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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF MONTEREY**

9 CESAR RODRIGUEZ VINLAY, on
10 behalf of himself and all others similarly
11 situated,

12 Plaintiff,

13 vs.

14 RESTAURANT PACIFIC GROUP, LLC,
15 a California Limited Liability company,
and DOES 1-50, inclusive,

16 Defendants.
17

Case No. 22CV000486

ASSIGNED FOR ALL PURPOSES TO:

JUDGE: Thomas W. Wills

DEPT: 15

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

18 WHEREAS, this action is pending before this Court as a putative class and PAGA action
19 (“Action”); and

20 WHEREAS, Plaintiff, through an unopposed motion for preliminary approval, have
21 applied to this Court for an order preliminarily approving the settlement of the Action in
22 accordance with the Joint Stipulation of Class Action Settlement (“Settlement Agreement” or
23 “Settlement”), and any exhibit annexed thereto, which sets forth the terms and conditions for a
24 proposed settlement and final resolution of the Action upon the terms and conditions set forth
25 therein; and the Court having read and considered the Settlement Agreement and the exhibit
26 annexed thereto;

27 NOW, THEREFORE, IT IS HEREBY ORDERED:
28

1 1. This Order incorporates by reference the definitions in the final version of the
2 Settlement Agreement which has been filed with the Court and all terms defined therein shall
3 have the same meaning in this Order as set forth in the Settlement Agreement;

4 2. The Court hereby preliminarily certifies the Class for settlement purposes only.
5 For the purposes of this settlement, the Class is defined as: all current and former non-exempt
6 employees of Defendant who worked for Defendant in the State of California at any time from
7 February 18, 2018, through August 13, 2021. Should for whatever reason the Settlement not
8 become final, the fact that the Parties were willing to stipulate to class certification as part of the
9 Settlement shall have no bearing on, nor be admissible in connection with, the issue of whether a
10 class should be certified in a non-settlement context;

11 3. Aggrieved Employees shall mean current and former non-exempt employees of
12 Defendant who worked for Defendant in the State of California at any time from February 18,
13 2021, through August 13, 2021;

14 4. The Court hereby approves and appoints ILYM Group as Settlement
15 Administrator for the purpose of this Settlement;

16 5. The Court hereby preliminarily finds that James R. Hawkins, Isandra Fernandez,
17 and Lance Dacre of James Hawkins APLC may serve as counsel for the Class. The Court further
18 preliminarily finds that Plaintiff Cesar Rodriguez Vinalay may serve as the class representative
19 for the Class;

20 6. The Court hereby preliminarily APPROVES the proposed Notice of Class Action
21 and PAGA Settlement ("Class Notice") (The Class Notice is attached hereto as Exhibit 1). The
22 Court further finds that the Class Notice appears to fully and accurately inform the Class
23 Members of all material elements of the proposed Settlement Agreement, of the Class Members'
24 right to be excluded from the Class, and of each Class Member's right and opportunity to object
25 to the Settlement. The Class Notice appears reasonable and will constitute due, adequate, and
26 sufficient notice to all persons entitled to receive notice and to meet all applicable requirements of
27 due process, and any other applicable rules or law, including the requirements of Cal. Rule of
28

1 Court 3.766. The Class Notice shall be mailed to the Class Members as set forth in the Settlement
2 Agreement;

3 7. The Court finds on a preliminary basis that the Settlement Agreement appears to
4 be within the range of reasonableness of a settlement that could ultimately be given final approval
5 by this Court. It appears to the Court on a preliminary basis that the settlement amount is fair,
6 adequate, and reasonable to all potential Class Members when balanced against the probable
7 outcome of further litigation relating to liability and damages issues. It further appears that
8 investigation and research have been conducted such that counsel for the Parties, at this time, are
9 able to reasonably evaluate their respective positions. It further appears to the Court that
10 settlement at this time will avoid substantial additional costs by all Parties, as well as avoid the
11 delay and risks that would be presented by the further prosecution of the Action. It further
12 appears that the Settlement has been reached as the result of serious and non-collusive, arms-
13 length negotiations;

14 8. The Court orders the following implementation schedule for further proceedings:

15 Order Granting Preliminary Approval.	December 8, 2023
16 Deadline for Defendants to provide the 17 Class Data to the Settlement Administrator.	December 26, 2023 (within fifteen (15) calendar days after the Court Grants 18 Preliminary Approval).
19 Mail Class Notices to Settlement Class 20 Members.	January 2, 2024 (within seven (7) calendar days after the Settlement Administrator 21 Receives the Class Data from Defendant).
22 Deadline for postmark by registered mail 23 of any Request for Exclusion.	February 16, 2024 (forty-five (45) days after Settlement Administrator first mails 24 Notice of Class Settlement to Settlement 25 Class Members).

Deadline for receipt by the Settlement Administrator of any objections to the Settlement.	February 16, 2024 (forty-five (45) days after Settlement Administrator first mails Notice of Class Settlement to Settlement Class Members).
Deadline for Class Counsel to file Motion for Final Approval of Settlement.	April 2, 2024, or _____
Final Approval Hearing.	April 24, 2024, or _____

IT IS SO ORDERED.

Dated: _____

Hon. Thomas W. Wills
Judge of the Monterey County Superior Court

Exhibit 1

NOTICE OF CLASS ACTION AND PAGA SETTLEMENT

[CLASS MEMBER NAME]

Cesar Rodriguez Vinalay v. Restaurant Pacific Group, LLC

**Superior Court of the State of California, County of Monterey
Case No.: 22CV000486**

If you are a current or former employee of Restaurant Pacific Group, LLC dba Scales Restaurant (“Restaurant Pacific Group” or “Defendant”), a class action lawsuit may affect your rights and you may be entitled to benefits under the settlement.

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

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

**YOUR ESTIMATED TOTAL INDIVIDUAL SETTLEMENT PAYMENT AMOUNT
FROM THIS CLASS ACTION SETTLEMENT IS \$ [REDACTED].**

According to Restaurant Pacific Group’s records, the total number of workweeks that you worked as an employee in California between February 18, 2018, through and including August 13, 2021, is [REDACTED]. Based on this number, your Individual Settlement Payment Amount as a member of the Class is estimated to be \$[REDACTED].

[PAGA MEMBERS ONLY:]

**YOUR ESTIMATED TOTAL PAGA PAYMENT AMOUNT FROM THIS CLASS
ACTION SETTLEMENT IS \$ [REDACTED].**

According to Restaurant Pacific Group’s records, the total number of pay periods that you worked as an employee in California between February 18, 2021, through and including August 13, 2021, is [REDACTED]. Based on this number, your PAGA Payment is estimated to be \$[REDACTED].

- This lawsuit involves a class defined as: All current and former non-exempt employees employed by Restaurant Pacific Group in the State of California from February 18, 2018, through August 13, 2021. It also asserts claims on behalf of aggrieved employees from February 18, 2021, through August 13, 2021.

- You are receiving this Notice because the records reflect that you may be a class member.
- In the lawsuit, Plaintiff *Cesar Rodriguez Vinalay* (“Plaintiff”) alleged that Defendant failed to pay wages for all hours worked, provide proper meal and rest breaks, pay premiums for missed meal and rest breaks, reimburse work-related expenses, provide accurate itemized wage statements, and timely pay all wages at the time owed and upon separation of employment, and that Defendant engaged in unfair business practices. Based on these allegations, Plaintiff sought unpaid wages and penalties. Defendant denies Plaintiff’s allegations. After the exchange of relevant information and evidence, the parties agreed to enter settlement negotiations in an attempt to resolve the claims in the case.
- There has been a settlement that affects your rights. Although the Court has authorized the Parties to provide this notice of the proposed settlement, the Court has expressed no opinion on the merits of Plaintiff’s claims or Defendant’s defenses.
- You will not be penalized or retaliated against by Restaurant Pacific Group for participating in this settlement.
- You have several options available to you, which are explained in the chart below:

DO NOTHING	By doing nothing, you <u>will</u> receive a share of the settlement proceeds. In exchange for the settlement proceeds, you will give up any rights to sue Restaurant Pacific Group separately for claims based on the facts pled in the operative Complaint, which are or could be the basis of claims that Restaurant Pacific Group failed to pay wages for all hours worked, provide proper meal and rest breaks, pay premiums for missed meal and rest breaks, reimburse work-related expenses, provide accurate itemized wage statements, and timely pay all wages at the time owed and upon separation of employment. See Section 8 below for an explanation of the claims you are giving up. If you move, you must notify the Settlement Administrator of your new address.
ASK TO BE EXCLUDED (OPT OUT)	You can exclude yourself from this lawsuit. If you ask to be excluded, you will not receive a share of the class settlement proceeds, but you keep any rights you may have to bring your own separate suit against Restaurant Pacific Group for the same legal claims in this lawsuit that are released in this settlement. You cannot ask to be excluded <u>and</u> still get a settlement payment for the class claims. If you ask to be excluded from the settlement, you cannot object to the settlement.

	Even if you request to be excluded from the class settlement, you may not exclude yourself from the settlement of claims under the Private Attorneys' General Act ("PAGA") and will receive your portion of the PAGA Payment and give up your right to pursue the Released PAGA Claims.
OBJECT	If you do not agree with the settlement, you can object to the terms of this settlement. The Court may or may not agree with your objection. If you object to the settlement and the Court does not agree with your objection, you will still be bound by the terms of the settlement and will receive a settlement payment. Objecting to the settlement will not exclude you from the settlement.
ATTEND THE FINAL APPROVAL HEARING	You can ask to speak in Court about the fairness of the settlement at the Final Approval Hearing. The Court will hold a Final Approval Hearing to determine whether the settlement is fair, reasonable, and adequate on [DATE] , 2023 at [TIME] . More information regarding this hearing is set forth in Section 12.

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

1. Why did I get this notice?

A proposed settlement has been reached in a class action lawsuit that was brought on behalf of Restaurant Pacific Group's non-exempt employees. You have received this notice because Restaurant Pacific Group's records indicate that you are a member of the settlement class or are an aggrieved employee.

2. What is this lawsuit about?

Plaintiff filed this lawsuit on February 18, 2022, on behalf of individuals who are employed or have been employed by Restaurant Pacific Group as non-exempt employees in the State of California, during the Class Period. Plaintiff amended his lawsuit on April 26, 2022.

"Class Period" is defined as the period from February 18, 2018, through August 13, 2021. The operative complaint alleges class and representative PAGA claims against Restaurant Pacific Group for (1) failure to pay wages for all hours worked including overtime and minimum wage in violation of Labor Code sections 210, 1194, and 1199 and applicable Wage Orders; (2) failure to provide meal periods or meal period premiums in violation of Labor Code sections 226.7, 512 and applicable Wage Orders; (3) failure to provide rest periods or rest period premiums in violation of

Labor Code sections 226.7 and applicable Wage Orders; (4) failure to reimburse work-related expenses in violation of Labor Code section 2802 and applicable Wage Orders; (5) failure to timely pay wages during employment in violation of Labor Code section 204 and applicable Wage Orders; (6) failure to timely pay wages upon separation of employment in violation of Labor Code sections 201-203 and applicable Wage Orders; (7) failure to provide accurate itemized wage statements in violation of Labor Code section 226 and applicable Wage Orders; (8) unfair competition in violation of Business and Professions Code section 17200 et seq.; and (9) PAGA penalties under Labor Code section 2699 et seq.

3. Has the Court decided who is right?

No. The Court has made no decision regarding the merits of Plaintiff's allegations or Restaurant Pacific Group's defenses.

4. Why did this case settle?

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

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

The Gross Settlement Amount is \$275,000.00. Under the proposed settlement, the following amounts will be deducted before any payments are made to employees, subject to final approval by the Court:

- Attorneys' fees: \$91,666.66
- Litigation Costs: \$15,000.00
- Settlement Administration Costs to the Settlement Administrator: \$8,850.00
- Class Representative Enhancement Award to Class Representative: \$5,000.00
- Payment to the Labor and Workforce Development Agency ("LWDA") and Aggrieved Employees: \$10,000.00, representing its share of the settlement payment for the PAGA claims made in this lawsuit, pursuant to the California Labor Code section 2699.

After these deductions, and to the extent that the Court approves these amounts in full, approximately \$125,516.66 is estimated to be available for payment to the Class Members receiving this notice ("Net Settlement Amount"). These amounts may change and are subject to Court approval.

Each class member's Individual Settlement Payment shall be determined as follows:

- The Net Settlement Amount will be apportioned among Class Members on a pro rata basis,

based on the number of workweeks worked by each respective Class Member during the Class Period.

All Individual Settlement Payments will be treated as follows: 10% as payment for wages (subject to withholding of employment taxes and to be reported on IRS Forms W-2, and 90% as penalties and interest (not subject to withholding of employment taxes and to be reported on IRS Forms 1099).

According to Restaurant Pacific Group's records, the total number of workweeks you worked during the Class Period is [REDACTED].

If you disagree with the above information regarding your number of workweeks worked and would like someone to look into the matter, please follow the procedure below. Based on the above information, your estimated Individual Settlement Payment from the class settlement is [REDACTED].

[PAGA MEMBERS ONLY: In addition, you are also eligible to receive a payment under the PAGA, California Labor Code section 2698, *et seq.* Your PAGA payment constitutes 100% penalties, not wages. Restaurant Pacific Group's records indicate that you worked for Restaurant Pacific Group as a non-exempt employee from February 18, 2021, through August 13, 2021 (the "PAGA Period"). Individual payments under the PAGA will be paid to employees who worked during the PAGA Period on a pro rata basis, based on the number of pay periods each respective employee worked during the PAGA Period. Based Restaurant Pacific Group's records, it has been determined that you worked a total of [REDACTED] pay periods during the PAGA Period. Based on that, your individual share of the PAGA Payment is \$ [REDACTED].]

6. What if I disagree with information or the number of workweeks shown above?

If you believe the information in the notice is incorrect regarding the number of workweeks or number of pay periods you worked, you can provide documentation or explanation to the Settlement Administrator to show contrary information. You can write a letter setting forth the number of workweeks or pay periods that you believe you worked as a non-exempt employee in California during the Class Period or the PAGA Period that you believe are correct. You may attach any relevant documentation in support thereof. You must mail or fax your letter to:

ILYM Group, Inc.

[INSERT SETTLEMENT ADMINISTRATION INFORMATION]

You must submit such information by [REDACTED]. Class Counsel and the Settlement Administrator will work together in good faith and do their best to promptly resolve the dispute based on available records. The Settlement Administrator shall review all information, material and documents and make a decision regarding the dispute, subject to the final resolution by the Court if the Court decides to rule on the dispute. If the Court does not issue a ruling on the dispute, the Settlement Administrator's determination of the number of workweeks you worked will be binding.

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

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

8. What rights am I giving up?

The class claims you will release by doing nothing and participating in the settlement are as follows:

All claims that were alleged in the operative complaints of the Action and any claims that could have been alleged based on the facts as alleged in of the operative complaints of the Action.

This includes claims that accrued during the Class Period for (1) failing to pay wages for all hours worked including overtime and minimum wage; (2) failing to provide compliant meal or rest periods or pay meal or rest period premiums; (3) failing to reimburse work-related expenses; (4) failing to timely pay all wages owed during employment or upon separation of employment; (5) failing to provide accurate itemized wage statements, and (6) engaging in unfair business practices.

PAGA MEMBERS ONLY: If you are an Aggrieved Employee, you are also giving up the right to sue for the Released PAGA Claims, which means all claims under the Private Attorneys General Act that were alleged in the operative complaints in the Action and any claims that could have been alleged based on the facts as alleged in the operative complaints in the Action.

This includes claims under the PAGA premised on Defendant's alleged failure to: (1) pay wages for all hours worked including overtime and minimum wage; (2) provide compliant meal or rest periods or pay meal or rest period premiums; (3) reimburse work-related expenses; (4) timely pay all wages owed during employment or upon separation of employment; or (5) provide accurate itemized wage statements.

Class Members and PAGA Members will be releasing these claims against Restaurant Pacific Group and any and all of its past and present affiliated entities, parents, subsidiaries, owners, officers, shareholders, executives, managers, and employees.

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

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

ILYM Group, Inc.

[INSERT SETTLEMENT ADMINISTRATION INFORMATION]

Your letter must include (1) your name, address, and telephone number; (2) a statement indicating

that you wish to be excluded from the settlement; and (3) your signature. Your letter must be postmarked or fax stamped on or before XXX.

If your Request for Exclusion is postmarked or fax stamped after XXX, it will be rejected as untimely, and you will be a Settlement Class Member and be bound by the settlement terms and release. Anyone who submits a timely and valid Request for Exclusion shall not be deemed a Settlement Class Member and will not receive any payment as part of this settlement. Such individuals will keep any right to sue Restaurant Pacific Group separately about the claims made in this lawsuit. If a Class Member submits both a valid Request for Exclusion and a valid Notice of Objection, the Request for Exclusion shall control. Aggrieved Employees cannot opt out of the PAGA Settlement.

10. What if I have an objection?

A class member may object to the settlement in writing or in person. Written objections and all supporting briefs or other materials must be submitted to the Settlement Administrator, ILYM Group, Inc., by mail or fax no later than XXXX. The Court will decide on the objections at the Final Approval Hearing. If your objection is overruled at the Final Approval Hearing, you will still be bound by the terms of this settlement and will receive a settlement payment. If a Class Member submits both a valid Request for Exclusion and a valid Notice of Objection, the Request for Exclusion shall control.

For written objections to be valid, it must contain (1) your name, address, and phone number; (2) the written basis of your objection, and (3) your signature. You may include copies of any papers, briefs, or documents upon which the objection is based. The written objection must be post marked or fax stamped on or before XXX. The postmark or fax stamp date shall be the exclusive means for determining that a written objection is timely and valid.

Any class member may nevertheless appear and make an objection at the Final Approval Hearing. The class member may appear personally or through an attorney, at his or her own expense, at the Final Approval Hearing to present his or her objection directly to the Court. Any attorney who will represent an individual objecting to this Settlement who has not filed a written objection must file a notice of appearance with the Court and serve Class Counsel and Defense Counsel no later than . The Final Approval Hearing will be held in Dept. 15 of the Monterey County Superior Court, Monterey Courthouse, located at 1200 Aguajito Road, Monterey, California 93940 on , 2023, at XXX (Pacific Time). Information on appearing remotely can be found here: <https://www.monterey.courts.ca.gov/remote>.

11. Do I need a lawyer? Who are the lawyers in this case?

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

The below are Class Counsel:

James R. Hawkins (SBN 192925)
Isandra Fernandez (SBN220482)

Lance Dacre (SBN190305)
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, CA 92618
Telephone: (949) 387-7200
Facsimile: (949) 387-6676

12. What happens next in the case?

The Settlement has only been preliminarily approved. The Court will hold a hearing in Dept. 15 of the Monterey County Superior Court, Monterey Courthouse, located at 1200 Aguajito Road, Monterey, California 93940 at _____, 2023, at XXX (Pacific Time), to determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, Plaintiff's enhancement award, and the costs of settlement administration. At the Final Approval Hearing, the Court will hear all objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, **but you are not required to do so**. You also have the right to hire an attorney to represent you, at your own expense, or to enter an appearance and represent yourself. The hearing may be continued without further notice to you. It is not necessary for you to appear at this hearing.

13. How can I receive more information?

This Notice is a summary of the basic terms of the settlement. For further information, you may telephone ILYM Group, Inc. [INSERT SETTLEMENT ADMINISTRATION INFORMATION], or you may go to the Administrator's website at _____ admin website. This website will contain pertinent documents including the operative Complaint, the Settlement Agreement, and the Final Approval and Judgment. You may also contact Class Counsel (listed above). You may also review the settlement agreement and other filed documents, which are on file with the Clerk of the Monterey Superior Court, 1200 Aguajito Road, Monterey, California 93940.

ALL INQUIRIES REGARDING THIS LITIGATION SHOULD BE MADE TO PLAINTIFF'S ATTORNEYS:

James R. Hawkins (SBN 192925)
Isandra Fernandez (SBN220482)
Lance Dacre (SBN190305)
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, CA 92618
Telephone: (949) 387-7200
Facsimile: (949) 387-6676

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