDODDY BURGER BAR, INC.

By: _____

APPROVED AS TO FORM AND CONTENT:

Dated: _____, 2022

KINGSLEY & KINGSLEY APC

By: _____
Eric B. Kingsley
Kelsey M. Szamet
Attorneys for Plaintiff, the Proposed Settlement
Class, and PAGA Settlement Class

Dated: June 28 _____, 2022

DAVIS WRIGHT TREMAINE LLP

By:  _____
Janet L. Grumer
Evelyn F. Wang
Tiffanie de la Riva
Attorneys for Defendant
Hopdoddy Burger Bar, Inc.

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EXHIBIT “A”

[CLASS MEMBER NAME]

DANGELO RANDLE-TATUM v. HOPDODDY BURGER BAR, INC.

**Superior Court of the State of California, County of Los Angeles
Case No.: 21STCV21015**

If you are a current or former employee for HOPDODDY BURGER BAR, INC. (“Defendant” or “Hopdoddy”), a class action lawsuit may affect your rights and you may be entitled to benefits under the settlement.

You are not being sued. A court authorized this notice. This is not a solicitation from a lawyer.

**PLEASE READ THIS NOTICE CAREFULLY. IT CONTAINS IMPORTANT
INFORMATION ABOUT YOUR RIGHTS.**

- This lawsuit involves a putative class consisting of:

All current and former non-exempt employees who were employed by Defendant in California at any time from June 4, 2017 through May 8, 2022.

The “Class Period” is from June 4, 2017 through May 8, 2022.

The actual scope and composition of the class, and the persons included and excluded from the class is set forth more particularly in the JOINT STIPULATION OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AND RELEASE OF CLAIMS

- You are receiving this Notice because the records reflect that you may be a Class Member.
- Plaintiff in this class action alleges that Defendant failed to pay wages and overtime, including minimum wages, failed to appropriately provide or compensate for mandated meal and rest periods, failed to maintain accurate wage statements, failed to reimburse employment-related expenses, failed to pay all wages due upon termination or resignation from Hopdoddy, is liable for penalties under California’s Business and Professions Code, and is liable for penalties under California’s Labor Code Private Attorneys General Act or “PAGA.” Defendant denies Plaintiff’s claims, and asserts that it has complied with all of its legal obligations to its employees.
- There has been a settlement that affects your rights. Although the Court has authorized the Parties to provide this notice of the proposed settlement, the Court has expressed no opinion on the merits of Plaintiff’s claims or Defendant’s defenses.
- You will not be penalized or retaliated against by Defendant for participating in this class action settlement. If you are currently employed by Defendant, your employment will not be affected in any way. Current employees of Defendant who choose to participate in the settlement will not be required to resign and can continue to work for Defendant.
- You have several options available to you:

DO NOTHING	By doing nothing, you <u>will</u> receive a share of the settlement proceeds, and you will give up any rights to sue Defendant for any and all claims reasonably related to or arising out of the factual allegations pled in the operative pleading in the Lawsuit, including all claims that have been or could have been pled as wage and hour violations and related penalties and interest under California law, including all claims made and that could have been made in such pleading reasonably related to or arising out of the factual allegations therein during the Class Period. The Released Class Claims include but are not limited to claims for any alleged or actual failures to timely, fully, properly, or completely pay any minimum wages, regular wages, overtime premium wages, meal or rest period premium wages, or other wages or premiums owed to the Settlement Class; any and all alleged or actual failures to comply with meal or rest period requirements; any alleged or actual failures to provide proper, accurate, timely, adequately descriptive, or complete wage statements or pay stubs; any and all alleged or actual failures to fully or properly reimburse or indemnify for any and all employment-related expenses; any and all alleged or actual failures to pay all wages, or compensation owed to a fired, quitting, or otherwise departing employee; any and all alleged or actual unfair business practices; and any and all alleged or actual failures to pay any interest or penalties owed as a result of any and all of the foregoing. Plaintiff and Class Members will release Defendant and the Released Parties from all remedies that could be claimed in connection with the Released Class Claims including but not limited to, statutory, constitutional, contractual damages, unpaid costs, penalties, punitive damages, interest, attorneys' fees, litigation costs, restitution, and equitable relief.
ASK TO BE EXCLUDED (OPT OUT)	Exclude yourself from this lawsuit. Keep your rights to file a separate claim against Defendant. If you ask to be excluded, you <u>will not</u> receive a share of the settlement proceeds, but you keep any rights you may have to bring your own suit against Defendant for the same legal claims in this lawsuit.
OBJECT	Object to the terms of this Settlement.

Your options are explained in this notice.
To opt out or object, you must act by XXXX.

1. Why did I get this notice?

A proposed settlement has been reached in a class action lawsuit that was brought on behalf of Defendant's employees. You have received this notice because Defendant's records indicate that

you are a member of this class.

2. What is this lawsuit about?

Plaintiff Dangelo Randle-Tatum filed this civil action lawsuit on June 4, 2021. Plaintiff filed this Lawsuit on behalf of all current and former non-exempt employees who were employed by Defendant in California at any time from June 4, 2017 through May 8, 2022. The operative complaint alleges class-wide causes of action against Defendant for: Failure to pay wages and overtime pursuant to Labor Code sections 510, 1194, and 1199; Failure to provide meal periods pursuant to Labor Code sections 226.7 and 512; Failure to provide rest periods pursuant to Labor Code section 226.7; Failure to Reimburse Expenses Pursuant to Labor Code section 2802; Violation of Labor Code section 226(a); Penalties Pursuant to Labor Code section 203; Unfair Business Practices pursuant to Business & Professions Code section 17200 et seq.; and Penalties pursuant to the Private Attorney General Act of 2007 (“PAGA”) (Lab. Code § 2699 et seq.).

3. Has the Court decided who is right?

No. The Court has made no decision regarding the merits of Plaintiff’s allegations or Defendant’s defenses.

4. Why did this case settle?

The Parties reached a settlement in order to avoid the risk, inconvenience and expense of further litigation. Plaintiff and his attorneys believe the proposed settlement is fair, adequate and in the best interest of the class members to whom it applies given the outcome of their investigation, the consumption of time and resources required in connection with further litigation, and the uncertainty in the law governing some of the claims presented. Although Defendant dispute Plaintiff’s claims and asserts that it has complied with all of its legal obligations toward its employees, Defendant has also concluded that further litigation would be protracted and expensive, and would also divert management and employee time.

5. What are the terms of the settlement and how much will I receive?

The Gross Settlement Amount is \$650,000.00. Under the proposed settlement, the following amounts will be deducted before any payments are made to employees, subject to final approval by the Court:

- Attorneys’ fees: \$216,666.67
- Litigation Costs: Up to \$15,000.00
- Claims Administration Costs: Up to \$15,000.00
- Enhancement Payment to Named Plaintiff: \$7,500.00
- Penalties to the Labor & Workforce Development Agency: \$35,000.00

After these deductions, \$360,833.33 will be available for payment to the Class Members receiving this notice (“Net Settlement Amount”).

Additionally, any Class Member who was employed at any time during the PAGA Period, June 4, 2020 through May 8, 2022, will be entitled to a share of the amount allocated to PAGA penalties. Of the \$35,000.00 allocated to PAGA penalties, 75% (\$26,250.00) shall be paid to the Labor &

Workforce Development Agency and the remaining 25% (\$8,750.00) shall be paid to the PAGA Members on a pro rata basis based on the number of work weeks you worked during the PAGA Period. You may not opt out of the PAGA Settlement and you will be bound by the release of PAGA claims under the Settlement.

Each Participating Class Member's Individual Settlement Payments shall be determined on a pro rata basis based upon the number of work weeks during which the employee worked in California in proportion to the aggregate number of work weeks by all Class Members during the Class Period.

All Individual Settlement Payments will be allocated as follows: 1/10 (10%) to settlement of wage claims and 9/20 (45%) to settlement of claims for interest and statutory penalties.

According to Defendant's records, the total number of work weeks that you worked as a Class Member *during the Class Period* (June 4, 2017 – May 8, 2020) is _____. The number of work weeks you worked during the *PAGA Period* (June 4, 2020 – May 8, 2022) is _____. If you disagree with this information and would like someone to look into the matter, please follow the procedure below. Based on these work weeks, your estimated Individual Settlement Payment is _____.

6. What if I disagree with the number of work weeks shown above?

If you believe the information in the notice is incorrect regarding the number of work weeks, you will need to write a letter setting forth the number of work weeks that you believe are correct. You may attach any relevant documentation in support thereof. You must mail your letter to:

<<Hopdoddy Settlement Administrator>>

You must submit such information by XXXX. Class Counsel and the Settlement Administrator will work together in good faith and do their best to promptly resolve the dispute based on available records. In the event they are unable to resolve any dispute under this Section, the Settlement Administrator shall review all information, material and documents and make a decision regarding the dispute.

7. What do I have to do to receive a share of the settlement?

If you wish to receive an award under the terms of this settlement, you do not have to do anything. However, it is advisable to confirm your current mailing address with the Settlement Administrator in order to ensure you receive your settlement share. You will be covered by the release summarized in Section 8, below.

8. What rights am I giving up?

The claims you will Release by doing nothing are: any and all claims reasonably related to or arising out of the factual allegations pled in the operative pleading in the Lawsuit, including all claims that have been or could have been pled as wage and hour violations and related penalties and interest under California law, including all claims made and that could have been made in such pleading reasonably related to or arising out of the factual allegations therein during the Class Period. The Released Class Claims include but are not limited to claims for any alleged or actual failures to timely, fully, properly, or completely pay any minimum wages, regular wages, overtime

premium wages, meal or rest period premium wages, or other wages or premiums owed to the Settlement Class; any and all alleged or actual failures to comply with meal or rest period requirements; any alleged or actual failures to provide proper, accurate, timely, adequately descriptive, or complete wage statements or pay stubs; any and all alleged or actual failures to fully or properly reimburse or indemnify for any and all employment-related expenses; any and all alleged or actual failures to pay all wages, or compensation owed to a fired, quitting, or otherwise departing employee; any and all alleged or actual unfair business practices; and any and all alleged or actual failures to pay any interest or penalties owed as a result of any and all of the foregoing. Plaintiff and Class Members will release Defendant and the Released Parties from all remedies that could be claimed in connection with the Released Class Claims including but not limited to, statutory, constitutional, contractual damages, unpaid costs, penalties, punitive damages, interest, attorneys' fees, litigation costs, restitution, and equitable relief from June 4, 2017 through May 8, 2022.

Additionally, if you are a PAGA Member you agree to release Defendant for any and all claims for civil penalties pursuant to PAGA that are reasonably related to or arising out of the factual allegations in the operative pleading in the Lawsuit and/or Plaintiff's PAGA notice to the LWDA which occurred during the PAGA Period (collectively, the "Released PAGA Claims"). Plaintiff and PAGA Members will release Defendant and the Released Parties from all remedies that could be claimed in connection with the Released PAGA Claims including but not limited to, statutory, constitutional, contractual damages, unpaid costs, penalties, punitive damages, interest, attorneys' fees, litigation costs, restitution, and equitable relief.

9. What if I do not wish to be involved?

Anyone not wishing to participate in the settlement may exclude himself or herself ("opt out") by completing, signing, and mailing a letter indicating that they do not want to participate in the settlement to the Settlement Administrator, by **XXXX**.

Hopdoddy Settlement Administrator
c/o **XXXX**

If your Request for Exclusion is postmarked after **XXXX**, it will be rejected, and you will be a Participating Class Member and be bound by the settlement terms and release. Anyone who submits a timely and valid Request for Exclusion shall not be deemed a Participating Class Member and will not receive any payment as part of this settlement (except for the individual's share of the PAGA payment, if any). Such persons will keep any rights to sue Defendant separately about the claims made in this lawsuit (except for the Released PAGA Claims).

10. What if I have an objection?

A class member may object to the settlement in writing or in person. Written objections and all supporting briefs or other materials must be submitted to the Settlement Administrator no later than **XXXX**.

Any class member may make an objection at the Final Approval Hearing with or without filing or serving any written objection. The Class Member may appear personally or through an attorney, at his or her own expense, at the Final Approval Hearing to present his or her objection directly to the Court. Any attorney who will represent an individual objecting to this Settlement who has not

filed a written objection must file a notice of appearance with the Judge and serve Class Counsel and Defense Counsel no later than _____. The Final Approval and Fairness Hearing will be held in Dept. 9 of the Los Angeles County Superior Court, Spring Street Courthouse, located at 312 North Spring Street, Los Angeles, CA 90012 on _____, 2022, at **XX** (a.m./p.m.) (Pacific Time).

<u>Class Counsel:</u> Kingsley & Kingsley, APC Eric B. Kingsley, Esq. Kelsey M. Szamet, Esq. 16133 Ventura Blvd., Suite 1200 Encino, CA 91436 Telephone: (818) 990-8300	<u>Counsel for Defendant:</u> Davis Wright Tremaine LLP Janet L. Grumer, Esq. Evelyn F. Wang, Esq. Tiffanie de la Riva Esq. 865 South Figueroa Street, 24th Floor Los Angeles, California 90017-2566 Telephone: (213) 633-6800
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11. Do I need a lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. However, if you want your own lawyer, you are free to hire one at your own expense.

12. What happens next in the case?

The Settlement has only been preliminarily approved. The Court will hold a hearing in Dept. 9 of the Los Angeles County Superior Court, Spring Street Courthouse, located at 312 North Spring Street, Los Angeles, CA 90012 on _____, 2022, at **XX** (a.m./p.m.) (Pacific Time), to consider any objections and determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, Plaintiff's enhancement award, and the costs of claims administration. The hearing may be continued without further notice to you. It is not necessary for you to appear at this hearing.

13. How can I receive more information?

This notice is a summary of the basic terms of the settlement. For further information, you may also telephone the Hopdoddy Settlement Administrator, (listed above), or Class Counsel (listed above).

Please do not telephone the Court, the Office of the Clerk, or Defendant's counsel for information regarding this settlement.

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EXHIBIT “B”

KINGSLEY & KINGSLEY, APC
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eric@kingsleykingsley.com
KELSEY M. SZAMET, Esq., Cal. Bar No. 260264
kelsey@kingsleykingsley.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
Telephone: (818) 990-8300
Fax: (818) 990-2903

Attorneys for Plaintiff and the proposed class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DANGELO RANDLE-TATUM an
individual, on behalf of himself and others
similarly situated

PLAINTIFF,

v.

HOPDODDY BURGER BAR, INC.; and
DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 21STCV21015

[Case Assigned for All Purposes to the Hon.
Yvette M. Palazuelos in Dept. 9]

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: XX

Time: XX

Dept.: 9

Complaint Filed:	June 4, 2021
FAC Filed:	September 16, 2021
Trial Date:	None Scheduled

1 The Motion for Preliminary Approval of the Joint Stipulation of Class and Representative
2 Action Settlement and Release of Claims (“Settlement Agreement”), a copy of which is attached
3 to the concurrently-filed Declaration of Kelsey M. Szamet in Support of Plaintiff’s Motion for
4 Preliminary Approval of Class Settlement as Exhibit “1”, came before this Court on XXXX. The
5 Court, having considered the papers submitted in support of the motion of the parties, **HEREBY**
6 **ORDERS THE FOLLOWING:**

7 1. The Court grants preliminary approval of the Settlement Agreement and the
8 Settlement Class³ based upon the terms set forth in the Settlement Agreement filed herewith. The
9 Settlement is fair, adequate, and reasonable to the Settlement Class. The Court finds that: (a) the
10 Settlement Agreement resulted from extensive arm’s length negotiations; and (b) the Settlement
11 Agreement is sufficient to warrant notice of the Settlement to persons in the Settlement Class
12 and a full hearing on the final approval of the Settlement.

13 2. “Class Member(s)” or “Settlement Class” means all current and former non-
14 exempt employees who were employed by Defendant in California at any time from June 4, 2017
15 through May 8, 2022.

16 3. “PAGA Member(s)” or “PAGA Settlement Class” means all current and former
17 non-exempt employees who were employed by Defendant in California at any time from June 4,
18 2020 through May 8, 2022.

19 4. The Settlement falls within the range of reasonableness and appears to be
20 presumptively valid, subject only to any objections that may be raised at the final fairness hearing
21 and final approval by this Court.

22 5. The Court makes the following preliminary findings for settlement purposes
23 only:

24 A. The Settlement Class, which consists of approximately 734 persons, is so
numerous that joinder of all members is impracticable;

25 B. There appear to be questions of law or fact common to the Settlement
26 Class for purposes of determining whether this Settlement should be
approved;

27
28 ³ All capitalized terms herein shall have the meaning ascribed to them in the Settlement
Agreement unless otherwise defined.

1 C. Plaintiff's claims appear to be typical of the claims being resolved through
the proposed settlement;

2 D. Plaintiff appears to be capable of fairly and adequately protecting the
3 interests of the Class Members in connection with the proposed settlement;

4 E. Common questions of law and fact appear to predominate over questions
affecting only individual persons in the Settlement Class. Accordingly,
5 the Settlement Class appears to be sufficiently cohesive to warrant
settlement by representation; and

6 F. Certification of the Settlement Class appears to be superior to other
7 available methods for the fair and efficient resolution of the claims of the
Settlement Class.

8 6. The Court approves, as to form and content, the Notice of Class Action Settlement
9 in substantially the form attached to the Settlement Agreement as Exhibit A.

10 7. The Court approves the procedure for Class Members to object to the Settlement as
11 set forth in the Notice of Class Action Settlement.

12 8. The Court approves the procedure for Class Members to become Participating Class
13 Members as set forth in the Notice of Class Action Settlement to Class Members.

14 9. The Court directs the mailing of the Notice of Class Action Settlement by first class
15 mail to the Class Members in accordance with the Implementation Schedule set forth below. The
16 Court finds that the dates selected for the mailing and distribution of the Notice of Class Action
17 Settlement, as set forth in the Implementation Schedule, meet the requirements of due process and
18 provide the best notice practicable under the circumstances and shall constitute due and sufficient
19 notice to all persons entitled thereto.

20 10. The Court confirms Kingsley & Kingsley, APC and Davtyan Law Firm, Inc. as
21 Class Counsel.

22 11. The Court confirms DANGELO RANDLE-TATUM as the Named Plaintiff.

23 12. The Court approves ILYM Group, Inc. as the Settlement Administrator.

24 13. The Court orders that pursuant to the Labor Code Private Attorneys General Act,
25 Labor Code §§ 2698, et seq. ("PAGA"), statutory notice of this Settlement has been and will
26 continue to be given to the Labor & Workforce Development Agency.

27 14. The Court orders the following Implementation Schedule for further proceedings:
28

a.	Preliminary Approval	XXXX
b.	Deadline for Defendant to Provide Class Data to Settlement Administrator.	20 business days from Preliminary Approval
c.	Mail Notice to Class Members	15 calendar days from Settlement Administrator's receipt of Class Data
d.	Deadline for Class Members to Postmark Claims Form	60 calendar days from mailing of Notice Packet (judged by postmark date)
e.	Deadline for Class Members to Postmark Any Objection	60 calendar days from mailing of Notice Packet (judged by postmark date)
f.	Deadline for Class Counsel to file Motion for Final Approval of Class Settlement	To be determined by the Court _____
g.	Deadline for Class Counsel to file Motion for Class Counsel Award	To be determined by the Court _____
h.	Final Approval Hearing	To be determined by the Court _____

15. IT IS FURTHER ORDERED that if the Court does not execute and file an Order of Final Approval and Judgment, or if the Effective Date of Settlement, as defined in the Settlement Agreement, does not occur for any reason, the Settlement Agreement and the proposed Settlement that is the subject of this Order shall become null, void, unenforceable and inadmissible in any judicial, administrative or arbitral proceeding for any purpose, and all evidence, court orders and proceedings had in connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the litigation, as more specifically set forth in the Settlement Agreement.

16. IT IS FURTHER ORDERED that, pending further Order of this Court, all proceedings in this matter except those contemplated herein and in the Settlement Agreement are hereby stayed.

1 17. The Court expressly reserves the right to adjourn or continue the Final Fairness
2 Hearing from time to time without further notice to members of the Settlement Class.

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4 **DATED:** _____
5 **JUDGE OF THE SUPERIOR COURT**
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EXHIBIT “C”

KINGSLEY & KINGSLEY, APC
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Fax: (818) 990-2903

Attorneys for Plaintiff and the proposed class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DANGELO RANDLE-TATUM an
individual, on behalf of himself and others
similarly situated

PLAINTIFF,

v.

HOPDODDY BURGER BAR, INC.; and
DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 21STCV21015

[Case Assigned for All Purposes to Hon.
Yvette M. Palazuelos in Dept. 9]

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND ENTERING
JUDGMENT**

Date: XX

Time: XX

Dept.: 9

Complaint Filed: June 4, 2021
FAC Filed: September 16, 2021
Trial Date: None Scheduled

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

The above captioned Action is a class action and representative action lawsuit brought by Plaintiff DANGELO RANDLE-TATUM (“Plaintiff”) against Defendant HOPDODDY BURGER BAR, INC. (“Defendant”) (Plaintiff and Defendant, together the “Parties”). The Motion for Final Approval of Class Action Settlement came before this Court on XXXX.

WHEREAS, Judge Yvette M. Palazuelos granted preliminary approval of the Joint Stipulation of Class and Representative Action Settlement and Release of Claims (“Settlement Agreement”), attached to the concurrently-filed Declaration of Kelsey M. Szamet as Exhibit “1”, on XX.

WHEREAS, Plaintiff DANGELO RANDLE-TATUM has applied to the Court for an order granting final approval of the Settlement Agreement.

WHEREAS, the Settlement Agreement sets forth the terms and conditions of the proposed Settlement and for entry of an order of final approval and entry of final judgment thereon. The Court having read and considered Plaintiff’s Motion for Final Approval of Class Action Settlement; Motion for Approval of Attorneys’ Fees and Costs; the Declarations of Kelsey M. Szamet, Dangelo Randle-Tatum, and XXXX of ILYM Group, Inc.; and the supporting documents annexed thereto, now finds:

NOW THEREFORE, GOOD CAUSE APPEARING, IT IS HEREBY ORDERED:

1. The Court has personal jurisdiction over all Class Members⁴ and that the Court has subject matter jurisdiction to approve the Settlement;

2. The terms of the Settlement are fair, just, reasonable, and adequate, consistent and in compliance with California Code of Civil Procedure, the California and United States Constitutions (including the due process clauses), the California Rules of Court and any other applicable law, and in the best interest of each of the Parties and the Class Members and is hereby finally approved in all respects.

3. The Parties are hereby directed to perform the terms of the Settlement as described

⁴ All capitalized terms herein shall have the meaning ascribed to them in the Settlement Agreement unless otherwise defined.

1 in the Settlement Agreement according to its terms and provisions.

2 4. The Settlement Agreement is binding on Plaintiff and all other Class Members,
3 except those timely and properly filed Requests for Exclusions, as well as their heirs, executors,
4 and administrators, successors, and assigns.

5 5. There are XX (XX) valid requests for exclusion.

6 6. There are XX (XX) valid objections.

7 7. It is ordered that the Settlement Class is certified for settlement purposes only. The
8 Court finds that an ascertainable class exists and a well-defined community of interest exists in the
9 questions of law and fact involved because in the context of the Settlement: (i) there are questions
10 of law and fact common to the Class Members which, as to the Settlement and all related matters,
11 predominate over any individual questions; (ii) the Claims of Plaintiff are typical of the Claims of
12 the Class Members; and (iii) in negotiating, entering into and implementing the Settlement,
13 Plaintiff and Plaintiff's Attorneys have fairly and adequately represented and protected the interest
14 of the Class Members.

15 8. The Court finds that the Notice of Class Action Settlement and notice methodology
16 implemented pursuant to this Settlement (i) constituted the best practicable notice; (ii) constituted
17 notice that was reasonably calculated, under the circumstances, to apprise Class Members of the
18 pendency of the Action, their right to object to or exclude themselves from the proposed Settlement
19 and their right to appear at the Final Settlement Hearing; (iii) were reasonable and constituted due,
20 adequate and sufficient notice to all persons entitled to receive notice; and (iv) met all applicable
21 requirements of the California Code of Civil Procedure, the California and United States
22 Constitution (including the Due Process Clause), the California Rules of Court and any other
23 applicable law.

24 9. The Class is hereby made final. The Class is defined as all current and former non-
25 exempt employees who were employed by Defendant in California at any time from June 4, 2017
26 through May 8, 2022.

27 10. The PAGA Members are hereby made final. The PAGA Members are defined as
28 all current and former non-exempt employees who were employed by Defendant in California at

1 any time from June 4, 2020 through May 8, 2022.

2 11. Pursuant to the Settlement Agreement, upon entry of this Final Order, Plaintiff and
3 the Class Members release Defendant and any and all affiliated predecessor and successor entities,
4 including without limitation HiBar Hospitality Operations, LLC, and each such entity's respective
5 present and former subsidiaries, affiliates, parents, agents, employees, members, investors,
6 partners, owners, directors, officers, attorneys, trustees, insurers, representatives, predecessors,
7 successors and assigns ("Released Parties") from any and all claims reasonably related to or arising
8 out of the factual allegations pled in the operative pleading in the Lawsuit, including all claims
9 that have been or could have been pled as wage and hour violations and related penalties and
10 interest under California law, including all claims made and that could have been made in such
11 pleading reasonably related to or arising out of the factual allegations therein during the Class
12 Period. The Released Class Claims include but are not limited to claims for any alleged or actual
13 failures to timely, fully, properly, or completely pay any minimum wages, regular wages, overtime
14 premium wages, meal or rest period premium wages, or other wages or premiums owed to the
15 Settlement Class; any and all alleged or actual failures to comply with meal or rest period
16 requirements; any alleged or actual failures to provide proper, accurate, timely, adequately
17 descriptive, or complete wage statements or pay stubs; any and all alleged or actual failures to fully
18 or properly reimburse or indemnify for any and all employment-related expenses; any and all
19 alleged or actual failures to pay all wages, or compensation owed to a fired, quitting, or otherwise
20 departing employee; any and all alleged or actual unfair business practices; and any and all alleged
21 or actual failures to pay any interest or penalties owed as a result of any and all of the foregoing.
22 Plaintiff and Class Members will release Defendant and the Released Parties from all remedies
23 that could be claimed in connection with the Released Class Claims including but not limited to,
24 statutory, constitutional, contractual damages, unpaid costs, penalties, punitive damages, interest,
25 attorneys' fees, litigation costs, restitution, and equitable relief from June 4, 2017 through May 8,
26 2022.

27 12. Pursuant to the Settlement Agreement, upon entry of this Final Order, Plaintiff and
28 the PAGA Members release Defendant and the Released Parties from any and all claims for civil

1 penalties pursuant to PAGA that are reasonably related to or arising out of the factual allegations
2 in the operative pleading in the Lawsuit and/or Plaintiff's PAGA notice to the LWDA which
3 occurred during the PAGA Period (collectively, the "Released PAGA Claims"). Plaintiff and
4 PAGA Members will release Defendant and the Released Parties from all remedies that could be
5 claimed in connection with the Released PAGA Claims including but not limited to, statutory,
6 constitutional, contractual damages, unpaid costs, penalties, punitive damages, interest, attorneys'
7 fees, litigation costs, restitution, and equitable relief.

8 13. The Settlement Agreement is not an admission by Defendant, nor is this Final Order
9 a finding of the validity of any allegations or of any wrongdoing by Defendant. Neither this Final
10 Order, the Settlement, nor any document referred to herein, nor any action taken to carry out the
11 Settlement, shall be construed or deemed an admission of liability, culpability, negligence, or
12 wrongdoing on the part of Defendant.

13 14. Plaintiff and all Class Members who have not been timely and properly excluded
14 from the Settlement Class, and any person acting on their behalf, are permanently barred and
15 enjoined from: (i) filing, commencing, prosecuting, intervening in, participating in (as class
16 members or otherwise), or receiving any benefits or other relief from, any other lawsuit, in any
17 state or federal court, arbitration, or administrative, regulatory or other proceeding or order in any
18 jurisdiction based on the Released Class Claims and/or Released PAGA Claims; and (ii)
19 organizing such non-excluded Class Members into a separate class for purposes of pursuing as a
20 purported class action (including by seeking to amend a pending complaint to include class
21 allegations, or by seeking class certification in a pending action) any lawsuit based on or relating
22 to the Released Class Claims and/or Released PAGA Claims.

23 15. The Settlement Agreement provides that the Gross Settlement Amount is Six
24 Hundred and Fifty Thousand Dollars and zero cents (\$650,000.00). The Net Settlement Amount
25 shall be determined according to the terms of the Settlement Agreement.

26 16. The Court orders the calculations and the payments to be made and administered in
27 accordance with the terms of the Settlement Agreement.

28 17. The Court hereby finds that Plaintiff and Class Counsel adequately represented the

1 Settlement Class for purposes of entering into and implementing the Settlement. The Court hereby
2 confirms Kingsley & Kingsley, APC and Davtyan Law Firm, Inc. as Class Counsel in the Action.

3 18. The Court hereby finds the unopposed application of Class Counsel for a costs and
4 attorneys' fees award provided for under the proposed Settlement to be fair and reasonable in light
5 of all the circumstances and is hereby granted. Of the Gross Settlement Amount, \$216,666.67
6 shall be paid for attorney fees and up to \$15,000.00 shall be paid for litigation costs.

7 19. The unopposed application of Class Counsel for a Service Award is hereby granted.
8 Of the Gross Settlement Amount, a \$7,500.00 enhancement award shall be allocated to Named
9 Plaintiff DANGELO RANDLE-TATUM.

10 20. The unopposed application of Class Counsel for claims administration fees to
11 ILYM Group, Inc. or the designated claim administrator is hereby granted. Of the Gross
12 Settlement Amount, up to \$15,000.00 shall be paid for settlement administration fees.

13 21. The Court approves the PAGA Payment in the amount of \$35,000.00 The Court
14 approves 75% of the PAGA Payment being allocated to the LWDA in the amount of \$26,250.00.
15 The Court further directs that the remaining 25% of the PAGA Payment, in the amount of
16 \$8,750.00 shall be allocated to the PAGA Members.

17 22. If a Class Member and/or PAGA Member does not cash his or her settlement check
18 within 180 days, the uncashed funds shall be transmitted by the Settlement Administrator to the
19 California State Controller's Office - Unclaimed Property Fund in the name of the Participating
20 Class Member who did not negotiate his or her Individual Settlement Payment check.

21 23. Defendant shall have no further liability for costs, expenses, interest, attorneys'
22 fees, or for any other charge, expense, or liability, except as provided for in the Settlement
23 Agreement.

24 24. Pursuant to California Rule of Court Rule 3.769(h) and C.C.P. § 664.4, the Court
25 shall retain continuing jurisdiction over the Action, the Parties, and the Settlement Class, as well
26 as the administration and enforcement of the terms of the Settlement of this action to enforce the
27 terms of the judgment. Without affecting the finality of the Final Judgment, the Court shall retain
28 continuing jurisdiction over the Actions, the Parties, and the Settlement Class, as well as the

1 administration and enforcement of the Settlement. Any disputes or controversies arising with
2 respect to the interpretation, consummation, enforcement, or implementation of the Settlement
3 shall be presented by motion to the Court; provided however, that nothing in this Part shall restrict
4 the ability of the Parties to exercise their rights to terminate the Settlement pursuant to the terms
5 of the Settlement Agreement.

6 25. This Final Order shall constitute a final judgment.

7 26. The Court hereby dismisses the Action (including all individual claims and
8 Released Class Claims and Released PAGA Claims presented thereby) with prejudice, without
9 fees or costs to any party except as provided in the Settlement Agreement.

10
11 **DATED:** _____

JUDGE OF THE SUPERIOR COURT

(Proof of Submission to LWDA)

EXHIBIT "2"

(PROOF OF SERVICE)
[CCP 1013(a)(3)]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On July 13, 2022, I served all interested parties in this action the following documents described as: **DECLARATION OF KELSEY M. SZAMET IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Janet Grumer Evelyn Wang Tiffanie de la Riva jgrumer@dwt.com evelynwang@dwt.com tiffaniedelariva@dwt.com Davis Wright Tremaine LLP 865 South Figueroa Street, 24th Floor Los Angeles, CA 90017-2566	Emil Davtyan emil@davtyanlaw.com Davtyan Law Firm, Inc. 880 E. Broadway Glendale, CA 91205
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[XX] BY ELECTRONIC SERVICE: I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/315>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

[XX] (BY ELECTRONIC MAIL TRANSMISSION) I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the below email address(es).

[XX] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 13, 2022, at Encino, California.



Michelle Tanzer