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as an aggrieved employee, and on behalf of all other aggrieved employees

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE

MARIONNA NAOMI LATRICE ACKLES,
as an aggrieved employee, and on behalf of
all other aggrieved employees under the
Labor Code Private Attorneys' General Act
of 2004,

Plaintiff,

v.

BRINKER RESTAURANT
CORPORATION, a Virginia corporation;
SHANE SOWERS, an individual; and DOES
1 through 100, inclusive,

Defendants.

CASE NO.: 22STCV19068

[Assigned to the Hon. Gail Killefer, in
Dept.
37]

REPRESENTATIVE ACTION

PAGA SETTLEMENT AGREEMENT

Action Filed: June 10, 2022

Trial Date: October 22, 2024

This PAGA Settlement Agreement (“Settlement,” “Agreement” or “Settlement Agreement”) is made by and between plaintiff Marionna Naomi Latrice Ackles (“Plaintiff”), individually and on behalf of the Aggrieved Employees, on one hand; and defendants Brinker Restaurant Corporation, and Brinker International Payroll Company, LP as a Doe Defendant (collectively “Defendants”), on the other hand, in the lawsuit entitled *Marionna Naomi Latrice Ackles v. Brinker Restaurant Corporation, et al.*, filed in Los Angeles County Superior Court, Case No. 22STCV19068 (the “Action”) and the PAGA letters submitted to the LWDA on March 31, 2022 and April 4, 2024. Plaintiff and Defendants shall be, at times, collectively referred to as the “Parties”. This Agreement is intended by the Parties to fully, finally, and forever resolve the claims as set forth herein, based upon and subject to the terms and conditions of this Agreement.

1. DEFINITIONS

1.1. “**Action**” means the Plaintiff’s PAGA lawsuit alleging wage and hour violations against Defendants captioned *Marionna Naomi Latrice Ackles v. Brinker Restaurant Corporation, et al.*, Case No. 22STCV19068, initiated on June 10, 2022, and pending in Superior Court of the State of California, County of Los Angeles.

1.2. “**Administrator**” means Phoenix Settlement Administrators, the neutral entity the Parties have agreed to appoint to administer the Settlement.

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 approval of this Settlement.

1.4. “**Aggrieved Employee**” means a person employed by Defendants, while under the age of eighteen (18), in California and classified as a non-exempt, hourly paid employee who worked for Defendants during the PAGA Period. “Aggrieved Employee(s)” as defined in this Agreement cannot opt out of or object to the settlement of the PAGA claim.

1.5. “**Aggrieved Employee Data**” means Aggrieved Employee identifying information in Defendants’ possession including the Aggrieved Employee’s name, last-known

mailing address, Social Security number, and hire date(s), termination date(s) (as applicable), and re-hire dates (as applicable).

1.6. **“Aggrieved Employee Address Search”** means the Administrator’s investigation and search for current Aggrieved Employee 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 Aggrieved Employees.

1.7. **“Court”** means the Superior Court of California, County of Los Angeles.

1.8. **“Defense Counsel”** means Mia Farber, Angela Nevarez and Michael Thomas of Jackson Lewis P.C.

1.9. **“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 Aggrieved Employee challenges the Settlement or Judgment, sixteen (16) days after the Court enters Judgment; (b) if one or more Aggrieved Employee challenges the Settlement or Judgment, 30 days after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, 30 days after the appellate court affirms the Judgment and issues a remittitur.

1.10. **“Gross Settlement Amount”** means \$2,750,000.00 which is the total amount Defendants agree to pay under the Settlement except as provided in Paragraph 8.1 below. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, the Administrator’s Expenses Payment, and the PAGA Representative Service Payment.

1.11. **“Individual PAGA Payment”** means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.

1.12. **“Judgment”** means the judgment entered by the Court based upon the Final Approval.

1.13. **“LWDA”** means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

1.14. **“LWDA PAGA Payment”** means 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1.15. **“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, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, the Administration Expenses Payment, PAGA Representative Service Payment.

1.16. **“PAGA Counsel”** means David D. Bibiyan, Jeffrey D. Klein and Vedang J. Patel, the attorneys representing the Plaintiff in the Action.

1.17. **“PAGA Counsel Fees Payment”** and **“PAGA Counsel Litigation Expenses Payment”** mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action, as described in paragraph 3.2.1 below.

1.18. **“PAGA Pay Period”** means any Pay Period during which an Aggrieved Employee worked for Defendants for at least one day during the PAGA Period, based on hire date(s), termination date(s) (as applicable), and re-hire dates (s).

1.19. **“PAGA Period”** means the period from March 31, 2021, through the date the Court grants Approval of the Settlement.

1.20. **“PAGA”** means the Private Attorneys’ General Act (Labor Code §§ 2698. et seq.).

1.21. **“PAGA Notice”** means Plaintiff’s March 31, 2022, and April 4, 2024, letters to Defendants and the LWDA, providing notice pursuant to Labor Code section 2699.3, subd. (a).

1.22. **“PAGA Penalties”** means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$435,625.00) and the 75% to LWDA (\$1,306,875.00) in settlement of PAGA claims.

1.24. **“PAGA Representative”** means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a PAGA Representative

1.25 **“PAGA Representative Service Payment”** means the payment to the PAGA

Representative for initiating the Action and providing services in support of the Action

1.26. **"Plaintiff"** means Marionna Naomi Latrice Ackles, the named plaintiff in the Action.

1.27. **"Approval Order"** means the proposed Court Order Granting Approval of PAGA Settlement.

1.28. **"Released PAGA Claims"** means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.

1.29. **"Released Parties"** means: Defendants, Defendants' parent corporation, affiliates, subsidiaries, divisions, predecessors, insurers, successors and assigns, and their current and former employees (including but not limited to Shane Sowers), attorneys, officers, directors and agents thereof, both individually and in their business capacities, and their employee benefit plans and programs and the trustees, administrators, fiduciaries and insurers of such plans and programs Defendants and each of their former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates, including, but not limited to, Brinker International Payroll Company LP.

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

2. RECITALS

2.1. On June 10, 2022, Plaintiff commenced this Action by filing a complaint alleging causes of action against Defendants for civil penalties under PAGA for the Labor Code violations alleged in the PAGA Notice. The Complaint is the operative complaint in the Action (the "Operative Complaint"). Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in the Operative Complaint and deny any and all liability for the causes of action alleged. On September 25, 2023, the Parties filed a stipulation to dismiss Defendant Shane Sowers without prejudice.

2.2. Pursuant to Labor Code section 2699.3, subd. (a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.

2.3. On May 30, 2023, the parties participated in an all-day mediation presided over

by the Hon. Carl West (Ret.), which led to this Agreement to settle the Action.

2.4. Prior to mediation, Plaintiff obtained, through informal discovery: (1) an approximately complete list of all Aggrieved Employees with dates of employment, birthdates, age of hire, and location worked; (2) 100% of time records of Aggrieved Employees who worked during the PAGA Period; (3) and all personnel records of Plaintiff available to Defendants.

2.5. The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS

3.1. **Gross Settlement Amount.** Except as otherwise provided by Paragraph 8.1 below, Defendants promise to pay \$2,750,000.00 and no more as the Gross Settlement Amount. Defendants have no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.

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

3.2.1. **To PAGA Counsel:** A PAGA Counsel Fees Payment of not more than 35%, subject to escalation pursuant to section 8.1 of this Agreement and approval by the Court, which is currently estimated to be \$962,500.00 and PAGA Counsel Litigation Expenses Payment of not more than \$25,000.00. Defendants will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will

1 allocate the remainder to the Net Settlement Amount. Released Parties
2 shall have no liability to PAGA Counsel or any other Plaintiff's Counsel
3 arising from any claim to any portion of any PAGA Counsel Fees Payment
4 and/or PAGA Counsel Litigation Expenses Payment. The Administrator
5 will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses
6 Payment using one or more IRS 1099 Forms. PAGA Counsel assume full
7 responsibility and liability for taxes owed on the PAGA Counsel Fees
8 Payment and the PAGA Counsel Litigation Expenses Payment and hold
9 Defendants harmless, and indemnify Defendants, from any dispute or
10 controversy regarding any division or sharing of any of these Payments.
11 There will be no additional charge of any kind to Aggrieved Employees or
12 request for additional consideration from Defendants for such work unless
13 Defendants materially breach this Agreement, including any term
14 regarding funding and further efforts are necessary from PAGA Counsel
15 to remedy said breach, including, without limitation, moving the Court to
16 enforce the Agreement.

17 3.2.2. **To Plaintiff:** PAGA Representative Service Payment to the PAGA
18 Representative of not more than \$7,500.00 (in addition to any Individual
19 PAGA Payment the PAGA Representative is entitled to receive as a
20 Participating PAGA Member). Defendants will not oppose Plaintiff's
21 request for a PAGA Representative Service Payment that does not exceed
22 this amount. As part of the motion for PAGA Counsel Fees Payment and
23 PAGA Litigation Expenses Payment, Plaintiff will seek Court approval for
24 any PAGA Representative Service Payments. If the Court approves a
25 PAGA Representative Service Payment less than the amount requested,
26 the Administrator will retain the remainder in the Net Settlement Amount.
27 The Administrator will pay the PAGA Representative Service Payment
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using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the PAGA Representative Service Payment.

3.3.3 **To the Administrator:** An Administrator Expenses Payment not to exceed \$12,500.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$12,500.00 the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. **To the LWDA and Aggrieved Employees:** PAGA Penalties in the amount of \$1,742,500.00 to be paid from the Gross Settlement Amount, with 75% (\$1,306,875.00) allocated to the LWDA PAGA Payment and 25% (\$435,625.00) allocated to the Individual PAGA Payments.

3.2.3.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$435,625.00) 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. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.3.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING PAYMENTS

4.1. **Aggrieved Employee Pay Periods.** Based on a review of its records produced by Defendants through December 31, 2022, Plaintiff estimates there are 2,397 Aggrieved Employees who worked a total 21,116 of PAGA Pay Periods to date.

4.2. **Aggrieved Employee Data.** Within 14 days of the Effective Date, Defendants

1 will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel
2 spreadsheet. To protect Aggrieved Employees' privacy rights, the Administrator must maintain
3 the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for
4 purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved
5 Employee Data to Administrator employees who need access to the Aggrieved Employee Data
6 to effect and perform under this Agreement. Defendants have a continuing duty to immediately
7 notify PAGA Counsel if they discover that the Aggrieved Employee Data omitted employee
8 identifying information and to provide corrected or updated Aggrieved Employee Data as soon
9 as reasonably feasible. Without any extension of the deadline by which Defendants must send
10 the Aggrieved Employee Data to the Administrator, the Parties and their counsel will
11 expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related
12 to missing or omitted Aggrieved Employee Data.

13 **4.3. Funding of Gross Settlement Amount.** Defendants shall fully fund the Gross
14 Settlement Amount by transmitting the funds to the Administrator no later than 14 days after the
15 Effective Date.

16 **4.4. Payments from the Gross Settlement Amount.** Within 14 days after Defendants
17 fund the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA
18 Payments, the LWDA PAGA Payment, the Administration Expenses Payment, and the PAGA
19 Counsel Litigation Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses
20 Payment shall not precede disbursement of Individual PAGA Payments.

21 **4.4.1.** The Administrator will issue checks for the Individual PAGA Payments
22 and send them to the Aggrieved Employees via First Class U.S. Mail,
23 postage prepaid. The face of each check shall prominently state the date
24 (not less than 180 days after the date of mailing) when the check will be
25 voided. The Administrator will cancel all checks not cashed by the void
26 date. Before mailing any checks, the Settlement Administrator must update
27 the recipients' mailing addresses using the National Change of Address
28 Database.

1 4.4.2. The Administrator must conduct an Aggrieved Employee Address Search
2 for all Aggrieved Employees whose checks are returned undelivered
3 without USPS forwarding address. Within 7 days of receiving a returned
4 check the Administrator must re-mail checks to the USPS forwarding
5 address provided or to an address ascertained through the Aggrieved
6 Employee Address Search. The Administrator need not take further steps
7 to deliver checks to Aggrieved Employees whose re-mailed checks are
8 returned as undelivered. The Administrator shall promptly send a
9 replacement check to any Aggrieved Employee whose original check was
10 lost or misplaced, requested by the Aggrieved Employee prior to the void
11 date.

12 4.4.3. For any Aggrieved Employee whose Individual PAGA Payment check is
13 uncashed and cancelled after the void date, the Administrator shall
14 transmit the funds represented by such checks to the California
15 Controller's Unclaimed Property Fund in the name of the Aggrieved
16 Employee.

17 4.4.4. The payment of Individual PAGA Payments shall not obligate Defendants
18 to confer any additional benefits or make any additional payments to the
19 Aggrieved Employees (such as 401(k) contributions or bonuses) beyond
20 those specified in this Agreement.

21 **5. RELEASES OF CLAIMS**

22 Effective on the date when Defendants fully fund the entire Gross Settlement Amount,
23 Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:

24 5.1. **Plaintiff's Release.** Plaintiff and her respective former and present spouses,
25 representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors,
26 and assigns and the State of California generally, release and discharge Released Parties from all
27 claims, transactions, or occurrences that occurred during the PAGA Period, including, but not
28 limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts

1 contained in the Operative Complaint and the PAGA Notice (“Plaintiff’s Release”). Plaintiff’s
2 Release does not extend to any claims or actions to enforce this Agreement, or to any claims for
3 vested benefits, unemployment benefits, disability benefits, social security benefits, workers’
4 compensation benefits that arose at any time, or based on occurrences outside the PAGA Period.
5 Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to,
6 the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that
7 Plaintiff’s Release shall be and remain effective in all respects, notwithstanding such different or
8 additional facts or Plaintiff’s discovery of them.

9 **5.1.1. Plaintiff’s Waiver of Rights Under California Civil Code Section 1542.**

10 For purposes of Plaintiff’s Release, Plaintiff expressly waives and
11 relinquishes the provisions, rights, and benefits, if any, of section 1542 of
12 the California Civil Code, which reads:

13 A general release does not extend to claims that the creditor or releasing
14 party does not know or suspect to exist in his or her favor at the time of
15 executing the release, and that if known by him or her would have
16 materially affected his or her settlement with the debtor or Released Party.

17 **5.2. Release by Aggrieved Employees:** Upon the date the Court has entered an order
18 approving the Settlement Agreement and full funding of the Total Settlement Amount, and except
19 as to the rights and obligations created by this Settlement Agreement, Plaintiff and Aggrieved
20 Employees, individually and on behalf of their heirs, executors, administrators, representatives,
21 attorneys, successors and assigns, and the State of California with respect to Aggrieved
22 Employees, will be deemed to have knowingly and voluntarily released and forever discharged
23 Defendants and the Released Parties to the full extent permitted by law, of and from the Action
24 and from any and all claims, arising during the PAGA Period, for civil penalties under California
25 Labor Code section 2698, et seq. (“PAGA”) as well as any interest, fees, and costs available
26 under PAGA, based on the factual allegations in the Operative Complaint and PAGA Notice,
27 including but not limited to, Labor Code section 2699, violations of Labor Code 432.5 and 1391,
28 et seq., as well as Educational Code 49112 and Educational Code 49116.

1 **5.3. Release by PAGA Counsel:** PAGA Counsel release, on behalf of their present
2 and former attorneys, employees, agents, successors and assigns, the Released Parties from all
3 claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA
4 Period facts stated in the Operative Complaint and the PAGA Notice.

5 **6. MOTION OR APPLICATION FOR APPROVAL OF**
6 **SETTLEMENT**

7 The Parties agree to jointly prepare and file an application or motion for approval of this
8 Settlement.

9 **6.1. Plaintiff's Responsibilities.** Plaintiff will prepare and deliver to Defense Counsel
10 all documents necessary for obtaining approval of this Settlement under Labor Code Section
11 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement;
12 (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering
13 the Settlement and attesting to its willingness to serve; competency; operative procedures for
14 protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data
15 breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential
16 conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any
17 financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed
18 declaration from PAGA Counsel's firm attesting to its timely transmission to the LWDA of all
19 necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)),
20 Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code
21 section 2699, subd. (l)(2)); and (iv) all facts relevant to any actual or potential conflict of interest
22 with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA
23 Counsel shall aver that they are not aware of any other pending matter or action asserting claims
24 that will be extinguished or adversely affected by the Settlement.

25 **6.2. Responsibilities of PAGA Counsel.** PAGA Counsel and Defense Counsel are
26 jointly responsible for expeditiously finalizing and filing the application or motion for approval
27 of this Settlement after the full execution of this Agreement and, if necessary, obtaining a prompt
28

1 hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA
2 Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

3 **6.3. Duty to Cooperate.** If the Parties disagree on any aspect of the proposed
4 application or motion for approval of this Settlement and/or the supporting declarations and
5 documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of
6 the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement.
7 If the Court does not grant the motion for approval of this Settlement or conditions its approval
8 on any material change to this Agreement, PAGA Counsel and Defense Counsel will
9 expeditiously work together on behalf of the Parties by meeting in person or by telephone, and
10 in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

11 **7. SETTLEMENT ADMINISTRATION**

12 **7.1. Selection of Administrator.** The Parties have jointly selected Phoenix Settlement
13 Administrators ("Phoenix") to serve as the Administrator and verified that, as a condition of
14 appointment, Phoenix agrees to be bound by this Agreement and to perform, as a fiduciary, all
15 duties specified in this Agreement in exchange for payment of Administration Expenses. The
16 Parties and their Counsel represent that they have no interest or relationship, financial or
17 otherwise, with the Administrator other than a professional relationship arising out of prior
18 experiences administering settlements.

19 **7.2. Employer Identification Number.** The Administrator shall have and use its own
20 Employer Identification Number for purposes of calculating payroll tax withholdings and
21 providing reports state and federal tax authorities.

22 **7.3. Qualified Settlement Fund.** The Administrator shall establish a settlement fund
23 that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury
24 Regulation section 468B-1.

25 **7.4. Administrator Duties.** The Administrator has a duty to perform or observe all
26 tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

27 **8. AGGRIEVED EMPLOYEE SIZE ESTIMATES and ESCALATOR** 28 **CLAUSE**

1 Based on their records produced by Defendants through December 31, 2022, Plaintiff
2 estimates that, as of the date of this Settlement Agreement, there are 2,397 Aggrieved Employees
3 who worked 21,116 Pay Periods during the PAGA Period.

4 8.1. **Escalator Clause.** Plaintiff estimates that there are no more than 21,116 Pay
5 Periods worked by Aggrieved Employees during the PAGA Period. In the event the number of
6 Pay Periods worked increases by more than 10% or 2,112 Pay Periods worked, then the Gross
7 Settlement Amount shall be increased proportionally by the Pay Periods worked in the PAGA
8 Period in excess of 23,228 Pay Periods multiplied by the Pay Period Value or Defendants, in their
9 sole discretion, may elect to cut off the PAGA Period on the date the total number of Pay Periods
10 reaches 23,228 (21,116 Pay Periods + 2,112 Pay Periods). The Pay Period Value shall be
11 calculated by dividing the originally agreed-upon Gross Settlement Amount (\$2,750,000.00) by
12 21,116 Pay Periods. The Parties agree that the Pay Period Value amounts to and the settlement
13 amounts to \$130.23 per Pay Period (\$2,750,000.00/ 21,116 Pay Periods). Thus, for example,
14 should there be 23,500 Pay Periods worked by Aggrieved Employees in the PAGA Period, then
15 the Gross Settlement Amount shall be increased by \$35,422.56 ((23,500 Pay Periods – 23,228
16 Pay Periods) x \$130.23 per Pay Period).

17 **9. CONTINUING JURISDICTION OF THE COURT**

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

22 9.1. **Waiver of Right to Appeal.** Provided the Judgment is consistent with the terms
23 and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and
24 PAGA Counsel Litigation Expenses Payment, the Parties and their respective counsel waive all
25 rights to appeal from the Judgment, including all rights to post-judgment and appellate
26 proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary
27 writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such
28 motions, writs or appeals. If another party 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. ADDITIONAL PROVISIONS

10.1. No Admission of Liability 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 Defendants that any of the allegations in the Operative Complaint have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Defendants reserve all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendants' 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).

10.2. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

10.3. Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this 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.

10.4. 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

1 points and authorities as requested by the Court. In the event the Parties are unable to agree upon
2 the form or content of any document necessary to implement the Settlement, or on any
3 modification of the Agreement that may become necessary to implement the Settlement, the
4 Parties will seek the assistance of a mediator and/or the Court for resolution.

5 **10.5. No Prior Assignments.** The Parties separately represent and warrant that they
6 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,
7 or encumber to any person or entity and portion of any liability, claim, demand, action, cause of
8 action, or right released and discharged by the Party in this Settlement.

9 **10.6. No Tax Advice.** Neither Plaintiff, PAGA Counsel, Defendants nor Defense
10 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
11 Settlement be relied upon as such within the meaning of United States Treasury Department
12 Circular 230 (31 CFR Part 10, as amended) or otherwise.

13 **10.7. Modification of Agreement.** This Agreement, and all parts of it, may be
14 amended, modified, changed, or waived only by an express written instrument signed by all
15 Parties or their representatives, and approved by the Court.

16 **10.8. Agreement Binding on Successors.** This Agreement will be binding upon, and
17 inure to the benefit of, the successors of each of the Parties.

18 **10.9. Applicable Law.** All terms and conditions of this Agreement and its exhibits will
19 be governed by and interpreted according to the internal laws of the state of California, without
20 regard to conflict of law principles.

21 **10.10. Cooperation in Drafting.** The Parties have cooperated in the drafting and
22 preparation of this Agreement. This Agreement will not be construed against any Party on the
23 basis that the Party was the drafter or participated in the drafting.

24 **10.11. Confidentiality.** To the extent permitted by law, all agreements made, and orders
25 entered during Action and in this Agreement relating to the confidentiality of information shall
26 survive the execution of this Agreement.

27 **10.12. Use and Return of Aggrieved Employee Data.** Information provided to PAGA
28 Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data

provided to PAGA Counsel by Defendants 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.

10.13. **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.

10.14. **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.

10.15. **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:

BIBIYAN LAW GROUP, P.C.
David D. Bibiyan (SBN 287811)
david@tomorrowlaw.com
Jeffrey D. Klein (SBN 297296)
jeff@tomorrowlaw.com
Vedang J. Patel (SBN 328647)
vedang@tomorrowlaw.com
Brandon Chang (SBN 316197)
brandon@tomorrowlaw.com
8484 Wilshire Boulevard, Suite 500
Beverly Hills, California 90211
Tel: (310) 438-5555; Fax: (310) 300-1705

To Defendant:

JACKSON LEWIS P.C.
Michael D. Thomas
200 Spectrum Center Drive, Suite 500
Irvine, CA 92618
Michael.Thomas@jacksonlewis.com
Telephone: (949) 885-1360
Facsimile: (949) 885-1380

Angela Quiles Nevarez (SBN 253571)
Jackson Lewis P.C.

725 South Figueroa St., Suite 2500
Los Angeles, CA 90017
Angela.Nevarez@jacksonlewis.com
Telephone: (213) 689-0404
Facsimile: (213) 689-0430

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

10.17. **Stay of Litigation.** The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.


Marionna Ackles (Apr 26, 2024 16:56 PDT)

Plaintiff Marionna Naomi Latrice Ackles

Defendant Brinker Restaurant Corporation

By: _____
Its: _____

David D. Bibiyan
Vedang J. Patel
Counsel for Plaintiff Marionna Naomi Latrice Ackles

Defendant Brinker International Payroll Company, LP

Mia Farber
Angela Nevarez
Michael Thomas
Counsel for Defendants Brinker Restaurant Corporation and Brinker International Payroll Company, LP

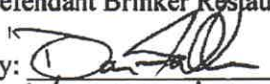
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Plaintiff Marionna Naomi Latrice Ackles

Defendant Brinker Restaurant Corporation

By: 
Its: Vice President

David D. Bibiyan
Vedang J. Patel
Counsel for Plaintiff Marionna Naomi Latrice Ackles

Defendant Brinker International Payroll Company, LP


Mia Farber
Angela Nevarez
Michael Thomas
Counsel for Defendants Brinker Restaurant Corporation and Brinker International Payroll Company, LP

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Plaintiff Marionna Naomi Latrice Ackles

Defendant Brinker Restaurant Corporation

By: _____

Its: _____

Vedang J. Patel 5/2/24

David D. Bibiyan
Vedang J. Patel
Counsel for Plaintiff Marionna Naomi Latrice Ackles

Defendant Brinker International Payroll Company, LP

Mia Farber
Angela Nevarez
Michael Thomas
Counsel for Defendants Brinker Restaurant Corporation and Brinker International Payroll Company, LP