

BIBIYAN LAW GROUP, P.C.

David D. Bibiyan, Esq. (SBN 287811)
david@tomorrowlaw.com
Vedang J. Patel (SBN 328647)
vedang@tomorrowlaw.com
Iona Levin (SBN 294657)
iona@tomorrowlaw.com
8484 Wilshire Blvd., Suite 500
Beverly Hills, California 90211
Tel: (310) 438-5555; Fax: (310) 300-1705

Attorneys for Plaintiff, ANAHY MACHUCA, on behalf of
herself and all others similarly situated and aggrieved

LITTLER MENDELSON, P.C.

Rachael Lavi, Esq. (SBN 294443)
rlavi@littler.com
Jennifer A. Goldberg, Esq. (SBN 292216)
jagoldberg@littler.com
2049 Century Park East, 5th Floor
Los Angeles, CA 90067
Tel: (310) 553-0308
Fax: (310) 553-5583

Attorneys for Defendants CHARLEY'S STEAKERY, INC.
(erroneously sued as Charleys Philly Steaks), and
MODESTO VENTURES, LLC,

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SOLANO**

ANAHY MACHUCA, an individual and on
behalf of all others similarly situated and
aggrieved,

Plaintiff,

v.

CHARLEYS PHILLY STEAKS, an Ohio
corporation; MODESTO VENTURES, LLC,
an Ohio Limited Liability Company;
SAMMY RAMIREZ, an individual; and
DOES 1 through 100, inclusive,

Defendants.

CASE NOs.: FCS057713; FCS058064

[Assigned for all purposes to the Hon.
Christine A. Carringer, Dept. 12]

**JOINT STIPULATION RE: CLASS
ACTION AND REPRESENTATIVE
ACTION SETTLEMENT**

Action Filed: January 18, 2022
Trial Date: None set

1 This Joint Stipulation re: Class Action and Representative Action Settlement
2 (“Settlement” or “Agreement” or “Settlement Agreement”) is made by and between plaintiff
3 ANAHY MACHUCA (“Plaintiff”) individually and on behalf of the Settlement Class, on the one
4 hand; and Defendants CHARLEY’S STEAKERY, INC. (erroneously sued as Charleys Philly
5 Steaks) and MODESTO VENTURES, LLC (collectively, “Defendants”), on the other hand, in
6 the lawsuits entitled *Anahy Machuca v. Charleys Philly Steaks et. al.*, filed in Solano County
7 Superior Court, Case No. FCS057713 (“Class Action”) and Case No. FCS058064 (“PAGA
8 Action,” and with the Class Action, the “Action”). Plaintiff and Defendants shall be, at times,
9 collectively referred to as the “Parties”. This Agreement is intended by the Parties to fully,
10 finally, and forever resolve the claims as set forth herein, based upon and subject to the terms
11 and conditions of this Agreement.

12 **1. DEFINITIONS**

13 **A. “Action”** means the related cases, *Anahy Machuca v. Charleys Philly Steaks et.*
14 *al* filed in Solano County Superior Court, Case No. FCS057713 and *Anahy Machuca v. Charleys*
15 *Philly Steaks et. al* filed in Solano County Superior Court, Case No. FCS058064.

16 **B. “Aggrieved Employees”** means Class Members working for Defendant Modesto
17 Ventures, LLC during the PAGA Period as non-exempt, hourly-paid employees in California.

18 **C. “Class Counsel”** means: David D. Bibiyan, Jeffrey D. Klein, and Vedang J. Patel
19 of Bibiyan Law Group, P.C. The term “Class Counsel” shall be used synonymously with the term
20 “Plaintiff’s Counsel.”

21 **D. “Class Members” “Settlement Class,” or “Settlement Class Members,”**
22 means all current and former non-exempt, hourly-paid employees who worked in California for
23 Defendant Modesto Ventures, LLC at any time during the Class Period.

24 **E. “Class Period”** means the period from January 18, 2018, through March 11, 2023.

25 **F. “Class Notice”** means and refers to the notice sent to Class Members after
26 preliminary approval of the Settlement in the manner described in Paragraph 9(A) of this
27 Agreement.
28

1 **G.** **“Court”** means the Superior Court of the State of California for the County of
2 Solano.

3 **H.** **“Final Approval Date”** means the later of: (1) the date the Court signs an Order
4 granting final approval of this Settlement (“Final Approval”) and Judgment; (2) if there is an
5 objector, 60 days from the date the Final Approval and Judgment; or (3) to the extent any appeals
6 have been filed, the date on which they have been resolved or exhausted.

7 **I.** **“Defendants”** means collectively, Charley’s Steakery, Inc. and Modesto
8 Ventures, LLC.

9 **J.** **“Employer Taxes”** means employer-funded taxes and contributions imposed on
10 the wage portions of the Individual Settlement Payments under the Federal Insurance
11 Contributions Act, the Federal Unemployment Tax Act, and any similar state and federal taxes
12 and contributions required of employers, such as for unemployment insurance.

13 **K.** **“General Release”** means the broader release of claims by Plaintiff, which is in
14 addition to Plaintiff’s limited release of claims as a Participating Class Member.

15 **L.** **“Gross Settlement Amount”** means a non-reversionary fund in the sum of Six
16 Hundred and Ninety Five Thousand Dollars and Zero Cent (\$695,000.00),¹ which shall be paid
17 by Defendants, from which all payments for the Individual Settlement Payments to Participating
18 Class Members, the Court-approved amounts for attorneys’ fees and reimbursement of litigation
19 costs and expenses to Class Counsel, Settlement Administration Costs, the Service Award, the
20 PAGA Payment, and the LWDA Payment shall be paid. It expressly excludes Employer Taxes,
21 which shall be paid by Defendants separate, apart, and in addition to the Gross Settlement
22 Amount.

23 **M.** **“Individual PAGA Payment”** means a payment made to an Aggrieved
24 Employee for his or her share of the PAGA Payment, which may be in addition to his or her
25 Individual Settlement Share if he or she is also a Participating Class Member.

26 **N.** **“Individual Settlement Payment”** means a payment to a Participating Class
27 Member of his or her net share of the Net Settlement Amount.

28 _____
¹ As the same may be increased in accordance with Paragraph 17, below.

1 **O. “Individual Settlement Share”** means the gross amount of the Net Settlement
2 Amount that a Participating Class Member is projected to receive based on the number of
3 Workweeks that he or she worked as a Settlement Class Member during the Class Period, which
4 shall be reflected in his or her Class Notice.

5 **P. “LWDA Payment”** means the payment to the State of California Labor and
6 Workforce Development Agency (“LWDA”) for its seventy-five percent (75%) share of the total
7 amount allocated toward penalties under the PAGA all of which is to be paid from the Gross
8 Settlement Amount. The Parties have agreed that Forty Thousand Dollars and Zero Cents
9 (\$40,000.00) shall be allocated toward PAGA penalties, of which Thirty Thousand Dollars and
10 Zero Cents (\$30,000.00) will be paid to the LWDA (*i.e.*, the LWDA Payment) and Ten Thousand
11 Dollars and Zero Cents (\$10,000.00) will be paid to Aggrieved Employees on a *pro rata* basis
12 based on the Workweeks worked for Defendants as a non-exempt, hourly-paid employee in
13 California in the PAGA Period (*i.e.* the PAGA Payment).

14 **Q. “Net Settlement Amount”** means the portion of the Gross Settlement Amount
15 that is available for distribution to the Participating Class Members after deductions for the Court-
16 approved allocations for Settlement Administration Costs, a Service Award to Plaintiff, an award
17 of attorneys’ fees, reimbursement of litigation costs and expenses to Class Counsel, the LWDA
18 Payment, and the PAGA Payment.

19 **R. “PAGA Payment** is the 25% portion of the Forty Thousand Dollars and Zero
20 Cents (\$40,000.00) that is allocated toward PAGA penalties (Ten Thousand Dollars and Zero
21 Cents (\$10,000.00)) that will be paid to Aggrieved Employees on a *pro rata* basis based on the
22 Workweeks worked as non-exempt, hourly-paid employees in California in the PAGA Period,
23 which would be in addition to their Individual Settlement Payment if they are Participating Class
24 Members, as well.

25 **S. “PAGA Period”** means the period from January 21, 2020 through March 11,
26 2023.

27 **T. “Participating Class Members”** means all Settlement Class Members who do
28 not submit a timely and valid Request for Exclusion.

1 **U. “Participating Individual Settlement Share”** means the gross amount of the Net
2 Settlement Amount that a Participating Class Member is eligible to receive based on the number
3 of Workweeks that he or she worked as a Settlement Class Member during the Class Period once
4 all opt-outs have been factored in, excluding any Individual PAGA Payment to which he or she
5 may be entitled if he or she is also an Aggrieved Employee.

6 **V. “Plaintiff”, “Named Plaintiff” or “Class Representative”** shall refer to
7 Plaintiff Anahy Machuca.

8 **W. “Preliminary Approval Date”** means the date on which the Court enters an
9 Order granting preliminary approval of the Settlement.

10 **X. “Released Parties”** shall mean Defendants and each of their past, present, and
11 future respective subsidiaries, dba’s, affiliates, parents, insurers and reinsurers, and company-
12 sponsored employee benefit plans of any nature and their successors and predecessors in interest,
13 including all of their officers, directors, shareholders, exempt employees, agents, principals,
14 heirs, representatives, accountants, auditors, consultants, attorneys, administrators, fiduciaries,
15 trustees, and agents; as well as Sammy Ramirez.

16 **Y. “Response Deadline”** means the deadline for Settlement Class Members to mail
17 any Requests for Exclusion, Objections, or Workweek Disputes to the Settlement Administrator,
18 which is forty-five (45) calendar days from the date that the Class Notice is first mailed in English
19 and Spanish by the Settlement Administrator, unless a Class Member’s notice is re-mailed. In
20 such an instance, the Response Deadline shall be fifteen (15) calendar days from the re-mailing,
21 or forty-five (45) calendar days from the date of the initial mailing, whichever is later, in which
22 to postmark a Request for Exclusion, Workweek Dispute or Objection. The date of the postmark
23 shall be the exclusive means for determining whether a Request for Exclusion, Objection, or
24 Workweek Dispute was submitted by the Response Deadline.

25 **Z. “Request for Exclusion”** means a written request to be excluded from the
26 Settlement Class pursuant to Paragraph 9(C) below.
27
28

1 **AA. “Service Award”** means monetary amounts to be paid to Plaintiff of up to Seven
2 Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00), which subject to Court approval,
3 will be paid out of the Gross Settlement Amount.

4 **BB. “Settlement Administration Costs”** means all costs incurred by the Settlement
5 Administrator in administration of the Settlement, including, but not limited to, translating the
6 Class Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English
7 and Spanish, calculating Individual Settlement Shares, Individual Settlement Payments,
8 Individual PAGA Payments, and Participating Individual Settlement Shares, as well as associated
9 taxes and withholdings, providing declarations, generating Individual Settlement Payment
10 checks and related tax reporting forms, doing administrative work related to unclaimed checks,
11 transmitting payment to Class Counsel for the Court-approved amounts for attorneys’ fees and
12 reimbursement of litigation costs and expenses, to Plaintiffs for their Service Award, and to the
13 LWDA for the LWDA Payment, providing weekly reports of opt-outs, objections and related
14 information, and any other actions of the Settlement Administrator as set forth in this Agreement,
15 all pursuant to the terms of this Agreement. The Settlement Administration Costs are estimated
16 not to exceed \$15,350.00. If the actual amount of the Settlement Administration Costs is less
17 than \$15,350.00, the difference between \$15,350.00 and the actual Settlement Administration
18 Costs shall be a part of the Net Settlement Amount. If the Settlement Administration Costs exceed
19 \$15,350.00 then such excess will be paid solely from the Gross Settlement Amount and
20 Defendants will not be responsible for paying any additional funds in order to pay these
21 additional costs.

22 **CC. “Settlement Administrator”** means the Third-Party Administrator mutually
23 agreed upon by the Parties that will be responsible for the administration of the Settlement
24 including, without limitation, translating the Class Notice in Spanish, the distribution of the
25 Individual Settlement Payments to be made by Defendants from the Gross Settlement Amount
26 and related matters under this Agreement.

27 **DD. “Workweeks”** means the number of weeks that a Settlement Class Member was
28 employed by and worked for the Defendants in a non-exempt, hourly position during the Class

1 Period in California, based on hire dates, re-hire dates (as applicable), and termination dates (as
2 applicable).

3 **2. BACKGROUND**

4 **A.** On January 18, 2022, Plaintiff filed a putative wage-and-hour class action alleging
5 failure to pay overtime and minimum wages, failure to provide meal periods and rest breaks, or
6 compensation in lieu thereof, failure to pay wages upon separation from employment, failure to
7 provide accurate wage statements, failure to timely pay wages, failure to indemnify business
8 expenses, and unfair competition, Solano County Superior Court, Case No. FCS057713 (the
9 “Class Action”).

10 **B.** On January 24, 2022, Plaintiff filed with the LWDA and served on Defendants a
11 notice under Labor Code section 2699.3 stating Plaintiff intended to serve as a proxy of the
12 LWDA to recover civil penalties on behalf of Aggrieved Employees for various Labor Code
13 violations. (“PAGA Notice”). On April 11, 2022, Plaintiff file a separate representative action
14 in Solano County Superior Court, Case No. FCS058064, seeking PAGA civil penalties on behalf
15 of herself and all others aggrieved (the “PAGA Action”).

16 **C.** Shortly thereafter, the Parties agreed to exchange informal discovery and attend
17 an early mediation, in which Plaintiff was provided with, among other things: (1) time and
18 Payroll records for 100% of the estimated 762 Class Members; (2) data points, including the total
19 number of shifts, total number of workweeks, total number of pay periods during the Class
20 Period, as well as the average rate of pay; (3) all relevant policy documents; (4) an employee
21 handbook; and (5) documents specifically related to Plaintiff.

22 **D.** On December 8, 2022, the Parties participated in a full-day mediation with Marc
23 Feder, Esquire, a well-regarded mediator experienced in mediating complex labor and
24 employment matters. With the aid of the mediator’s evaluation, the Parties reached the
25 Settlement to resolve the Action. As part and parcel to the Settlement, the Parties have agreed to
26 stipulate to consolidate the Class Action and PAGA Action.

27 **E.** Class Counsel has conducted significant investigation of the law and facts relating
28 to the claims asserted in the Class Action, and the PAGA Notice, and have concluded that that

1 the Settlement set forth herein is fair, reasonable, adequate, and in the best interests of the
2 Settlement Class, taking into account the sharply contested issues involved, the expense and time
3 necessary to litigate the Action through trial and any appeals, the risks and costs of further
4 litigation of the Action, the risk of an adverse outcome, the uncertainties of complex litigation,
5 the information learned through informal discovery regarding Plaintiff's allegations, and the
6 substantial benefits to be received by Settlement Class Members.

7 **F.** Defendants have concluded that, because of the substantial expense of defending
8 against the Action, the length of time necessary to resolve the issues presented herein, the
9 inconvenience involved, and the concomitant disruption to its business operations, it is in its best
10 interest to accept the terms of this Agreement. Defendants deny each of the allegations and
11 claims asserted against it in the Action and the PAGA Notice. However, Defendants nevertheless
12 desire to settle the Action for the purpose of avoiding the burden, expense and uncertainty of
13 continuing litigation and for the purpose of putting to rest the controversies engendered by the
14 Action.

15 **G.** This Agreement is intended to and does effectuate the full, final, and complete
16 resolution of all Class Released Claims of Plaintiff and Participating Class Members, and all
17 PAGA Released Claims of Plaintiff and, to the extent permitted by law, of the State of California
18 acting on behalf of Aggrieved Employees.

19 **3. JURISDICTION**

20 The Court has jurisdiction over the Parties and the subject matter of the Action. The
21 Action includes claims that, if proven, would authorize the Court to grant relief pursuant to the
22 applicable statutes. After the Court has granted Final Approval of the Settlement and entered
23 judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment
24 pursuant to California Rule of Court, rule 3.769, subdivision (h).

25 **4. STIPULATION OF CLASS CERTIFICATION**

26 The Parties stipulate to the certification of the Settlement Class under this Agreement for
27 purposes of settlement only.
28

1 **5. STIPULATION TO CONSOLIDATE AND MOTIONS FOR**
2 **APPROVAL OF SETTLEMENT**

3 The Parties hereby stipulate to the filing of a stipulation to consolidate the Class Action
4 and PAGA Action to effectuate the Settlement.

5 After full execution of this Agreement, Plaintiff will move for an order granting
6 preliminary approval of the Settlement, approving and directing the mailing of the proposed
7 Notice of Class Action Settlement (“Class Notice”) attached hereto as **Exhibit “A”**, conditionally
8 certifying the Settlement Class for settlement purposes only, and approving the deadlines
9 proposed by the Parties for the submission of Requests for Exclusion, Workweek Disputes, and
10 Objections. If and when the Court preliminarily approves the Settlement, and after
11 administration of the Class Notice in a manner consistent with the Court’s Preliminary Approval
12 Order, Plaintiffs will move for an order finally approving the Settlement and seek entry of a
13 Judgment in line with this Settlement. The Parties may both respond to any Objections lodged
14 to final approval of the Settlement up to five (5) court days before the Final Approval Hearing.

15 **6. STATEMENT OF NO ADMISSION**

16 Defendants deny any wrongdoing of any sort and further deny any liability to Plaintiff
17 and the Settlement Class with respect to any claims or allegations asserted in the Action and the
18 PAGA Notice. This Agreement shall not be deemed an admission by Defendants of any claims
19 or allegations asserted in the Action or the PAGA Notice. Except as set forth elsewhere herein,
20 in the event that this Agreement is not approved by the Court, or any appellate court, is
21 terminated, or otherwise fails to be enforceable, Plaintiff will not be deemed to have waived,
22 limited or affected in any way any claims, rights or remedies, or defenses in the Action or the
23 PAGA Notice, and Defendants will not be deemed to have waived, limited, or affected in any
24 way any of their objections or defenses in the Action and the PAGA Notice. The Parties shall be
25 restored to their respective positions in the Action prior to the entry of this Settlement.

26 **7. RELEASE OF CLAIMS**

27 **A. Release by All Participating Class Members.**
28

1 **B.** Effective only upon the entry of an Order granting Final Approval of the
2 Settlement, entry of Judgment, and payment by Defendants to the Settlement Administrator of
3 the full Gross Settlement Amount and Employers' Taxes necessary to effectuate the Settlement,
4 Plaintiff and all Participating Class Members release all claims against the Released Parties
5 asserted in the complaint filed in the Class Action, or any and all claims that may be asserted
6 against the Released Parties based on the factual allegations in the complaint filed in the Class
7 Action. For the duration of the Class Period, the release includes, for Participating Class
8 Members: (A) all claims pled in the complaint filed in the Class Action, including: (1) all claims
9 for failure to pay overtime wages; (2) all claims for failure to pay minimum wages; (3) all claims
10 for failure to provide meal periods or compensation in lieu thereof; (4) all claims for failure to
11 provide rest periods or compensation in lieu thereof; (5) all claims for failure to pay all wages
12 due upon separation from employment; (6) all claims for failure to issue accurate and compliant
13 wage statements; (7) all claims for failure timely pay wages; and (8) failure to indemnify business
14 expenses; (9) all claims asserted through California Business & Professions Code section 17200,
15 *et seq.* arising out of the Labor Code violations referenced in the Complaint; and (B) all claims
16 that could have been pled in the Class Action arising out of the same operative facts referenced
17 in the complaint filed in the Class Action. (the "Class Released Claims").

18 **C. Release by All Aggrieved Employees**

19 For Aggrieved Employees, and, to the extent permitted by law, the State of California,
20 the release includes for the duration of the PAGA Period, all claims asserted in the PAGA Notice
21 and/or thereafter alleged in the complaint filed in the PAGA Action for PAGA civil penalties
22 pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 in connection with
23 alleged violations of Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 226, 226.7, 227.3,
24 232, 232.5, 246, *et seq.*, 432, 510, 512, 1102.5, 1174, 1194, 1197, 1197.5, 1198.5, 2802,
25 and 2810.5, among others, as well as all claims that could have been pled in the complaint filed
26 in the PAGA Action arising out of the facts asserted in the complaint filed in the PAGA Action
27 (the "PAGA Released Claims"). The Class Released Claims and PAGA Released Claims shall
28 be referred to herein as the "Released Claims".

1 **D. Claims Not Released**

2 The releases above expressly exclude all other claims, including claims for vested
3 benefits, wrongful termination, unemployment insurance, disability, social security, workers'
4 compensation, and any other claims outside of the Class Released Claims of Participating Class
5 Members arising during the Class Period and the PAGA Released Claims of Aggrieved
6 Employees (and, to the extent permitted by law, the State of California) arising outside of the
7 PAGA Period.

8 **E. General Release.**

9 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
10 of Judgment, and payment by Defendants to the Settlement Administrator selected of the full
11 Gross Settlement Amount and Employers' Taxes necessary to effectuate the Settlement, in
12 addition to the Released Claims, Plaintiff makes the additional following General Release:
13 Plaintiff releases the Released Parties from all claims, demands, rights, liabilities and causes of
14 action of every nature and description whatsoever, known or unknown, asserted or that might
15 have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule,
16 law or regulation arising out of, relating to, or in connection with any act or omission of the
17 Released Parties through the date of full execution of this Agreement in connection with
18 Plaintiff's employment with Defendant or the termination thereof, except for any and all other
19 claims that may not be released as a matter of law through this Agreement. To the extent of the
20 General Release provided herein, Plaintiff stipulates and agrees that, upon entry of an Order
21 granting Final Approval of the Settlement, entry of Judgment, and payment by Defendants to the
22 Settlement Administrator selected of the full Gross Settlement Amount and Employers' Taxes
23 necessary to effectuate the Settlement, they shall have expressly waived and relinquished, to the
24 fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the
25 California Civil Code, or any other similar provision under federal or state law, which provides:

26 A general release does not extend to claims that the creditor or
27 releasing party does not know or suspect to exist in his or her
28 favor at the time of executing the release and that, if known by

1 him or her, would have materially affected his or her settlement
2 with the debtor or released party.

3 **8. SETTLEMENT ADMINISTRATOR**

4 A. Plaintiff and Defendants, through their respective counsel, have selected ILYM
5 Group, Inc (“ILYM”) and will request that the Court appoint ILYM to administer the Settlement,
6 which includes but is not limited to translating the Class Notice to Spanish, distributing and
7 responding to inquiries about the Class Notice and calculating all amounts to be paid from the
8 Gross Settlement Amount. Charges and expenses of the Settlement Administrator, currently
9 estimated to be \$15,350.00 will be paid from the Gross Settlement Amount. If the actual amount
10 of the Settlement Administration Costs is less than \$15,350.00, the difference between
11 \$15,350.00 and the actual Settlement Administration Costs shall be a part of the Net Settlement
12 Amount. If the Settlement Administration Costs exceed \$15,350.00, then such excess will be
13 paid solely from the Gross Settlement Amount and Defendants will not be responsible for paying
14 any additional funds in order to pay these additional costs.

15 **9. NOTICE, WORKWEEK DISPUTE, OBJECTION, AND EXCLUSION**
16 **PROCESS**

17 **A. Notice to the Settlement Class Members**

18 (1) Within fourteen (14) calendar days after the Preliminary Approval Date,
19 Defendants’ Counsel shall provide the Settlement Administrator with information with respect
20 to each Settlement Class Member, including his or her: (1) name; (2) last known address(es)
21 currently in Defendants’ possession, custody, or control; (3) last known telephone number(s)
22 currently in Defendants’ possession, custody, or control; (4) last known Social Security
23 Number(s) in Defendants’ possession, custody, or control; and (5) the dates of employment (*i.e.*,
24 hire dates, and, if applicable, re-hire date(s) and/or separation date(s)) for each Settlement Class
25 Member (“Class List”). The Settlement Administrator shall perform an address search using the
26 United States Postal Service National Change of Address (“NCOA”) database and update the
27 addresses contained on the Class List with the newly-found addresses, if any. Within seven (7)
28 calendar days, or soon thereafter, of receiving the Class List from Defendant, the Settlement

1 Administrator shall mail the Class Notice in English and Spanish to the Settlement Class
2 Members via first-class regular U.S. Mail using the most current mailing address information
3 available. The Settlement Administrator shall maintain the Class List and digital copies of all
4 the Settlement Administrator's records evidencing the giving of notice to any Settlement Class
5 Member, for at least four (4) years from the Final Approval Date.

6 (2) The Class Notice will set forth:

- 7 (a) the Settlement Class Member's estimated Individual
8 Settlement Payment and Individual PAGA Payment,
9 and the basis for each;
- 10 (b) the information required by California Rule of Court,
11 rule 3.766, subdivision (d);
- 12 (c) the material terms of the Settlement;
- 13 (d) the proposed Settlement Administration Costs;
- 14 (e) the definition of the Settlement Class;
- 15 (f) a statement that the Court has preliminarily approved
16 the Settlement;
- 17 (g) how the Settlement Class Member can obtain
18 additional information, including contact information
19 for Class Counsel;
- 20 (h) information regarding opt-out and objection
21 procedures;
- 22 (i) the date and location of the Final Approval Hearing;
23 and
- 24 (j) that the Settlement Class Member must notify the
25 Settlement Administrator no later than the Response
26 Deadline if the Settlement Class Member disputes the
27 accuracy of the number of Workweeks as set forth on
28 his or her Class Notice ("Workweek Dispute"). If a

1 Settlement Class Member fails to timely dispute the
2 number of Workweeks attributed to him or her in
3 conformity with the instructions in the Class Notice,
4 then he or she shall be deemed to have waived any
5 objection to its accuracy and any claim to any
6 additional settlement payment based on different data.

7 (3) If a Class Notice from the initial notice mailing is returned as
8 undeliverable, the Settlement Administrator will attempt to obtain a current address for the
9 Settlement Class Member to whom the returned Class Notice had been mailed, within five (5)
10 calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class
11 Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator
12 is successful in obtaining a new address, it will promptly re-mail the Class Notice to the
13 Settlement Class Member. Further, any Class Notices that are returned to the Settlement
14 Administrator with a forwarding address before the Response Deadline shall be promptly re-
15 mailed to the forwarding address affixed thereto.

16 (4) No later than seven (7) calendar days from the Response Deadline, the
17 Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the
18 completion of the notice process, including the number of attempts to obtain valid mailing
19 addresses for and re-sending of any returned Class Notices, as well as the identities, number of,
20 and copies of all Requests for Exclusion and Objections received by the Settlement
21 Administrator.

22 **B. Objections.**

23 Only Participating Class Members may object to the Settlement. In order for any
24 Settlement Class Member to object to this Settlement in writing, or any term of it, he or she must
25 do so by mailing a written objection to the Settlement Administrator at the address or phone
26 number provided on the Class Notice no later than the Response Deadline. The Settlement
27 Administrator shall email a copy of the Objection forthwith to Class Counsel and Defendants'
28 counsel and attach copies of all Objections to the Declaration it provides Class Counsel, which

1 Class Counsel shall file in support of Plaintiff's Motion for Final Approval. The Objection
2 should set forth in writing: (1) the Objector's name; (2) the Objector's address; (3) the last four
3 digits of the Objector's Social Security Number; (4) the Objector's signature; (5) a statement of
4 whether the Objector plans to appear at the Final Approval Hearing; and (6) the reason(s) for the
5 Objection, along with whatever legal authority, if any, the Objector asserts in support of the
6 Objection. If a Settlement Class Member objects to the Settlement, the Settlement Class Member
7 will remain a member of the Settlement Class and if the Court approves this Agreement, the
8 Settlement Class Member will be bound by the terms of the Settlement in the same way and to
9 the same extent as a Settlement Class Member who does not object. The date of mailing of the
10 Class Notice to the objecting Settlement Class Member shall be conclusively determined
11 according to the records of the Settlement Administrator. Settlement Class Members need not
12 object in writing to be heard at the Final Approval Hearing; they may object or comment in
13 person at the hearing at their own expense. Class Counsel and Defendants' Counsel may respond
14 to any objection lodged with the Court up to five (5) court days before the Final Approval
15 Hearing.

16 **C. Requesting Exclusion.**

17 Any Settlement Class Member may request exclusion from (*i.e.*, "opt out" of) the
18 Settlement by mailing a written request to be excluded from the Settlement ("Request for
19 Exclusion") to the Settlement Administrator, postmarked on or before the Response Deadline.
20 To be valid, a Request for Exclusion must include: (1) the Class Member's name; (2) the Class
21 Member's Social Security Number; (3) the Class Member's signature; and (4) any statement of
22 similar meaning standing for the proposition that the Class Member does not wish to participate
23 in the Settlement or the following statement: "Please exclude me from the Settlement Class in
24 the *Machuca v. Charleys Philly Steaks et. al.*, matter." The Settlement Administrator shall
25 immediately provide copies of all Requests for Exclusion to Class Counsel and Defendant's
26 Counsel and shall report the Requests for Exclusions that it receives, to the Court, in its
27 declaration to be provided in advance of the Final Approval Hearing. Any Settlement Class
28 Member who requests exclusion using this procedure will not be entitled to receive any payment

1 from the Settlement and will not be bound by the Settlement Agreement or have any right to
2 object to, appeal, or comment on the Settlement. Any Settlement Class Member who does not
3 opt out of the Settlement by submitting a timely and valid Request for Exclusion will be bound
4 by all terms of the Settlement, including those pertaining to the Released Claims, as well as any
5 Judgment that may be entered by the Court if Final Approval of the Settlement is granted. A
6 Settlement Class Member cannot submit both a Request for Exclusion and an objection. If a
7 Settlement Class Member submits an Objection and a Request for Exclusion, the Request for
8 Exclusion will control and the Objection will be overruled. Settlement Class Members who
9 worked during the PAGA Period as Aggrieved Employees that submit a valid Request for
10 Exclusion will still be deemed Aggrieved Employees, will still receive their Individual PAGA
11 Payments, and will be bound by the release of the PAGA Released Claims.

12 **D. Disputes Regarding Settlement Class Members' Workweek Data.**

13 Each Settlement Class Member may dispute the number of Workweeks attributed to him
14 or her on his or her Class Notice ("Workweek Dispute"). Any such disputes must be mailed to
15 the Settlement Administrator by the Settlement Class Member, postmarked on or before the
16 Response Deadline. The Settlement Administrator shall immediately provide copies of all
17 disputes to Class Counsel and counsel for Defendants and shall immediately attempt to resolve
18 all such disputes directly with relevant Settlement Class Member(s) with the assistance of
19 Defendants and Class Counsel. If the dispute cannot be resolved in this manner, the Court shall
20 adjudicate the dispute.

21 **10. INDIVIDUAL SETTLEMENT PAYMENTS AND INDIVIDUAL**
22 **PAGA PAYMENTS**

23 Individual Settlement Payments will be calculated and distributed to Participating Class
24 Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class
25 Members' respective number of Workweeks during the Class Period. Individual PAGA
26 Payments to Aggrieved Employees will be calculated and distributed to Aggrieved Employees
27 from the PAGA Payment on a *pro rata* basis based on Aggrieved Employees' respective
28 number of Workweeks during the PAGA Period. Specific calculations of the Individual

1 Settlement Shares and Individual PAGA Payments to Aggrieved Employees will be made as
2 follows:

3 **A.** The Settlement Administrator will determine the total number of Workweeks
4 worked by each Settlement Class Member during the Class Period (“Class Member’s
5 Workweeks”), as well as the aggregate number of Workweeks worked by all Settlement Class
6 Members during the Class Period (“Class Workweeks”). Additionally, the Settlement
7 Administrator will determine the total number of Workweeks worked by each Aggrieved
8 Employee during the PAGA Period (“Aggrieved Employee’s Workweeks”), as well as the
9 aggregate number of Workweeks worked by all Aggrieved Employees during the PAGA Period
10 (“PAGA Workweeks”).

11 **B.** To determine each Settlement Class Member’s Individual Settlement Share, the
12 Settlement Administrator will use the following formula: Individual Settlement Share =
13 (Settlement Class Member’s Workweeks ÷ Class Workweeks) × Net Settlement Amount.

14 **C.** To determine each Participating Class Member’s Participating Individual
15 Settlement Share, the Settlement Administrator will determine the aggregate number of
16 Workweeks worked by all Participating Class Members during the Class Period (“Participating
17 Class Workweeks”) and use the following formula: Individual Settlement Share =
18 (Participating Class Member’s Workweeks ÷ Participating Class Workweeks) × Net Settlement
19 Amount.

20 **D.** The net amount of the Participating Individual Settlement Share is to be paid out
21 to Participating Class Members by way of check and is referred to as “Individual Settlement
22 Payment(s)”.

23 **E.** To determine each Aggrieved Employee’s Individual PAGA Payment, the
24 Settlement Administrator will use the following formula: Aggrieved Employee’s Individual
25 PAGA Payment = (Aggrieved Employee’s Workweeks ÷ PAGA Workweeks) x \$5,000.00 (the
26 PAGA Payment).

27 **F.** Individual Settlement Payments and Individual PAGA Payments shall be paid
28 to Participating Class Members and/or Aggrieved Employees by way of check. When a

1 Participating Class Member is also an Aggrieved Employee, one check may be issued that
2 aggregates both the Individual Settlement Payment and the Individual PAGA Payment

3 **11. DISTRIBUTION OF PAYMENTS**

4 **A. Distribution of Individual Settlement Payments.**

5 Participating Class Members will receive an Individual Settlement Payment and
6 Aggrieved Employees will receive an Individual PAGA Payment. Individual Settlement
7 Payment and Individual PAGA Payment checks shall remain valid and negotiable for one
8 hundred and eighty (180) calendar days after the date of their issuance. Within seven (7)
9 calendar days after expiration of the 180-day period, checks for such payments shall be
10 canceled and funds associated with such checks shall be considered unpaid, unclaimed or
11 abandoned cash residue pursuant to Code of Civil Procedure section 384 (“Unpaid
12 Residue”). The Unpaid Residue plus accrued interest, if any, as provided in Code of Civil
13 Procedure section 384, shall be delivered to the State of California’s State Controller
14 Unclaimed Property Fund with an identification of the amount of unclaimed funds attributable
15 to each Settlement Class Member and Aggrieved Employee. The Settlement Administrator
16 shall prepare a report regarding the distribution plan pursuant to Code of Civil Procedure
17 section 384 and the report shall be presented to the Court by Class Counsel along with a
18 proposed amended judgment that is consistent with the provisions of Code of Civil Procedure
19 section 384.

20 **B. Funding of Settlement.**

21 Defendants shall, within thirty (30) calendar days of Final Approval Date, make payment
22 of the Gross Settlement Amount (as the same may be escalated pursuant to Paragraph 17 of this
23 Agreement) and Employer Taxes to the Settlement Administrator pursuant to Internal Revenue
24 Code section 1.468B-1 for deposit in an interest-bearing qualified settlement account (“QSA”)
25 with an FDIC insured banking institution, for distribution in accordance with this Agreement and
26 the Court’s Orders and subject to the conditions described herein.

27 **C. Time for Distribution.**

28 Within seven (7) calendar days after payment of the full Gross Settlement Amount and

1 Employer Taxes by Defendants, or as soon thereafter as practicable, the Settlement Administrator
2 shall distribute Payments from the QSA for: (1) the Service Award to Plaintiff as specified in
3 this Agreement and approved by the Court; (2) the Attorneys' Fees and Cost Award to be paid
4 to Class Counsel, as specified in this Agreement and approved by the Court; (3) the Settlement
5 Administrator Costs, as specified in this Agreement and approved the Court; (4) the LWDA
6 Payment, as specified in this Agreement and approved by the Court; and (5) Individual PAGA
7 Payments as specified in this Agreement and approved by the Court. The balance remaining
8 shall constitute the Net Settlement Amount from which Individual Settlement Payments shall be
9 made to Participating Class Members, less applicable taxes and withholdings. All interest
10 accrued shall be for the benefit of the Class Members and distributed on a *pro rata* basis to
11 Participating Class Members based on the number of Workweeks worked by them in the Class
12 Period.

13 **12. ATTORNEYS' FEES AND LITIGATION COSTS**

14 Class Counsel shall apply for, and Defendants shall not oppose, an award of attorneys'
15 fees of up to 35% of the Gross Settlement Amount, which, unless escalated pursuant to Paragraph
16 17 of this Agreement, amounts to Two Hundred and Forty-Three Thousand and Two Hundred
17 Fifty Dollars and Zero Cents (\$243,250.00). Class Counsel shall further apply for, and
18 Defendants shall not oppose, an application or motion by Class Counsel for reimbursement of
19 actual costs associated with Class Counsel's prosecution of this matter as set forth by declaration
20 testimony in an amount up to Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00).
21 Awards of attorneys' fees and costs shall be paid out of the Gross Settlement Amount, for all
22 past and future attorneys' fees and costs necessary to prosecute, settle, and obtain Final Approval
23 of the settlement in Action. The "future" aspect of the amounts stated herein includes, without
24 limitation, all time and expenses expended by Class Counsel (including any appeals therein).
25 There will be no additional charge of any kind to either the Settlement Class Members or request
26 for additional consideration from Defendants for such work unless, Defendants materially breach
27 this Agreement, including any term regarding funding, and further efforts are necessary from
28 Class Counsel to remedy said breach, including, without limitation, moving the Court to enforce

1 the Agreement. Should the Court approve attorneys' fees and/or litigation costs and expenses in
2 amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall
3 be a part of the Net Settlement Amount.

4 **13. SERVICE AWARD TO PLAINTIFF**

5 Named Plaintiff shall seek, and Defendants shall not oppose, a Service Award in an
6 amount not to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to
7 Plaintiff, for participation in and assistance with the Action. Any Service Award awarded to
8 Plaintiff shall be paid from the Gross Settlement Amount and shall be reported on an IRS Form
9 1099. If the Court approves the Service Award to Plaintiff in less than the amounts sought herein,
10 then the unapproved portion(s) shall be a part of the Net Settlement Amount.

11 **14. TAXATION AND ALLOCATION**

12 a. Each Individual Settlement Share shall be allocated as follows: 20% as wages (to
13 be reported on an IRS Form W2); and 80% as interest and penalties (to be reported on an IRS
14 Form 1099). Each Individual PAGA Payment shall be allocated entirely as penalties. The Parties
15 agree that the employees' share of taxes and withholdings with respect to the wage-portion of the
16 Individual Settlement Share will be withheld from the Individual Settlement Share in order to
17 yield the Individual Settlement Payment. The amount of federal income tax withholding will be
18 based upon a flat withholding rate for supplemental wage payments in accordance with Treasury
19 Regulation § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also
20 be made pursuant to applicable state and/or local withholding codes or regulations.

21 b. Forms W-2 and/or Forms 1099 will be distributed by the Settlement
22 Administrator at times and in the manner required by the Internal Revenue Code of 1986 (the
23 "Code") and consistent with this Agreement. If the Code, the regulations promulgated
24 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes
25 set forth in this Section may be modified in a manner to bring Defendants into compliance with
26 any such changes.

1 c. All Employer Taxes shall be paid by Defendants separate, apart, and in addition
2 to the Gross Settlement Amount. Defendants shall remain liable to pay the employer's share of
3 payroll taxes as described above.

4 d. Neither Counsel for Plaintiff nor Defendants intend anything contained in this
5 Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement
6 be relied upon as such within the meaning of United States Treasury Department Circular 230
7 (31 C.F.R. Part 10, as amended) or otherwise.

8 **15. PRIVATE ATTORNEYS' GENERAL ACT ALLOCATION**

9 The Parties agree to allocate Forty Thousand Dollars and Zero Cents (\$40,000.00) of the
10 Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five percent
11 (75%) of the amount allocated toward PAGA (\$30,000.00) will be paid to the LWDA and twenty-
12 five percent (25%) (\$10,000.00) will be distributed to Aggrieved Employees on a *pro rata* basis
13 based upon their respective Workweeks worked as Aggrieved Employees during the PAGA
14 Period.

15 **16. COURT APPROVAL**

16 This Agreement is contingent upon an order by the Court granting Final Approval of the
17 Settlement, and that the LWDA does not intervene and object to the Settlement. In the event it
18 becomes impossible to secure approval of the Settlement by the Court and the LWDA, the Parties
19 shall be restored to their respective positions in the Action prior to entry of this Settlement. If
20 this Settlement Agreement is voided, not approved by the Court or approval is reversed on appeal,
21 it shall have no force or effect and no Party shall be bound by its terms except to the extent: (a)
22 the Court reserves any authority to issue any appropriate orders when denying approval; and/or
23 (b) there are any terms and conditions in this Settlement Agreement specifically stated to survive
24 the Settlement Agreement being voided or not approved, and which control in such an event.

25 **17. INCREASE IN WORKWEEKS**

26 Defendants represent that there are an estimated 19,505 Workweeks worked by Class
27 Members through the December 8, 2022, mediation. In the event the number of Workweeks
28 worked increases by more than 10%, or 1,951 Workweeks worked, then the Gross Settlement

1 Amount shall be increased proportionally by the Workweeks worked in the Class Period in
2 excess of 21,456 Workweeks by the Workweek Value. The Workweek Value shall be
3 calculated by dividing the Gross Settlement Amount by 19,505 Workweeks. The Parties agree
4 that the Workweek Value amounts to and the settlement amounts to \$35.63 per Workweek
5 (\$695,000 / 19,505 Workweeks). Thus, for example, should there be 22,000 Workweeks
6 worked by Class Members in the Class Period, then the Gross Settlement Amount shall be
7 increased by \$19,383. ((22,000 Workweeks – 21,456 Workweeks) x \$35.63 per Workweek.)

8 **18. WITHDRAWAL FROM SETTLEMENT BASED ON REQUESTS FOR**
9 **EXCLUSION**

10 Defendants shall retain the right to nullify the Agreement in the event that more than
11 5% of Class Members submit timely and valid Requests for Exclusion. Defendants must
12 provide written notice to Class Counsel of their withdrawal within ten (10) calendar days of
13 receiving sufficient information to determine that the opt out rate exceeds 5%. If Defendants
14 exercise this right, they shall be solely responsible for the costs incurred for settlement
15 administration up to the date of nullification.

16 **19. NOTICE OF JUDGMENT**

17 In addition to any duties set out herein, the Settlement Administrator shall provide
18 notice of the Final Judgment entered in the Action by posting the same on its website for a
19 period of no less than one (1) year.

20 **20. MISCELLANEOUS PROVISIONS**

21 **A. Interpretation of the Agreement.**

22 This Agreement constitutes the entire agreement between the Parties with respect to its
23 subject matter. Except as expressly provided herein, this Agreement has not been executed in
24 reliance upon any other written or oral representations or terms, and no such extrinsic oral or
25 written representations or terms shall modify, vary or contradict its terms. In entering into this
26 Agreement, the Parties agree that this Agreement is to be construed according to its terms and
27 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and
28 enforced under the laws of the State of California, both in its procedural and substantive aspects,

1 without regard to its conflict of law provisions. Any claim arising out of or relating to the
2 Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior
3 Court of the State of California for the County of Ventura, and Plaintiff and Defendants hereby
4 consent to the personal jurisdiction of the Court in the Action over it solely in connection
5 therewith. The foregoing is only limited to disputes concerning this Agreement. The Parties,
6 and each of them, participated in the negotiation and drafting of this Agreement and had available
7 to them the advice and assistance of independent counsel. As such, neither Plaintiff nor
8 Defendants may claim that any ambiguity in this Agreement should be construed against the
9 other. The Agreement may be modified only by a writing signed by counsel for the Parties and
10 approved by the Court.

11 **B. Further Cooperation.**

12 The Parties and their respective attorneys shall proceed diligently to prepare and execute
13 all documents, to seek the necessary approvals from the Court, and to do all things reasonably
14 necessary to consummate the Settlement as expeditiously as possible. The Parties agree that they
15 will not take any action inconsistent with this Agreement, including, without limitation,
16 encouraging Class Members to opt out of the Settlement. In the event the Court finds that any
17 Party has taken actions inconsistent with the Settlement, including, without limitation,
18 encouraging Class Members to opt out of the Settlement, the Court may take any corrective
19 actions, including enjoining any Party from communicating regarding the Settlement on an *ex*
20 *parte* basis, issuing (a) corrective notice(s), awarding monetary, issue, evidentiary and/or
21 terminating sanctions against that Party, and/or enforcing this Agreement despite the presence of
22 opt-outs and/or objections.

23 **C. Counterparts.**

24 The Agreement may be executed in one or more actual or non-original counterparts, all
25 of which will be considered one and the same instrument and all of which will be considered
26 duplicate originals.

27 **D. Authority.**

Each individual signing below warrants that he or she has the authority to execute this Agreement on behalf of the Party for whom or which that individual signs.

E. No Third-Party Beneficiaries.

Plaintiffs, Participating Class Members, Aggrieved Employees, the State of California, Class Counsel, and Defendants are direct beneficiaries of this Agreement, but there are no third-party beneficiaries.

F. Deadlines Falling on Weekends or Holidays.

To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday, or legal holiday, that deadline shall be continued until the following business day.

G. Jurisdiction of the Court

Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Settlement Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the settlement embodied in this Settlement Agreement and all orders and judgments entered in connection therewith.

H. Severability.

In the event that one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision if Defendants' Counsel and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

///

IT IS SO AGREED:

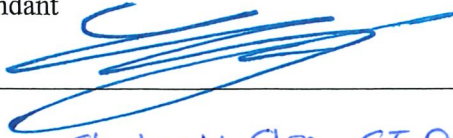
Dated: Nov 9, 2023, 2023

Anahy machuca
Anahy machuca (Nov 9, 2023 10:51 PST)

ANAHY MACHUCA
Plaintiff and Class Representative

1 Dated: September 22, 2023

2 CHARLEY'S STEAKERY, INC.
3 Defendant

4 By: 

5 Its: Charley M. Shin, CEO

6
7
8 Dated: September 22, 2023

9 MODESTO VENTURES, LLC
10 Defendant

11 By: 

12 Its: Charley M. Shin, Manager

13 **AGREED AS TO FORM:**

14
15 Dated: _____, 2023

16
17 DAVID D. BIBIYAN
18 VEDANG J. PATEL
19 **Counsel for Plaintiff ANAHY MACHUCA**

20 Dated: _____, 2023

21 RACHAEL LAVI
22 JENNIFER A. GOLDBERG
23 **Counsel for Defendants**

1 Dated: _____, 2023

2 _____
3 CHARLEY'S STEAKERY, INC.
4 Defendant

5 By: _____

6 Its: _____

7
8 Dated: _____, 2023

9 _____
10 MODESTO VENTURES, LLC
11 Defendant

12 By: _____

13 Its: _____

14 **AGREED AS TO FORM:**

15 Dated: _____, 2023

16 *Vedang J. Patel*

17 _____
18 DAVID D. BIBIYAN
19 VEDANG J. PATEL
20 **Counsel for Plaintiff ANAHY MACHUCA**

21 Dated: 12.4.2023, 2023

22 *Rachael Lavi*

23 _____
24 RACHAEL LAVI
25 JENNIFER A. GOLDBERG
26 **Counsel for Defendants**