

Kane Moon (SBN 249834)
 kane.moon@moonyanglaw.com
 H. Scott Leviant (SBN 200834)
 scott.leviant@moonyanglaw.com
 Mariam Ghazaryan (SBN 341119)
 mariam.ghazaryan@moonyanglaw.com
MOON & YANG, APC
 1055 W. Seventh St., Suite 1880
 Los Angeles, California 90017
 Telephone: (213) 232-3128
 Facsimile: (213) 232-3125

Attorneys for Plaintiffs TONY LUCAS and THOMAS MILES

Tiffany S. Woods, CA Bar No. 257075
 tiffany.woods@ogletree.com
 Sarah Christenson, CA Bar No. 291548
 sarah.christenson@ogletree.com
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
 Park Tower, Fifteenth Floor
 695 Town Center Drive
 Costa Mesa, CA 92626
 Telephone: 714-800-7900
 Facsimile: 714-754-1298

Attorneys for Defendant
 Rubicon Bakers, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF CONTRA COSTA

TONY LUCAS, individually, and on behalf of
 all others similarly situated, et al.,

Plaintiffs,

vs.

RUBICON BAKERS, LLC, a limited liability
 company; and DOES 1 through 10, inclusive,

Defendants.

Case No.: CIVMSC22-02279

CLASS ACTION

[Hon. Edward G. Weil]

**CLASS ACTION AND PAGA SETTLEMENT
 AGREEMENT AND CLASS NOTICE**

Complaint filed: February 3, 2022
 Trial date: Not set

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiffs TONY LUCAS and THOMAS MILES (“Plaintiffs”) and Defendant RUBICON BAKERS, LLC (“Rubicon” or “Defendant”). The Agreement refers to Plaintiffs and Defendant collectively as “Parties,” or individually as “Party.”

1. **DEFINITIONS.**

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *Tony Lucas, individually, and on behalf of all others similarly situated, Plaintiff, vs. Rubicon Bakers, LLC, a limited liability company; and DOES 1 through 10*, inclusive, Case No.: CIVMSC22-02279 initiated on February 10, 2022 and pending in Superior Court of the State of California, County of Contra Costa.
- 1.2. “Administrator” means ILYM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement, subject to Court approval.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means all individuals who are or previously were employed by Defendant or its successors, affiliates, and subsidiaries, in California who were classified as hourly, nonexempt employees from January 21, 2021 to Court approval of the PAGA settlement.
- 1.5. “Class” means all individuals who are or previously were employed by Defendant or its successors, affiliates, and subsidiaries in California who were classified as hourly non-exempt employees during the Class Period.
- 1.6. “Class Counsel” means Moon & Yang, APC.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts to be paid to Class Counsel for fees and expenses, respectively, as approved by the Court, to compensate Class Counsel for their legal work in connection with the

Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, all post-Settlement compliance procedures, and related litigation expenses billed in connection with the Action.

1.8. “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.

1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English, with a Spanish translation, in the form, without material variation, attached as **Exhibit A** and incorporated by reference into this Agreement.

1.12. “Class Period” means the period from February 10, 2018 to the earlier of the date of preliminary approval or May 5, 2023.

1.13. “Class Representative” means the named Plaintiffs in the Operative Complaint in the Action seeking Court approval to serve as a Class Representative.

1.14. “Class Representative Service Payments” means the payments to the Class Representatives in order to compensate for initiating the Action, performing work in support of the Action, undertaking the risk of liability for Defendant’s expenses, and for the general release of all claims by the Plaintiffs.

1.15. “Court” means the Superior Court of California, County of Contra Costa.

1.16. “Defendant” means named Defendant RUBICON BAKERS, LLC.

- 1.17. “Defense Counsel” means Sarah Christenson and Tiffany Woods of Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
- 1.18. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; (c) if a timely appeal(s) from the Judgment is filed, the day after the highest appellate court to which an appeal can be taken affirms the Judgment or otherwise dismisses the appeal(s) and issues a remittitur.
- 1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21. “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.22. “Gross Settlement Amount” means \$435,000.00 which is the total amount to be paid by Defendant as provided by this Agreement except for the employers’ share of payroll taxes and except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Expenses Payment, Class Representative Service Payments and the Administration Expenses Payment. This Gross Settlement Amount is an all-in amount without any reversion to Defendant, and excludes any employer payroll taxes, if any, due on the portion of the Individual Class Payments allocated to wages which shall not be paid from the Gross Settlement and shall be the separate additional obligation of Defendant. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.

- 1.23. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.
- 1.24. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.25. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code § 2699(i).
- 1.26. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code § 2699(i).
- 1.27. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.28. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.29. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.30. “PAGA Period” means the period from January 21, 2021 to the date of Court approval of the PAGA settlement.
- 1.31. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).
- 1.32. “PAGA Notice” means Plaintiff Lucas’s January 21, 2022 letter to Defendant and the LWDA providing notice pursuant to Labor Code § 2699.3(a), and Plaintiff Miles’s November 4, 2022 letter to Defendant and the LWDA providing notice pursuant to Labor Code § 2699.3(a), both attached hereto as **Exhibit B**.
- 1.33. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$10,000.00) and the 75% to LWDA (\$30,000.00) in settlement of PAGA claims.
- 1.34. “Participating Class Member” means a Class Member who does not submit a valid and

timely Request for Exclusion from the Settlement.

1.35. “Plaintiffs” means TONY LUCAS and THOMAS MILES, the named plaintiffs in the Action.

1.36. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.

1.37. "Proposed Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.

1.38. “Released Class Claims” means all class claims pled or that could have been pled, whether known or unknown, that reasonably arise out of the same set of operative facts or are reasonably related to the allegations contained in the Operative Complaints filed by Plaintiffs which occurred during the Class Period (the “Operative Complaints”). Except as expressly set forth in this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or class claims based on facts occurring outside the Class Period.

1.39. “Released PAGA Claims” means all PAGA claims pled or that could have been pled, whether known or unknown, that reasonably arise out of the same set of operative facts or are reasonably related to the allegations contained in the Operative Complaint filed by Plaintiffs and PAGA Notices sent by Plaintiffs that occurred during the PAGA Period as to the Aggrieved Employees.

1.40. “Released Parties” means: Defendant along with each of its current and former subsidiaries, parent entities, affiliates, and predecessors, and each of their respective insurers, agents, employees, successors, assigns, officers, officials, directors, employers, attorneys, personal representatives, executors, and shareholders and/or members, including their respective pension, profit sharing, savings, health, and other employee benefit plans of any nature, the successors of such plans, and those plans’ respective current or former trustees and administrators, agents, employees, and fiduciaries, as well as the personal representatives or executors of any such persons. “Request for Exclusion” means a Class

Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.

1.41. "Response Deadline" means 45 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her written Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

1.42. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

1.43. "Workweek" means any week during which a Class Member worked for Defendant for at least one day, during the Class Period.

2. RECITALS.

2.1. On February 10, 2022, Plaintiff LUCAS commenced this Action by filing a Complaint alleging causes of action against Defendant for: (1) Failure to Pay Minimum Wages (Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197); (2) Failure to Pay Overtime Compensation (Cal. Lab. Code §§ 1194 and 1198); (3) Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512); (4) Failure to Authorize and Permit Rest Breaks (Cal. Lab. Code §§ 226.7); (5) Failure to Indemnify Necessary Business Expenses (Cal. Lab. Code § 2802); (6) Failure to Timely Pay Final Wages at Termination (Cal. Lab. Code §§ 201-203); (7) Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226); and (8) Unfair Business Practices (Cal. Bus. & Prof. Code § 17200, *et seq.*). On April 14, 2022, Plaintiff LUCAS filed a First Amended Complaint alleging an additional cause of action against Defendant for violation of PAGA. On January 9, 2023, Plaintiffs filed a Second Amended Complaint, adding THOMAS MILES as a named Plaintiff. The Second Amended Complaint is the operative complaint in the Action (the "Operative Complaint.") Defendant denies the allegations in the Operative Complaint, denies any failure to comply

1 with the laws identified in in the Operative Complaint and denies any and all liability for
2 the causes of action alleged.

3 2.2. Pursuant to Labor Code § 2699.3(a), Plaintiffs gave timely written notice to Defendant and
4 the LWDA by sending the PAGA Notices.

5 2.3. On August 30, 2022, the Parties participated in an all-day mediation presided over by
6 Michael Young, Esq., a respected mediator of wage and hour representative and class
7 actions. Following the mediation, each side, represented by its respective counsel, were
8 able to agree to settle the Action based upon a mediator's proposal which was
9 memorialized in the form of a Memorandum of Understanding. This Agreement replaces
10 and supersedes the Memorandum of Understanding and any other agreements,
11 understandings, or representations between the Parties.

12 2.4. Prior to mediation, Plaintiffs obtained, through informal discovery, electronic time and pay
13 records, policy documents, and data about the class. Plaintiffs' investigation was sufficient
14 to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.*, 48
15 Cal. App. 4th 1794, 1801 (1996) and *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th
16 116, 129-130 (2008) ("*Dunk/Kullar*").

17 2.5. This Agreement represents a compromise and settlement of highly disputed claims.
18 Nothing in this Agreement is intended or will be construed as an admission by
19 Defendant that the claims in the Action by any of the Plaintiffs, the Class or any
20 Aggrieved Employees have merit or that Defendant bears any liability to Plaintiffs, the
21 Class or any Aggrieved Employees on those claims or any other claims, or as an
22 admission by Plaintiffs that Defendant's defenses in the Action have merit. The Parties
23 agree to certification of the Class for purposes of this Settlement only and Defendant
24 retains all objections to class certification other than for purposes of settlement. If for
25 any reason the settlement does not become effective, Defendant reserves the right to
26 contest certification of any class for any reason and reserve all available defenses to the
27 claims in the Action.
28

1 **3. MONETARY TERMS.**

2 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below,
3 Defendant's maximum total payment under the Settlement, including all attorney's fees
4 and costs, the Service Payment to the named Plaintiff, the costs of settlement
5 administration, the PAGA Allocation, and any other payments provided by this Settlement,
6 is \$435,000.00, subject to the Escalator Clause and except that, to the extent that any
7 portions of the Settlement Class Payments constitute wages, Defendant will be separately
8 responsible for any employer payroll taxes required by law, including the employer FICA,
9 FUTA, and SDI contributions. Defendant has no obligation to pay the Gross Settlement
10 Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this
11 Agreement. The Administrator will disburse the entire Gross Settlement Amount without
12 asking or requiring Participating Class Members or Aggrieved Employees to submit any
13 claim as a condition of payment. No portion of the Gross Settlement Amount will revert to
14 Defendant.

15 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the
16 following payments from the Gross Settlement Amount, in the amounts specified by the
17 Court in the Final Approval:

18 3.2.1. To Plaintiffs: Class Representative Service Payments to the Class Representatives
19 of not more than \$5,000.00 each (for a total of \$10,000), in addition to any
20 Individual Class Payment and any Individual PAGA Payment the Class
21 Representatives are entitled to receive as a Participating Class Member. Defendant
22 takes no position on Plaintiffs' request for Class Representative Service Payments
23 provided it does not exceed this amount. This Settlement is not contingent on the
24 approval of the Class Representative Service Payments. As part of the motion for
25 Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiffs
26 will seek Court approval for any Class Representative Service Payments no later
27 than 16 court days prior to the Final Approval Hearing. If the Court approves the
28 Class Representative Service Payments less than the amount requested, the

1 Administrator will retain the remainder in the Net Settlement Amount. The
2 Administrator will pay the Class Representative Service Payments using IRS Form
3 1099. Plaintiffs assumes full responsibility and liability for employee taxes owed
4 on the Class Representative Service Payment.

5 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 33 1/3%,
6 which is currently estimated to be \$145,000.00, and a Class Counsel Litigation
7 Expenses Payment of not more than \$18,000.00. Defendant takes no position on
8 the request provided that it does not exceed these amounts. Plaintiffs and/or Class
9 Counsel will file a motion for Class Counsel Fees Payment and Class Litigation
10 Expenses Payment no later than 16 court days prior to the Final Approval Hearing.
11 If the Court approves a Class Counsel Fees Payment and/or a Class Counsel
12 Litigation Expenses Payment less than the amounts requested, the Administrator
13 will allocate the remainder to the Net Settlement Amount. Released Parties shall
14 have no liability to Class Counsel or any other Plaintiffs' Counsel arising from any
15 claim to any portion any Class Counsel Fee Payment and/or Class Counsel
16 Litigation Expenses Payment. This Settlement is not contingent on the award of
17 Class Counsel Fees Payment or Class Counsel Litigation Expenses Payment.
18 Nothing in this Section or Agreement limits the rights of Class Counsel to appeal
19 any decision by the Court regarding Class Counsel Fees Payment or Class Counsel
20 Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees
21 Payment and Class Counsel Expenses Payment using one or more IRS 1099
22 Forms. Class Counsel assumes full responsibility and liability for taxes owed on
23 the Class Counsel Fees Payment and the Class Counsel Litigation Expenses
24 Payment and holds Defendant harmless, and indemnifies Defendant, from any
25 dispute or controversy regarding any division or sharing of any of these Payments.

26 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
27 \$14,500.00 except for a showing of good cause and as approved by the Court. The
28 Parties agree that the actual Administration Expenses Payment shall not exceed

1 that Court-approved figure unless the Court approves a request for additional
2 Administration Expenses Payment. To the extent the Administration Expenses are
3 less or the Court approves payment less than \$14,500.00, the Administrator will
4 retain the remainder in the Net Settlement Amount.

5 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by
6 (a) dividing the Net Settlement Amount by the total number of Workweeks worked
7 by all Participating Class Members during the Class Period and (b) multiplying the
8 result by each Participating Class Member's Workweeks.

9 3.2.4.1. Tax Allocation of Individual Class Payments. 25% of each Participating
10 Class Member's Individual Class Payment will be allocated to settlement
11 of wage claims (the "Wage Portion"). The Wage Portions are subject to tax
12 withholding and will be reported on an IRS W-2 Form. The remaining
13 75% of each Participating Class Member's Individual Class Payment will
14 be allocated to settlement of claims for interest and penalties (the "Non-
15 Wage Portion"). The Administrator will report the Non-Wage Portions on
16 IRS 1099 Forms. Participating Class Members assume full responsibility
17 and liability for any employee taxes owed on their Individual Class
18 Payment.

19 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual
20 Class Payments. Non-Participating Class Members will not receive any
21 Individual Class Payments. Their Workweeks will not be used to calculate
22 payments to Participating Class Members.

23 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of
24 \$40,000.00 to be paid from the Gross Settlement Amount, with 75% (\$30,000.00)
25 allocated to the LWDA PAGA Payment and 25% (\$10,000.00) allocated to the
26 Individual PAGA Payments.

27 3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a)
28 dividing the amount of the Aggrieved Employees' 25% share of PAGA

Penalties (\$10,000.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount.

4. **SETTLEMENT FUNDING AND PAYMENTS.**

4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records kept in the ordinary course of business, Defendant estimates there are 651 Class Members who collectively worked a total of 30,000 Workweeks between February 10, 2018 and present, and 321 Aggrieved Employees who worked a total of approximately 6,000 PAGA Pay Periods between January 21, 2021 and present.

4.2. Class Data. No later than 30 days after the Court grants Preliminary Approval of the Settlement, Defendant shall provide to the Settlement Administrator a class database containing the following information for each Class Member: (1) name; (2) last known address; (3) social security number; and (4) dates of employment at Defendant's locations in California. This database shall be based on Defendant's payroll and other business records and shall be provided in a reasonable format to the Settlement Administrator. Defendant agrees to consult with the Settlement Administrator prior to the production date to ensure that the format will be acceptable to the Administrator. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class

1 Data to effect and perform under this Agreement.

2 4.3. Funding of Gross Settlement Amount. Defendant shall pay the amount allocated for
3 Administration Expenses Payment within thirty (30) days of Preliminary Approval or the
4 establishment of the Qualified Settlement Fund ("QSF"), whichever is later. Defendant
5 shall pay the balance of the Gross Settlement Amount to the QSF within thirty (30) days of
6 the Effective Date. In the event that final approval is not granted (or is granted and then
7 reversed on appeal) and no final judgment is entered, any amounts paid by Defendant for
8 Administration Expenses Payment but not used by the Administrator shall be returned to
9 Defendant. The Administrator will calculate the amount for the employers' share of taxes
10 and Defendant will pay that amount to a separate account maintained by the Administrator
11 within thirty (30) days of receiving the calculation from the Administrator.

12 4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant funds the
13 Gross Settlement Amount, the Administrator will mail checks for all Individual Class
14 Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the
15 Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel
16 Litigation Expenses Payment, and the Class Representative Service Payment.
17 Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
18 Payment and the Class Representative Service Payment shall not precede disbursement of
19 Individual Class Payments and Individual PAGA Payments.

20 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or
21 Individual PAGA Payments and send them to the Class Members via First Class
22 U.S. Mail, postage prepaid. The face of each check shall prominently state the
23 date (not less than 180 days after the date of mailing) when the check will be
24 voided. The Administrator will cancel all checks not cashed by the void date. The
25 Administrator will send checks for Individual Settlement Payments to all
26 Participating Class Members to the most updated address available to the
27 Administrator (including addresses updated in accordance with Section 7.4). The
28 Administrator will send checks for Individual PAGA Payments to all Aggrieved

1 Employees including Non-Participating Class Members who qualify as Aggrieved
2 Employees to the most updated address available to the Administrator (including
3 addresses updated in accordance with Section 7.4). The Administrator may send
4 Participating Class Members a single check combining the Individual Class
5 Payment and the Individual PAGA Payment. If a Participating Class Member's or
6 Aggrieved Employee's check is not cashed within 120 days after the last mailing to
7 the affected individual, the Administrator will also send the individual a notice
8 informing him or her that unless the check is cashed by the void date, it will expire
9 and become non-negotiable, and offer to replace the check if it was lost or
10 misplaced but not cashed.

11 4.4.2. The Administrator must conduct a Class Member Address Search for all other
12 Class Members whose checks are returned undelivered without USPS forwarding
13 address. Within 7 days of receiving a returned check the Administrator must re-
14 mail checks to the USPS forwarding address provided or to an address ascertained
15 through the Class Member Address Search. The Administrator need not take
16 further steps to deliver checks to Class Members whose re-mailed checks are
17 returned as undelivered. The Administrator shall promptly send a replacement
18 check to any Class Member whose original check was lost or misplaced, requested
19 by the Class Member prior to the void date.

20 4.4.3. For any Class Member whose Individual Class Payment check or Individual
21 PAGA Payment check is uncashed and cancelled after the void date, the
22 Administrator shall transmit the funds represented by such checks to the California
23 Controller's Unclaimed Property Fund in the name of the Class Member thereby
24 leaving no "unpaid residue" subject to the requirements of California Code of Civil
25 Procedure § 384(b).

26 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall
27 not obligate Defendant to confer any additional benefits or make any additional
28 payments to Class Members (such as 401(k) contributions or bonuses) beyond

those specified in this Agreement.

5. RELEASES OF CLAIMS.

Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs, Class Members, and Class Counsel will release claims against all Released Parties as follows:

5.1. Plaintiff's Releases.

5.1.1. Scope of Plaintiffs' Release. Each Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint and Plaintiffs' PAGA Notices. ("Plaintiffs' Release.") Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiffs acknowledges that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be true but agree, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them.

5.1.2. Plaintiffs' Waiver of Rights Under California Civil Code § 1542. For purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of Section 1542 of the California Civil Code, which reads:

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

would have materially affected his or her settlement with the debtor or Released Party.

- 5.2. Release by Participating Class Members Who Are Not Aggrieved Employees: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint, including:
- a. Failure to Pay Minimum Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197];
 - b. Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198];
 - c. Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512];
 - d. Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7];
 - e. Failure to Indemnify Necessary Business Expenses [Cal. Lab. Code § 2802];
 - f. Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203];
 - g. Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226];
 - h. Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.]; and

Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

- 5.3. Release of PAGA Claims: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notices attached here to **Exhibit B.**

1 **6. MOTION FOR PRELIMINARY APPROVAL.**

2 The Parties agree to work together to jointly prepare and file a motion for preliminary approval (“Motion
3 for Preliminary Approval”) that complies with the Court’s current checklist for Preliminary Approvals.

4 6.1. Plaintiffs’ Responsibilities. Plaintiffs will prepare and deliver to Defense Counsel all
5 documents necessary for obtaining Preliminary Approval, including: (i) a draft of the
6 notice, and memorandum in support, of the Motion for Preliminary Approval that includes
7 an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA
8 Settlement under Labor Code § 2699(f)(2)); (ii) a draft proposed Order Granting
9 Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class
10 Notice; (iv) a signed declaration from the Administrator attaching its “not to exceed” bid
11 for administering the Settlement and attesting to its willingness to serve; competency;
12 operative procedures for protecting the security of Class Data; insurance coverage for any
13 data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or
14 potential conflicts of interest with Class Members; and the nature and extent of any
15 financial relationship with Plaintiff, Defendant, Class Counsel or Defense Counsel; (v)
16 signed declarations from Plaintiffs confirming willingness and competency to serve and
17 disclosing all facts relevant to any actual or potential conflicts of interest with Class
18 Members, and/or the Administrator; (v) a signed declaration from each Class Counsel firm
19 attesting to its competency to represent the Class Members; its timely transmission to the
20 LWDA of all necessary PAGA documents (initial notice of violations (Labor Code §
21 2699.3(a)), Operative Complaint (Labor Code § 2699(l)(1)), this Agreement (Labor Code
22 § 2699(l)(2)); and, (vi) all facts relevant to any actual or potential conflict of interest with
23 Class Members and/or the Administrator.

24 6.2. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible
25 for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30
26 days after the full execution of this Agreement; obtaining a prompt hearing date for the
27 Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the
28 Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court’s

Preliminary Approval to the Administrator.

6.3. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

7.1. Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve as the Administrator, subject to Court approval, and verified that, as a condition of appointment, ILYM Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports to state and federal tax authorities.

7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation § 468B-1.

7.4. Notice to Class Members.

7.4.1. No later than seven (7) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in

1 the Class Data.

2 7.4.2. Using best efforts to perform as soon as possible, and in no event later than 14 days
3 after receiving the Class Data, the Administrator will send to all Class Members
4 identified in the Class Data, via first-class United States Postal Service (“USPS”)
5 mail, the Class Notice, with Spanish translation, substantially in the form attached
6 to this Agreement as **Exhibit A**. The first page of the Class Notice shall
7 prominently estimate the dollar amounts of any Individual Class Payment and/or
8 Individual PAGA Payment payable to the Class Member, and the number of
9 Workweeks and PAGA Pay Periods (if applicable) used to calculate these
10 amounts. Before mailing Class Notices, the Administrator shall update Class
11 Member addresses using the National Change of Address database.

12 7.4.3. Not later than three business days after the Administrator’s receipt of any Class
13 Notice returned by the USPS as undelivered, the Administrator shall re-mail the
14 Class Notice using any forwarding address provided by the USPS. If the USPS
15 does not provide a forwarding address, the Administrator shall conduct a Class
16 Member Address Search, and re-mail the Class Notice to the most current address
17 obtained. The Administrator has no obligation to make further attempts to locate
18 or send Class Notice to Class Members whose Class Notice is returned by the
19 USPS a second time.

20 7.4.4. The deadlines for Class Members’ written objections, Challenges to Workweeks
21 and/or Pay Periods, and Requests for Exclusion will be extended an additional 14
22 days beyond the 45 days otherwise provided in the Class Notice for all Class
23 Members whose notice is re-mailed. The Administrator will inform the Class
24 Member of the extended deadline with the re-mailed Class Notice.

25 7.4.5. If the Administrator, Defendant or Class Counsel is contacted by or otherwise
26 discovers any persons who believe they should have been included in the Class
27 Data and should have received Class Notice, the Parties will expeditiously meet
28 and confer in person or by telephone, and in good faith, in an effort to agree on

whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

7.5. Requests for Exclusion (Opt-Outs).

7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

7.5.3. Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement,

1 including the Participating Class Members' Releases under Paragraphs 5.2 and 5.3
2 of this Agreement, regardless of whether the Participating Class Member actually
3 receives the Class Notice or objects to the Settlement.

4 7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a
5 Non-Participating Class Member and shall not receive an Individual Class
6 Payment or have the right to object to the class action components of the
7 Settlement. Because future PAGA claims are subject to claim preclusion upon
8 entry of the Judgment, Non-Participating Class Members who are Aggrieved
9 Employees are deemed to release the claims identified in Paragraph 5.3 of this
10 Agreement and are eligible for an Individual PAGA Payment.

11 7.6. Challenges to Calculation of Workweeks. Each Class Member shall have 45 days after the
12 Administrator mails the Class Notice (plus an additional 14 days for Class Members whose
13 Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay
14 Periods (if any) allocated to the Class Member in the Class Notice. The Class Member
15 may challenge the allocation by communicating with the Administrator via fax, email or
16 mail. The Administrator must encourage the challenging Class Member to submit
17 supporting documentation. In the absence of any contrary documentation, the
18 Administrator is entitled to presume that the Workweeks contained in the Class Notice are
19 correct so long as they are consistent with the Class Data. The Administrator's
20 determination of each Class Member's allocation of Workweeks and/or Pay Periods shall
21 be final and not appealable or otherwise susceptible to challenge. The Administrator shall
22 promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods
23 to Defense Counsel and Class Counsel and the Administrator's determination the
24 challenges.

25 7.7. Objections to Settlement.

26 7.7.1. Only Participating Class Members may object to the class action components of
27 the Settlement and/or this Agreement, including contesting the fairness of the
28 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class

Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

7.7.2. Participating Class Members may send written objections to the Administrator, by fax, email, or mail no later than the Response Deadline. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 45 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

7.7.3. Non-Participating Class Members have no right to object to any of the class action components of the Settlement. If a Class Member submits both a Request for Exclusion and an objection, only the Request for Exclusion will be accepted and the objection will be void.

7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

7.8.1. Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than five days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion

1 (“Exclusion List”); (b) the names and other identifying information of Class
2 Members who have submitted invalid Requests for Exclusion; (c) copies of all
3 Requests for Exclusion from Settlement submitted (whether valid or invalid).

4 7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written
5 reports to Class Counsel and Defense Counsel that, among other things, tally the
6 number of: Class Notices mailed or re-mailed, Class Notices returned undelivered,
7 Requests for Exclusion (whether valid or invalid) received, objections received,
8 challenges to Workweeks and/or Pay Periods received and/or resolved, and checks
9 mailed for Individual Class Payments and Individual PAGA Payments (“Weekly
10 Report”). The Weekly Reports must include provide the Administrator’s
11 assessment of the validity of Requests for Exclusion and attach copies of all
12 Requests for Exclusion and objections received.

13 7.8.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to
14 address and make final decisions consistent with the terms of this Agreement on all
15 Class Member challenges over the calculation of Workweeks and/or Pay Periods.
16 The Administrator’s decision shall be final and not appealable or otherwise
17 susceptible to challenge.

18 7.8.5. Administrator’s Declaration. Not later than 14 days before the date by which
19 Plaintiffs are required to file the Motion for Final Approval of the Settlement, the
20 Administrator will provide to Class Counsel and Defense Counsel, a signed
21 declaration suitable for filing in Court attesting to its due diligence and compliance
22 with all of its obligations under this Agreement, including, but not limited to, its
23 mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing
24 of Class Notices, attempts to locate Class Members, the total number of Requests
25 for Exclusion from Settlement it received (both valid or invalid), the number of
26 written objections and attach the Exclusion List. The Administrator will
27 supplement its declaration as needed or requested by the Parties and/or the Court.
28 Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.

7.8.6. Final Report by Settlement Administrator. Within 14 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 14 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. ESCALATOR CLAUSE

In the event of an increase in workweeks of more than 20% from original estimate of 30,000 workweeks worked by employees during the Class Period, the settlement amount shall be increased by 1% for each percent that the actual number of workweeks exceeds the 20% threshold (*i.e.* should the escalator clause be triggered, the settlement amount shall be increased by 1% for each percent that the actual number of workweeks exceeds 36,000 workweeks, so if the total number of workweeks exceeds 30,000 by 22%, the Gross Settlement Amount would be increased by $2\% = 22\% - 20\%$)

9. DEFENDANT'S RIGHT TO WITHDRAW.

If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the total of all Class Members, Defendant may, but is not obligated, elect to withdraw from the Settlement. The Settlement Administrator shall provide Defense Counsel with the information necessary to effectuate this provision on a regular basis, but no less frequently than on a monthly basis. The Parties agree that, if Defendant withdraws, the Settlement shall be *void ab initio*, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than seven days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no

effect.

10. MOTION FOR FINAL APPROVAL.

Not later than 16 court days before the calendared Final Approval Hearing, Plaintiffs will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code § 2699(I), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiffs shall provide drafts of these documents to Defense Counsel not later than seven days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

10.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and

conditions of this Agreement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10.5. Denial of Final Approval or Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. In the event that the Court does not grant final approval, or if the Court grants final approval and a reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment. An order by the Court awarding Class Representative Service Payments or any payments to Class Counsel less than the amounts contemplated by this Agreement, or an appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

10.6. Effect on Effective Date. In the event that the Effective Date does not occur, this Agreement shall be deemed null, void and unenforceable, and each Party shall retain each of its respective rights as they existed as of the date of the mediation on August 30, 2022, and neither this Agreement, nor any of its accompanying Exhibits, nor any orders entered by the Court in connection with this Agreement, shall be admissible or used for any purpose in any subsequent proceedings in this Action or in any other judicial, arbitral,

administrative, investigative, or other court tribunal, forum or proceeding.

11. AMENDED JUDGMENT.

If any amended judgment is required under Code of Civil Procedure § 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

12. ADDITIONAL PROVISIONS.

12.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiffs reserve the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

12.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant, and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys,

1 accountants, auditors, or spouses, all of whom will be instructed to keep this Agreement
2 confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to
3 appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in
4 response to an inquiry or subpoena issued by a state or federal government agency. Each
5 Party agrees to immediately notify each other Party of any judicial or agency order,
6 inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant, and
7 Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or
8 other communication, before the filing of the Motion for Preliminary Approval, any with
9 third party regarding this Agreement or the matters giving rise to this Agreement except to
10 respond only that “the matter was resolved,” or words to that effect. This paragraph does
11 not restrict Class Counsel’s communications with Class Members in accordance with Class
12 Counsel’s ethical obligations owed to Class Members.

13 12.3. No Solicitation. The Parties separately agree that they and their respective counsel and
14 employees will not solicit any Class Member to opt out of or object to the Settlement, or
15 appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class
16 Counsel’s ability to communicate with Class Members in accordance with Class Counsel’s
17 ethical obligations owed to Class Members.

18 12.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
19 together with its attached exhibits shall constitute the entire agreement between the Parties
20 relating to the Settlement, superseding any and all prior or contemporaneous agreements,
21 understandings, representations, statements warranties, covenants, or inducements,
22 whether oral or written and whether by a Party or such Party’s legal counsel. No rights
23 under this Agreement may be waived except in writing and signed by the Party against
24 whom such waiver is to be enforced.

25 12.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
26 represent that they are authorized by Plaintiffs and Defendant, respectively, to take all
27 appropriate action required or permitted to be taken by such Parties pursuant to this
28 Agreement to effectuate its terms, and to execute any other documents reasonably required

to effectuate the terms of this Agreement including any amendments to this Agreement.

12.6. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of mediator Michael Young, Esq., and/or the Court for resolution.

12.7. No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

12.8. No Tax Advice. Neither Plaintiff, Class Counsel, Defendant, nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

12.9. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court. Notwithstanding the forgoing, the Parties agree that any dates or deadlines contained in this Agreement may be modified by the Court, or by agreement of the Parties without Court approval if the Parties agree and good cause exist for such modification.

12.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

12.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

12.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

12.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

12.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to Evidence Code § 1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiffs shall destroy all paper and electronic versions of Class Data received from Defendant.

12.15. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

12.16. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

12.17. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

1 Kane Moon
kane.moon@moonyanglaw.com
2 H. Scott Leviant
scott.leviant@moonyanglaw.com
3 Mariam Ghazaryan
mariam.ghazaryan@moonyanglaw.com
4 MOON & YANG, APC
1055 W. Seventh St., Suite 1880
5 Los Angeles, California 90017
Telephone: (213) 232-3128
6 Facsimile: (213) 232-3125
7

8 To DEFENDANT:

9 Tiffany S. Woods
tiffany.woods@ogletree.com
10 Sarah Christenson
sarah.christenson@ogletree.com
11 OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
Park Tower, Fifteenth Floor
12 695 Town Center Drive
Costa Mesa, CA 92626
13 Telephone: 714-800-7900
14 Facsimile: 714-754-1298
15

16 12.18. Execution in Counterparts. This Agreement may be executed in one or more counterparts
17 by facsimile, electronically (*i.e.* DocuSign), or email which for purposes of this Agreement
18 shall be accepted as an original. All executed counterparts and each of them will be
19 deemed to be one and the same instrument if counsel for the Parties will exchange between
20 themselves signed counterparts. Any executed counterpart will be admissible in evidence
21 to prove the existence and contents of this Agreement.

22 12.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the
23 litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties
24 further agree that upon the signing of this Agreement that pursuant to California Code of
25 Civil Procedure section 583.330 to extend the date to bring a case to trial under California
26 Code of Civil Procedure section 583.310 for the entire period of this settlement process.
27
28

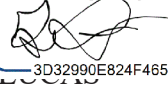
Plaintiffs & Class Representatives:

Dated: February 2, 2023

By: _____

TONY LUCAS

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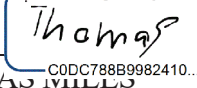

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Dated: February 2, 2023

By: _____

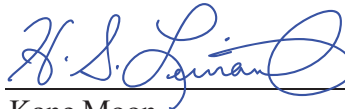
THOMAS WILLES

DocuSigned by:


C0DC788B9982410...**Plaintiffs' Counsel:**Dated: January 20, 2023

MOON & YANG, APC

By: _____



Kane Moon

H. Scott Leviant

Mariam Ghazaryan

Attorneys for Plaintiff

Defendant:

Dated: January ____, 2023

RUBICON BAKERS, LLC

By: _____

Print Name

Signature

Title

Defendant's Counsel:

Dated: January ____, 2023

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

By: _____

Tiffany S. Woods
Sarah Christenson

Attorneys for Defendant RUBICON BAKERS, LLC

Plaintiffs & Class Representatives:

Dated: January ____, 2023

By: _____
TONY LUCAS

Dated: January ____, 2023

By: _____
THOMAS MILES

Plaintiffs' Counsel:

Dated: January ____, 2023

MOON & YANG, APC

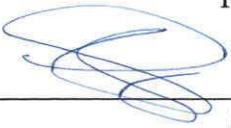
By: _____
Kane Moon
H. Scott Leviant
Mariam Ghazaryan
Attorneys for Plaintiff

Defendant:

Dated: January 19, 2023

RUBICON BAKERS, LLC

By: Leslie Cravy
Print Name


Signature

V.P. Human Resources
Title

Defendant's Counsel:

Dated: January 19, 2023

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

By: 
Tiffany S. Woods
Sarah Christenson

Attorneys for Defendant RUBICON BAKERS, LLC

Exhibit “A”

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL

Lucas v. Rubicon Bakers, LLC, Contra Costa County Superior Court Case No. CIVMSC22-02279

*The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.*

You may be eligible to receive money from an employee class action lawsuit (“Action”) against defendant RUBICON BAKERS, LLC (“Defendant”)¹ for alleged wage and hour violations. The Action was filed by former Defendant employees, Tony Lucas and Thomas Miles (“Plaintiffs”), and seeks payment of (1) back wages and other relief for a class of hourly non-exempt employees (“Class Members”) who worked for Defendant during the Class Period (February 10, 2018 to the earlier of the date of preliminary approval or March 1, 2023); and, (2) penalties under the California Private Attorney General Act (“PAGA”) for all hourly non-exempt employees who worked for Defendant during the PAGA Period (January 21, 2021 to the date of Court approval of the PAGA settlement) (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant to fund Individual Settlement Class Payments, and (2) a PAGA Settlement requiring Defendant to fund Individual PAGA Settlement Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Defendant’s records, and the Parties’ current assumptions, your Individual Class Payment is estimated to be \$ [REDACTED] (less withholding) and your Individual PAGA Settlement Payment is estimated to be \$ [REDACTED]. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Settlement Payment, then according to Defendant’s records you are not eligible for such a payment under the Settlement because you didn’t work during the covered period.)

The above estimates are based on Defendant’s records showing that you worked [REDACTED] workweeks during the Class Period, and you worked [REDACTED] pay periods during the PAGA Period. If you believe that you worked more workweeks or pay periods during either of the respective periods, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or do not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiffs and Plaintiffs’ attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

If you worked for Defendant during the Class Period and/or the PAGA Period, you have two options under the Settlement:

- (1) **Do Nothing.** You don’t have to do anything to participate in the proposed Settlement and be eligible for an Individual Settlement Class Payment and/or an Individual PAGA Settlement Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Defendant.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Settlement Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Defendant, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Settlement Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Defendant will not retaliate against you for any actions you take with respect to the proposed Settlement.

¹ All key terms herein are further defined in the Parties’ Class Action and PAGA Settlement Agreement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendant that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released PAGA Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement except with respect to the PAGA Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiffs who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiffs reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiffs if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on . You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period, and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number of Class Period Workweeks and number of PAGA Period Pay Periods you worked according to Defendant's records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by . See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiffs are former Defendant employees. The Action accuses Defendant of violating California labor laws by failing to pay overtime wages, minimum and straight time wages, wages due upon termination and reimbursable expenses and failing to provide meal periods, rest breaks and accurate itemized wage statements. Based on the same claims, Plaintiffs have also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) ("PAGA Claims"). Plaintiffs are represented by attorneys in the Action: Moon & Yang, APC ("Class Counsel.")

Defendant denies all liability arising from any of the Action and is confident it has strong legal and factual defenses to Plaintiffs' claims. Defendant contends that, at all relevant times, Defendant properly compensated all employees and fully complied with all applicable laws. Defendant also denies that the Action is appropriate to maintain as a class or representative action.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendant or Plaintiffs are correct on the merits. In the meantime, Plaintiffs and Defendant hired an experienced, neutral mediator, Michael Young, in an effort to resolve the Action by negotiating and to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiffs and Defendant have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed

Settlement is a compromise of disputed claims. By agreeing to settle, Defendant does not admit any violations or concede the merit of any claims.

Plaintiffs and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendant has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Defendant will Pay \$435,000 as the Gross Settlement Amount (Gross Settlement). Defendant has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payments, Class Counsels' attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, Defendant will fund the Gross Settlement not more than 14 days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiffs and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:

A. Up to \$150,000.00 (33 and 1/3% of the Gross Settlement) to Class Counsel for attorneys' fees and up to \$18,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

B. Up to \$5,000.00 to each Plaintiff for the Class Representative Service Payments for filing the Action, working with Class Counsel and representing the Class. Class Representative Service Payments will be the only monies Plaintiffs will receive other than each Plaintiff's Individual Class Payment, and any Individual PAGA Payment.

C. Up to an estimated \$14,500.00 to the Administrator for services administering the Settlement.

D. \$40,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment (\$30,000.00) and 25% in Individual PAGA Payments (\$10,000.00) to the Aggrieved Employees based on their PAGA Period Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.

4. Taxes Owed on Payments to Class Members. Plaintiffs and Defendant are asking the Court to approve an allocation of 25% of each Individual Class Payment to taxable wages ("Wage Portion") and 75% to interest and penalties ("Non-Wage Portion."). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay employer payroll taxes it owes on the Wage portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiffs and Defendant have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Settlement Payments and Individual PAGA Settlement Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be paid to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure § 384(b).

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than [REDACTED], that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion

by the [REDACTED] Response Deadline. The Request for Exclusion should be a signed letter from a Class Member setting forth a Class Member's name, present address, telephone number, last four digits of the Class Member's Social Security Number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Settlement Payments, but will preserve their rights to personally pursue wage and hour claims against Defendant.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Settlement Payments and are required to give up their right to assert PAGA Claims against Defendant based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant.

8. Administrator. The Court has appointed a neutral company, ILYM Group, Inc. (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks and/or Pay Periods, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.

9. Participating Class Members' Release. After the Judgment is final and Defendant has fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of another lawsuit against Defendant or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint, including:

- a. Failure to Pay Minimum Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197];
- b. Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198];
- c. Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512];
- d. Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7];
- e. Failure to Indemnify Necessary Business Expenses [Cal. Lab. Code § 2802];
- f. Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203];
- g. Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226]; and,
- h. Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.].

Except as set forth in Section 5.3 of the Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

10. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and Defendant has paid the Gross Settlement (and separately paid the employer-side payroll taxes), all Aggrieved Employees will be barred from asserting PAGA Claims against the Released Parties, including Defendant, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Defendant or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice attached [to the Agreement] as Exhibit B.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Settlement Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.

3. Individual PAGA Payments. The Administrator will calculate Individual PAGA Settlement Payments by (a) dividing \$10,000.00 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.

4. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Defendant's records, are stated in the first page of this Notice. You have until [REDACTED] to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendant's calculation of Workweeks and/or Pay Periods based on Defendant's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Class Members) and Defendant's Counsel.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) and all Class Members who qualify as Aggrieved Employees, whether they opt out or not. The single check will combine the Individual Class Settlement Payment and the Individual PAGA Payment.

2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member who is eligible as an Aggrieved Employee).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, address and email address or telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request and identify the Action in a way that is clear. You must make the request yourself. If someone else makes the request for you, it will not be valid. The Administrator must be sent your request to be excluded by [REDACTED], or it will be invalid. Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiffs and Defendant are asking the Court to approve. At least [REDACTED] days before the [REDACTED] Final Approval Hearing, Class Counsel and/or Plaintiffs will file in Court a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and a request for awards of Fees, Litigation Expenses and a Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiffs are requesting as Class Representative Service Awards. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and for awards of Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiffs are too high or too low. The deadline for sending written objections to the Administrator is [REDACTED]. Be sure to tell the Administrator what you object to, why you object,

and any facts that support your objection. Make sure you identify the Action and include your name, address and email address or telephone number and sign the objection. Section 9 of this Notice has the Administrator’s contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don’t have to, attend the Final Approval Hearing on [redacted] at [redacted] in Department 39 of the Contra Costa Superior Court, located at 725 Court Street, Martinez, CA 94553. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via Zoom (information on Zoom connections for Department 39 can be found at <https://www.cc-courts.org/calendars/court-calendars.aspx>). Check the Court’s website for the most current information, including any current information about health and safety requirements.

It’s possible the Court will reschedule the Final Approval Hearing. You should contact Class Counsel to verify the date and time of the Final Approval Hearing if you are planning to attend the hearing or have your own lawyer attend.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendant and Plaintiffs have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to the Administrator’s website at [redacted]. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Contra Costa County Superior Court website by going to <https://www.cc-courts.org/civil/records.aspx> and entering the Case Number for the Action, CIVMSC22-02279.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:

Kane Moon
H. Scott Leviant
scott.leviant@moonyanglaw.com
Mariam Ghazaryan
mariam.ghazaryan@moonyanglaw.com
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

Settlement Administrator:

Name of Company: **ILYM Group, Inc.**
Email Address:
Mailing Address:
Telephone:
Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

Exhibit “B”

MOON & YANG, APC

ATTORNEYS AT LAW
WWW.MOONYANGLAW.COM

1055 W. SEVENTH ST., SUITE 1880
LOS ANGELES, CALIFORNIA 90017
TELEPHONE: (213) 232-3128
FACSIMILE: (213) 232-3125

Kane Moon, Esq.
Kane.Moon@moonyanglaw.com

January 21, 2022

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

VIA CERTIFIED MAIL

Rubicon Bakers, LLC
154 S. 23rd Street
Richmond, CA 94804

Notice of Labor Code Violations and PAGA Penalties

Re: ***Tony Lucas v. Rubicon Bakers, LLC***

To Whom It May Concern:

Please be advised that my office has been retained by Tony Lucas ("Plaintiff") to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against his former employer, Rubicon Bakers, LLC ("Defendant"). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant's aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of Plaintiff as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the "Aggrieved Employees").

Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff's Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Contra Costa County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission ("IWC").

Plaintiff worked for Defendant as a maintenance worker from approximately May 2021 to June 2021, primarily in Contra Costa County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 5 days per week, and in excess of 8 hours each workday.

Throughout Plaintiff's employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the statutory period, Defendants maintained a policy and practice of not paying Plaintiff and the Aggrieved Employees for all hours worked, including all overtime wages. Throughout the statutory period, Plaintiff and the Aggrieved Employees were required to work "off the clock", uncompensated. For example, Plaintiff and the Aggrieved Employees were required to perform pre-clock-in activities. This included COVID screening prior to clocking into work, which included waiting in line for the screening, off the clock and uncompensated. Further, Plaintiff and the Aggrieved Employees were required to put on uniforms prior to clocking into work, off the clock and uncompensated. Plaintiff and the Aggrieved Employees were also required to keep their radios on during their meal and rest breaks, leading to interrupted meal breaks which were uncompensated. In maintaining a practice of not paying all wages owed, Defendants failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required meal periods. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours).

Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required rest periods. Further, Defendant did not maintain accurate records of employee work periods, and therefore Defendant cannot demonstrate that Plaintiff and the Aggrieved Employees took rest periods during the middle of each work period. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendants wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendants without reimbursement. For example, Plaintiff and the Aggrieved Employees were required to use their own personal cellular telephones for work, without reimbursement. Plaintiff and the Aggrieved Employees were also required to purchase tools for work, without reimbursement.

Failure to Pay All Accrued Vacation Wages at Termination

Labor Code § 227.3 requires employers to pay employees for all unused vested vacation time at their final rate of pay upon termination of their employment.

During the statutory period, Defendant maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees the correct amount of vacation pay owed at the termination of employment. For instance, when Plaintiff's employment with Defendant terminated, he was owed vacation wages at his true final wage rate on his final pay check from Defendant even

though he had accrued unused vacation time. On information and belief, Defendant's failure to pay Plaintiff the correct amount of vacation pay was not a single, isolated incident, but was instead part of Defendant's policy and practice that applied to the Aggrieved Employees.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to pay all accrued vacation wages at termination.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” (Lab. Code § 226(e)(1).)

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked.

As a result of Defendant violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant’s failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendant also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month. Throughout the statute of limitations period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for hours worked. However, during all such times, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked. As a result, Defendant owes employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code § 227.3 by failing to pay all vacation wages at termination;
7. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
8. Labor Code § 226 by failing to provide accurate itemized wage statements; and
9. Labor Code § 204 by failing to pay all earned wages two times per month.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 2802, and 2699(f)(2).

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address, as indicated on the first page.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

MOON & YANG, APC



Kane Moon, Esq.
Attorney at Law

MOON & YANG, APC

ATTORNEYS AT LAW
WWW.MOONYANGLAW.COM

1055 W. SEVENTH ST., SUITE 1880
LOS ANGELES, CALIFORNIA 90017
TELEPHONE: (213) 232-3128
FACSIMILE: (213) 232-3125

Kane Moon, Esq.
Kane.Moon@moonyanglaw.com

November 4, 2022

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

VIA CERTIFIED MAIL

Rubicon Bakers, LLC
154 S. 23rd Street
Richmond, CA 94804

Notice of Labor Code Violations and PAGA Penalties

Re: ***Thomas Miles v. Rubicon Bakers, LLC***

To Whom It May Concern:

Please be advised that my office has been retained by Thomas Miles (“Plaintiff”) to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against his former employer, Rubicon Bakers, LLC (“Defendant”). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of Plaintiff as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff's Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Contra Costa County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission (“IWC”).

Plaintiff worked for Defendant as a sanitation worker from approximately May 2016 to November 16, 2021, primarily in Richmond, California. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 5 days per week, and in excess of 8 hours each workday.

Throughout Plaintiff's employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the statutory period, Defendants maintained a policy and practice of not paying Plaintiff and the Aggrieved Employees for all hours worked, including all overtime wages. Throughout the statutory period, Plaintiff and the Aggrieved Employees were required to work "off the clock", uncompensated. For example, Plaintiff and the Aggrieved Employees were required to perform pre-clock-in activities. This included COVID screening prior to clocking into work, which included waiting in line for the screening, off the clock and uncompensated. Further, Plaintiff and the Aggrieved Employees were required to put on uniforms prior to clocking into work, off the clock and uncompensated. Plaintiff and the Aggrieved Employees were also required to keep their radios on during their meal and rest breaks, leading to interrupted meal breaks which were uncompensated. In maintaining a practice of not paying all wages owed, Defendants failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required meal periods. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours).

Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required rest periods. Further, Defendant did not maintain accurate records of employee work periods, and therefore Defendant cannot demonstrate that Plaintiff and the Aggrieved Employees took rest periods during the middle of each work period. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendants wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendants without reimbursement. For example, Plaintiff and the Aggrieved Employees were required to use their own personal cellular telephones for work, without reimbursement. Plaintiff and the Aggrieved Employees were also required to purchase tools for work, without reimbursement.

Failure to Pay All Accrued Vacation Wages at Termination

Labor Code § 227.3 requires employers to pay employees for all unused vested vacation time at their final rate of pay upon termination of their employment.

During the statutory period, Defendant maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees the correct amount of vacation pay owed at the termination of employment. For instance, when Plaintiff's employment with Defendant terminated, he was owed vacation wages at his true final wage rate on his final pay check from Defendant even

though he had accrued unused vacation time. On information and belief, Defendant's failure to pay Plaintiff the correct amount of vacation pay was not a single, isolated incident, but was instead part of Defendant's policy and practice that applied to the Aggrieved Employees.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to pay all accrued vacation wages at termination.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” (Lab. Code § 226(e)(1).)

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked.

As a result of Defendant violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant’s failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendant also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month. Throughout the statute of limitations period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for hours worked. However, during all such times, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked. As a result, Defendant owes employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code § 227.3 by failing to pay all vacation wages at termination;
7. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
8. Labor Code § 226 by failing to provide accurate itemized wage statements; and
9. Labor Code § 204 by failing to pay all earned wages two times per month.

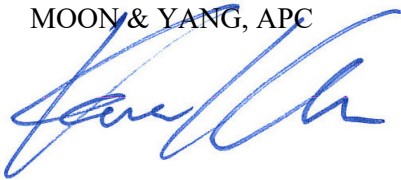
Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 2802, and 2699(f)(2).

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address, as indicated on the first page.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

MOON & YANG, APC



Kane Moon, Esq.
Attorney at Law