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7 Attorneys for Plaintiff VIJAY SHETH, as an individual,
and on behalf of all others similarly situated
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9
10 **SUPERIOR COURT OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF LOS ANGELES**

12 VIJAY SHETH, as an individual and on
behalf of all others similarly situated,

13 Plaintiff,

14 vs.

15 ICON BURGER ACQUISITION LLC, a
Delaware limited liability company;
16 SMASHBURGER ACQUISITION-SO CAL
LLC, a Delaware limited liability company;
17 SMASHBURGER ACQUISITION – SAN
DIEGO LLC, a Delaware limited liability
18 company; SMASHBURGER
ACQUISITION – SACRAMENTO LLC, a
19 Delaware limited liability company; and
20 DOES 1-100, inclusive,

21 and DOES 1-100, inclusive,

22 Defendants.
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CASE NO.: 22STCV09093

Assigned for All Purposes to:
Hon. Yvette M. Palazuelos
Dept SSC-9

**DECLARATION OF CHAD SAUNDERS IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

**[Filed concurrently with Notice of Motion and
Motion; Memorandum of Points &
Authorities; Declarations of Vijay Sheth and
Chris Longley; [Proposed] Order]**

DATE: July 10, 2024

TIME: 10:00 a.m.

DEPT.: SSC-9

1 I, CHAD SAUNDERS, declare as follows:

2 1. I am an attorney duly licensed to practice in California and before this Court, and I am
3 associated with Crosner Legal, PC, counsel of record for Plaintiff in the above-captioned matter. If
4 called to testify as to the facts within, I would and could competently do so.

5 2. **Settlement Agreement and Notice.** Attached hereto as **Exhibit 1** is a true and correct copy
6 of the Parties' Class Action and PAGA Settlement Agreement and Class Notice. Attached hereto
7 as **Exhibit 2** is a true and correct redline copy of the Agreement showing the modifications made
8 by the Parties the LASC form agreement. Attached hereto as **Exhibit 3** is a true and correct copy
9 of Parties' Class Action Notice of Settlement.

10 3. **LWDA PAGA Notices.** Attached hereto as **Exhibit 4** is a true and correct copy of the
11 March 4, 2022 PAGA letter to the LWDA and proof of submission.

12 4. **Complaint Uploaded to LWDA.** Attached hereto as **Exhibit 5** is a true and correct copy
13 of the proof of submission that the operative complaint was uploaded to the LWDA.

14 5. **Settlement Agreement Uploaded to LWDA.** Attached hereto as **Exhibit 6** is a true and
15 correct copy of the proof of submission that the Settlement Agreement was uploaded to the LWDA.

16 **CROSNER LEGAL'S EXPERIENCE**

17 6. I received a Bachelor of Arts in Philosophy from the University of Maryland
18 Baltimore County in 2001 and a Juris Doctor from New College of California School of Law in
19 2008. While a law student, I completed 600 hours of public interest law apprenticeship, at Legal
20 Services for Children, Disability Rights California, and as a Certified Legal Intern with the Bay
21 Area Legal Aid Housing Clinic. I have been a member of the California Bar since 2008. Since
22 2009, I have been a class action attorney, practicing mainly in the area of California wage and
23 hour law, with the firms of Hoffman & Lazear, Kralowec Law P.C., Sundeen Salinas & Pyle, and
24 Hunter Pyle Law. I joined Crosner Legal in May 2021 as a Senior Associate Attorney. In this role
25 I routinely draft complaints and discovery, brief motions, appear before California courts for law
26 and motion and settlement hearings, lead mediation negotiations, and draft settlement approval
27 documents. I also regularly communicate with class members, co-counsel, and opposing counsel.
28 I have represented thousands of employees in both state and federal courts, involving class

1 actions and PAGA claims, and I have assisted in obtaining millions of dollars for employees
2 during my years of practice.

3 7. I have been approved as Class Counsel by numerous courts throughout
4 California, including in the following cases: *Alonzo, et al. v. First Transit, Inc.* (Los Angeles
5 Superior Court case no. BC433932; settled for \$2 million); *Sadiq v. Greatwide Dedicated*
6 *Transport II, LLC* (Alameda County Superior Court case no. RG15789114; settled for
7 \$762,500); *Kostyuk v. Golden State Overnight Delivery Service, Inc.* (Alameda County Superior
8 Court case no. RG14727191; settled for \$1.25 million); *Newcomb, et al. v. J.B. Hunt Transport,*
9 *Inc.* (Alameda County Superior Court case no. RG16815734; settled for \$750,000); *Hooper v.*
10 *URS Midwest, Inc.,* (San Bernardino Superior Court Case No. CIV DS1607489; settled for
11 approximately \$3 million); *Brooks, et al. v. Chariot Transit, Inc.* (San Francisco Superior Court
12 case no. CGC-16-554398; settled for \$750,000); *Austin, et al. v. Foodliner, Inc.* (Northern
13 District of California, case number 16-cv-07185-HSG; settled for \$1.2 million); *Castro, et al. v.*
14 *ABM Industries, Inc., et al.* (Northern District of California, case number 17-cv-03026-YGR;
15 settled for \$5.4 million); *Benton v. Northern California InAlliance* (Sacramento County
16 Superior Court, case number 34-2021-00293036; settled for \$650,000); *French v. Lonza, Inc.*
17 (Los Angeles County Superior Court, case number 21STCV08097; settled for \$556,500);
18 *McKinnie v. Iron Mountain Secure Shredding, Inc., et al.* (Los Angeles Superior County
19 Superior Court, case number 21STCV05707; settled for \$1.5 million); and *Bland v. Marin*
20 *Airporter* (Marin County Superior Court, case number CIV 2003640; settled for \$450,000).

21 8. Zach Crosner is a 2010 graduate of University San Diego School of Law and he
22 has approximately thirteen years of experience as a practicing attorney. For nearly his entire
23 career, his practice has focused on litigation of wage & hour, consumer, and privacy class
24 action and representative action claims. Following graduation he immediately began working
25 for a nationally recognized plaintiff's complex litigation firm, CaseyGerry, where he worked
26 directly with past presidents of the consumer attorneys and recipients of trial attorneys of the
27 year awards. He also worked for other firms that included former CAALA and CLAY trial
28 attorney of the year recipients. While with these firms, he advocated for the rights of consumers

1 and employees in class action litigation, civil rights and employment litigation, catastrophic
2 injuries, insurance bad faith and appellate litigation.

3 9. In 2013, he founded the law firm of Crosner Legal, P.C. which since its inception
4 has focused almost exclusively on plaintiff-side class actions lawsuits representing employees,
5 consumers and other victims. Currently, over ninety percent (95%) of his practice is dedicated
6 exclusively to the prosecution of class actions and representative action lawsuits, and his law
7 firm is currently responsible as lead counsel or co-lead counsel for prosecuting over one
8 hundred (100) active wage and hour class actions and/or PAGA representative actions, as well
9 as a multitude of consumer and privacy class actions, in both federal and state courts throughout
10 California. He has been a direct participant in over one hundred (100) class action and/or
11 representative action settlements where he has been approved as adequate lead counsel.

12 10. Mr. Crosner has been selected by Super Lawyers as a “Southern California
13 Rising Star” for employment and labor law consecutively from 2018 through 2023. Super
14 Lawyers has also named me on their “Up-and-Coming 100” Southern California Rising Stars
15 List for consecutive years from 2021 through 2023. Only 2.5% of lawyers within California are
16 named a Super Lawyer Rising Star and even less are added to their Top Lists. Additionally, he
17 has been selected as a Top 40 Under 40 Civil Plaintiff Attorney by the National Trial Lawyers,
18 invitation-only organization composed of the premier trial lawyers, from 2019 through 2023.
19 He is an active participant in advocacy groups, including as an executive board member of the
20 Wage and Hour Committee and the Legislative Committee for the California Employment
21 Lawyers Association; a member of the Grassroots Advocacy Team for the National
22 Employment Lawyers Association; Wage and Hour Committee member and Class Action
23 Committee member for the National Trial Lawyers; a member of the American Association for
24 Justice; and a member of the Pound Civil Justice Institute.

25 11. Jamie Serb is a partner with Crosner Legal and head of the firms’ Wage & Hour
26 practice group. She graduated from the University of California, San Diego in 2004, graduated
27 from California Western School of Law in 2013, and has been a member of the California Bar since
28 2013. She gained extensive experience in wage and hour litigation, beginning work as a class action

1 attorney in 2015 at the Mara Law Firm, PC (previously Turley & Mara Law Firm, APLC; Turley
2 Law Firm, APLC). She joined Crosner Legal on January 4, 2021 as an associate attorney. She has
3 handled wage and hour class actions and PAGA lawsuits for the past several years and has assisted
4 in obtaining millions of dollars for employees during her years of practice.

5 12. Crosner Legal, P.C. has obtained several multi-million dollar wage and hour class
6 action settlements while serving as lead class counsel in recent years, including but not limited to
7 a \$1.9 million wage and hour class action settlement in 2015 (*Smith v. Lux Retail North America,*
8 *Inc.*, Case No. 3:13-cv-01579-WHA (N.D. Cal.)); a \$4.1 million wage and hour class action
9 settlement in 2016 (*Aguirre v. Mariani Nut Company, Inc. et al.*, Case No. 34- 2016-00190252
10 (Sacramento Cty. Super Ct.)); a \$1.35 million wage and hour class action settlement in 2017
11 (*Montelone v. Ocean Cities Pizza, Inc.*, Case No. 56-2014-00458249 (Ventura Cty. Super. Ct.)), a
12 \$1.8 million wage and hour class action settlement in 2018 (*Latham v. K.W.P.H. Enterprises, Inc.*
13 *dba American Ambulance*, Case No. 17C-0162 (Kings Cty. Super Ct.)), a \$1.3 million wage and
14 hour class action settlement in 2019 (*Means, et al. v. AirGas USA, LLC*, Case No. 17-CV-2160
15 JGB (C.D. Cal.)), a \$1.5 million wage and hour settlement in 2020 (*Babouchian, et al. v. Wyndham*
16 *Vacation Ownership, et al.*, Case No. CV18-14601 (San Diego Cty. Super. Ct.)), a \$1.15 million
17 wage and hour class action settlement in 2020 (*Buford v. Medical Solutions LLC*, Case No. 4:18-
18 CV-04864-YGR (N.D.Cal.)); a \$7.25 million wage and hour class action settlement in 2020 in
19 *Avina, et al. v. First Alarm Security & Patrol, Inc.*, Case No. 18CV323753 (Santa Clara Cty. Super
20 Ct.); a \$2.2 million wage and hour class action settlement in 2021 (*Ghorchian, et al. v. West Hills*
21 *Hospital, et al.*, Case No. LS029737 (Los Angeles Cty. Super. Ct.)); a \$2.85 million dollar wage
22 and hour settlement in 2021 (*Valencia v. The Original Mowbray's Tree Service, Inc.*, Case No.
23 CIVDS1825518 (San Bernardino Cty. Super. Ct.)); a \$1 million wage and hour class action
24 settlement in 2022 (*Duong v. Loan Factory, Inc.*, Case No. 21CV382467 (Santa Clara Cty. Super.
25 Ct.)), a \$1.4 million wage and hour class action settlement in 2023 in *Correa, et al. v. FedEx Supply*
26 *Chain, Inc.*, Case No. CIVDS2023369 (San Bernardino Cty. Super. Ct.)), a \$2.38 million wage and
27 hour class action settlement in 2023 in *Michel, et al. v. Valley Thrift Store, Inc.*, Case No.
28 21STCV00925 (Los Angeles Cty. Super. Ct.); a \$2.5 million wage and hour class action settlement

1 in 2023 in *Jajuga v. Pilot Travel Centers*, Case No. CIVDS1931464 (San Bernardino Cty. Super.
2 Ct.); \$1.015 million wage and hour class action settlement in 2023 in *Gotishan v. Kyo Autism*
3 *Therapy*, Case No. CGC-21-596378 (San Francisco Cty. Super. Ct); and a \$1.15 million wage and
4 hour PAGA settlement in 2023 in *Vaughn v. Public Health Foundation Enters., Inc.*, Case No.
5 21STCV18512 (Los Angeles Cty. Super. Ct.).

6 **BACKGROUND/LITIGATION HISTORY**

7 13. Defendants own and operate Smashburger restaurants, including at least 12
8 restaurants in California. During the relevant time frame, Defendants employed Plaintiff as a non-
9 exempt Cook and Front of House Manager at a restaurant in Redondo Beach, although Plaintiff
10 occasionally worked at restaurants in Carson, Manhattan Beach, and San Diego as well.

11 14. Plaintiff timely exhausted his administrative remedies with the LWDA by
12 submitting his PAGA notice on March 4, 2022. Plaintiff did not receive notice from the LWDA
13 that it intended to investigate the alleged violations outlined in his PAGA letter. Consequently,
14 Plaintiff filed his class action lawsuit on March 14, 2022, alleging causes of action for unpaid
15 minimum wages, unpaid overtime wages, failure to provide meal and rest breaks, wage statement
16 violations, business expense reimbursements, and unfair competition. Plaintiff filed a separate
17 PAGA lawsuit on May 11, 2022, based on the same alleged Labor Code violations. Both matters
18 were consolidated by stipulation on August 8, 2022, and are currently pending before this Court.

19 15. In October 2022, the Parties agreed to pursue an early mediation and to forego
20 formal discovery pending mediation. The Parties then scheduled a mediation with Todd Smith,
21 Esq., a respected wage and hour class action mediator. The Parties mediated with Mr. Smith in
22 January 2024 and, after a full day of arms-length negotiations, finally reached agreement on all
23 major issues. They then reduced the proposed settlement to the Agreement now before the Court
24 for approval. The Agreement has been uploaded to the LWDA.

25 16. For mediation Defendants provided Plaintiff with extensive informal discovery,
26 including Plaintiff's personnel, time, and payroll records, time records and payroll records for a
27 randomly selected sampling of about 20% of the Class Members (Plaintiff's experts at Berger
28 Consulting suggested this amount would be statistically reliable) wage statement exemplars, Defendants'

1 employee handbooks, including Defendants’ policies and procedures regarding the payment of
2 wages, the provision of meal and rest breaks, timekeeping policies (including recording hours),
3 issuance of wage statements, and termination wages, as well as information regarding the number
4 of putative Class Members who are current and former employees, sample arbitration agreements,
5 the number of Aggrieved Employees, the number of workweeks throughout the Class Period, and
6 the number of pay periods throughout the PAGA Period. From this information, Plaintiff analyzed
7 Defendants’ potential liability and, with the assistance of Plaintiff’s experts at Berger Consulting
8 Group, the potential exposure and damages

9 17. Based on this informal discovery, Plaintiff contends the Class Members were not
10 paid all minimum or overtime wages, not provided with legally compliant meal and rest periods,
11 did not receive compliant wage statements, did not receive required expense reimbursement, and
12 did not receive all wages due on separation of employment. In considering the reasonableness of
13 the proposed settlement, Plaintiff considered Defendants’ many counterarguments, which sharply
14 contested Plaintiff’s claims. Plaintiff’s Counsel weighed the strength of Defendants’ arguments,
15 including the risks of prevailing at class certification and on the merits, and determined the
16 proposed settlement is in the best interests of the Class. Although remaining confident in the
17 strength of the claims, all these factors led Plaintiff to discount the exposure analysis as discussed
18 in detail below.

19 **TERMS OF THE PROPOSED SETTLEMENT**

20 18. The Parties have agreed (subject to Court approval) to settle and compromise this
21 matter for the non-reversionary sum of \$989,947.00 (“Gross Settlement Amount” or “GSA”)
22 (Agreement, §§ 1.22, 3.1, 4.3). The GSA includes: (a) attorney’s fees of up to \$329,980.00 (one-
23 third of the GSA) to compensate Class Counsel for work performed and all work remaining to be
24 performed (Agreement, § 3.2.1.); (b) actual litigation expenses not to exceed \$20,000.00 (*Id.*); (c) a
25 service award to Plaintiff in an amount not to exceed \$5,000.00; (d) Administration Costs to Atticus
26 Administration, LLC in an amount not to exceed \$19,610.00 (Agreement, § 1.3, 3.2.2); and (e)
27 PAGA penalties to the LWDA of \$18,750.00 (which is 75% of the \$25,000.00 PAGA Payment,
28 with the remaining 25% or \$6,250.00 to Aggrieved Employees) (Agreement, § 3.2.4). Employer-

side payroll taxes (including FICA, FUTA, and SDI) will be paid by Defendants separate and apart from the GSA. (Agreement, §§ 3.1, 4.3.)

19. After all Court-approved deductions from the GSA, it is estimated that \$590,320 (“Net Settlement Amount” or “NSA”), less all applicable employee-side taxes, will be distributed to the estimated 2,373 Class Members, with an average individual settlement amount of around \$249. Additionally, it is estimated that the 25% PAGA Payment (\$6,250.00) will be distributed to the estimated 1,082 Aggrieved Employees, resulting in an average payment of about \$5.77 per Aggrieved Employee. Under no circumstances will any portion of the Settlement revert to Defendants. (Agreement, § 3.1.)

20. Subject to the terms and conditions of the Settlement, Atticus will calculate and issue Individual Settlement Payments to Participating Class Members based on the following formula: (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member’s Workweeks. (Agreement, § 3.2.3.)

21. Additionally, Atticus will calculate and issue payments to Aggrieved Employees based on the following formula: (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties (\$6,250.00) 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. Therefore, the value of each Aggrieved Employee’s share of the PAGA Payment ties directly to the amount of pay periods that he or she worked. (Agreement, § 3.2.5.1)

22. The number of pay periods and weeks worked by each Participating Class Member and Aggrieved Employee will be derived from Defendants’ records. (Agreement, § 1.8). Each Class Member’s gross settlement award will be apportioned as follows: 20% wages and 80% non-statutory damages and interest. (Agreement, § 3.2.4.1). Atticus will be responsible for issuing Form W-2s for amounts deemed “wages” and Form 1099s for the portions allocated to penalties and interest. (Agreement, § 3.2.4.1.)

23. Settlement checks must be cashed or deposited within 180 days after the

1 checks are mailed to them. (Agreement, § 4.4.1.) In the event a settlement check remains
2 uncashed, such uncashed funds shall be transmitted to the State Controller's Office
3 Unclaimed Property Fund in the name of the Participating Class Member and/or Aggrieved
4 Employee for later claim. (Agreement, § 4.4.3.) Because this lawsuit benefits Class
5 Members/Aggrieved Employees who release claims by participating in the lawsuit, the
6 funds representing their settlement payments should remain their property. By sending the
7 uncashed funds to the Unclaimed Property Fund in the name of the Class
8 Member/Aggrieved Employee, he or she can claim his or her property at a future date
9 convenient to the Class Member. Therefore, there will be no unpaid residue or unclaimed
10 or abandoned Class Member funds under California Code of Civil Procedure section 384(a).

11 24. Within fifteen days after entry of the Preliminary Approval Order,
12 Defendants will provide Atticus with the Class Data, containing each Class Member's first
13 and last name, last known mailing address, Social Security number, total number of weeks
14 worked during the Class Period, and total number of pay periods worked during the PAGA
15 Period. (Agreement, § 4.2.) Atticus will maintain the Class Data as private and confidential,
16 but Class Counsel will have access to the Class Data so that nothing shall impede Class
17 Counsel from discharging their fiduciary duties to the Class. (Agreement, § 4.2.)

18 25. Prior to mailing, Atticus will perform a search for updated addresses in the
19 National Change of Address Database. (Agreement, § 7.4.2.) Atticus will use the NCOA
20 and skip traces to attempt to find current addresses for any Notice returned as undeliverable.
21 For any re-mailed Notice, Atticus will extend the Class Member's Response Deadline by
22 14 calendar days. (Agreement, § 7.4.3-4.) If Atticus is unable to obtain a better address for
23 a Class Member, the Notice will be deemed undeliverable. (Agreement, § 7.4.3-4.) Within
24 14 days after receipt of the class data, Atticus will mail via regular First-Class mail the
25 Notice to all Class Members. (Agreement, § 7.4.2.)

26 26. The contents of the Notice are consistent with the terms of the Agreement.
27 The Notice informs Class Members how and when to request exclusion from or object to
28 the settlement and of their estimated payment amount which they will automatically receive

1 a settlement payment if they do nothing. The Notice further advises Class Members of the
2 Court's COVID-19 procedures, how to obtain documents filed in the case from the Court,
3 Atticus or Class Counsel, how to check the Court's website to find out whether the Final
4 Approval hearing date/location has been changed, directs the Class Member to Atticus's
5 website and the Court's website to find out whether final judgment has been entered.

6 27. Class Members will have 45 days from the initial mailing of the Notice to
7 respond to the settlement by submitting a challenge to the number of weeks or pay periods
8 attributed to them, submitting an objection, or requesting to be excluded from the settlement
9 and the consequences of each choice. (Agreement, 7.4.4.) Class Members can object to the
10 settlement in writing via mail or fax by submitting a document with their name, the words
11 "Notice of Objection" or "Formal Objection" and a description of the arguments supporting
12 their objection. Class Members are informed that the Court will hear any objections from
13 any Class Member who attends the Final Approval Hearing. (Agreement, § 7.7.)

14 28. Class Members can also submit a written request for exclusion from the
15 settlement by mailing or faxing a written request, including his or her name, address, and
16 phone number, and a statement demonstrating his or her intent to opt out of the settlement.
17 (Agreement, § 7.5.)

18 29. The Notice also informs the Class Member/Aggrieved Employees that they can
19 dispute the number of weeks/pay periods allotted to them to calculate their settlement payments by
20 contacting Atticus before the Response Deadline and include any documentation supporting the
21 dispute. Atticus will investigate the dispute, request additional information from Defendants, and
22 make a final decision as to the number of eligible work weeks/pay periods. (Agreement, § 7.6.)

23 30. Defendants shall fund the settlement within 14 days of the Effective Date.
24 (Agreement, § 4.3.). Atticus shall disburse all payments required under this Settlement within 14
25 calendar days funding. (Agreement, § 4.4.)

26 31. Upon Defendants' payment funding the GSA, Participating Class Members shall
27 forever release the Released Parties for the Released Claims for the Class Period. (Agreement, § 5.)
28 The Released Claims are:

1 (i) all claims that were alleged, or reasonably could have been alleged, based on
2 the facts stated in the Operative Complaint during the Class Period. Participating
3 Class Members' only release these claims for the duration of the Class Period.
4 Except as set forth in Section 5.3 of this Agreement, Participating Class Members
5 do not release any other claims, including claims for vested benefits, wrongful
6 termination, violation of the Fair Employment and Housing Act, unemployment
7 insurance, disability, social security, workers' compensation, or claims based on
8 facts occurring outside the Class Period

9 (Agreement, § 5.2.) Likewise, upon Defendants' funding of the GSA, Plaintiff, the Aggrieved
10 Employees, and the State of California shall forever release the Released Parties for the PAGA
11 Released Claims for the PAGA Period. (Agreement, § 5.) The PAGA Released Claims are:

12 all claims for PAGA penalties that were alleged, or reasonably could have been
13 alleged, based on the facts stated in the Operative Complaint and the PAGA
14 Notice during the PAGA Period. Aggrieved Employees only release these claims
15 for the duration of the PAGA Period.

16 (Agreement, § 5.3.)

17 32. As discussed below, Plaintiff's Counsel is convinced that the proposed settlement is
18 in the Class Members' best interests based on the negotiations and a detailed knowledge of the
19 issues present in this action. The length and risks continued litigation that affect the value of the
20 claims were all carefully weighed. In addition, the affirmative defenses asserted by Defendants, the
21 uncertainty of class certification, the difficulties of complex litigation, the lengthy process of
22 establishing specific damages and various possible delays and appeals were also carefully
23 considered by Plaintiff's Counsel in arriving at the proposed settlement.

24 33. The proposed settlement was reached as a result of arm's-length negotiations.
25 Though cordial and professional, the settlement negotiations have been, at all times, adversarial
26 and non-collusive in nature. Following mediation, Counsel for the Parties further negotiated
27 regarding the settlement terms memorialized in the Agreement.

28 34. While Plaintiff believes in the merits of his case, he also recognizes the inherent
risks of litigation and understand the benefit of Class Members receiving significant settlement
funds immediately as opposed to risking continued litigation in achieving class certification, the
merits of the case before and after trial, the damages awarded and/or an appeal that can take several

1 more years to litigate.

2 35. The proposed settlement was only possible following significant analysis and
3 evaluation of Defendants' relevant policies and procedures, as well as the data that Defendants
4 produced for the Class. This permitted Plaintiff's Counsel to engage in a comprehensive analysis
5 of liability and potential damages. The discovery conducted resulted in Plaintiff's central theories
6 of liability, which are based on Plaintiff's claims that Defendants failed to provide compliant meal
7 and rest periods, failed to pay all minimum and overtime wages, failed to provide accurate, itemized
8 wage statements and failed to pay all wages due on separation of employment As explained above,
9 Defendants maintain that the discovery produced demonstrates that it would succeed at both class
10 certification and on the merits.

11 36. Plaintiff believes this case is suitable for certification on the claimed basis that there
12 are company-wide policies that Plaintiff contends violate California law and uniformly affect the
13 Class Members. However, Defendants' counterarguments raise uncertainties with respect to both
14 class certification and success on the merits. As the California Supreme Court has emphasized,
15 class certification is always a matter of the trial court's sound discretion, and decisions have reached
16 different conclusions with respect to certification of wage and hour claims. While remaining
17 confident in the strengths of his claims, all of these factors led Plaintiff to discount the following
18 maximum potential damage claims.

19 37. Defendants provided Plaintiff with class-wide data from which Plaintiff's Counsel
20 could extrapolate a damage analysis in preparation of mediation. Prior to mediation, there were a
21 total of about 2,373 Class Members (1,724 formerly employed in the limitations period) and 70,710
22 work weeks in the Class Period. There are also approximately 1,082 aggrieved employees and
23 14,542 pay periods within the PAGA Period.

24 38. Plaintiff first asserts Defendants' failed to pay for all hours worked, and particularly
25 that Defendants frequently "edited" employee time punches to reduce hours worked in order to
26 avoid paying overtime and/or meal break premiums. The practice of editing Class Members' actual
27 hours worked systematically underpaid them for both regular and overtime hours. Plaintiff contends
28 the evidence showing unpaid hours worked will be presumed accurate and Defendants' records

1 showing edits made to their time will support that presumption, which Defendants will be unable
2 to rebut. On the other hand, Defendants argued their time keeping policies fully complied with the
3 law, that they accurately recorded and paid for all hours worked and, that to the extent any changes
4 were made to employee time, it was rare and done for legitimate reasons such as correcting
5 employee errors, correcting instances when employees forgot to clock out, etc. Without considering
6 any of Defendants' defenses to certification or on the merits, and assuming one hour of "off the
7 clock" work per week, Plaintiff's expert calculated Defendants' maximum exposure for this claim
8 as about \$936,900.

9 39. Plaintiff next contends Defendants failed to provide legally compliant meal and rest
10 breaks. Specifically, although employees consistently worked shifts of at least five and a half hours
11 or more, they did not receive legally compliant meal periods for several reasons. For example, the
12 time records show that for 85.1% of shifts between 5-6 hours do not reflect a meal period and there
13 is no evidence of waiver. Plaintiff also contends class members frequently had to work through
14 part or all their meal periods due to understaffing, pressure to complete their job duties before
15 having a meal, and instructions from supervisors to take short meal periods or to skip meal periods
16 completely, and again that Defendants altered time records to avoid paying meal period premiums.

17 40. Defendants deny Plaintiff's contentions, claiming they made meal and rest breaks
18 available to Class Members in compliance with California law. Defendants contend their meal and
19 rest break policies are lawful and that Class Members were frequently reminded via training and
20 supervisors that they were required to take all meal and rest breaks. Defendants also contend that
21 time records demonstrate that Class Members took duty-free, timely meal and rest breaks. They
22 further emphasized employees can and did verbally waive meal periods, particularly when working
23 less than a six hour shift. Defendants contend their meal and rest break policies and practices
24 comported with the flexibility the *Brinker* court held was integral to California's meal and rest
25 period requirements. Finally, Defendants argue that Plaintiff's meal and rest break claims are not
26 susceptible to common proof, as the claims would require individualized inquiry, including whether
27 there was an unlawful companywide policy, whether employees had the opportunity to take meal
28 and rest periods, whether they voluntarily chose to waive meal and rest periods, and whether

1 Defendants ever prevented them from taking meal and rest periods. Accordingly, Defendants
2 contend these claims are vulnerable to a ruling that class treatment is not appropriate. Without
3 taking into consideration any of Defendants' defenses to certification or on the merits, Plaintiff
4 calculated Defendants' maximum exposure for the meal and rest break claims as approximately
5 \$926,500.

6 41. Plaintiff also contends Defendants required Plaintiff and the Class Members to use
7 their personal cell phones for work related purposes including communicating with supervisors
8 before and after their shifts. However, Defendants failed to reimburse employees for the use of their
9 personal cell phones *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, it was
10 held that § 2802 requires employers to always reimburse employees who are required to use
11 personal cell phones for work-related calls for a reasonable percentage of their cell phone bills. On
12 the other hand, Defendants argued there was no reason for employees to use their own phones while
13 working, and any other use was purely for personal preference and therefore not reimbursable.
14 Without taking into consideration any of Defendants' defenses to certification or on the merits,
15 Plaintiff calculated Defendants' maximum exposure for expense reimbursement as about \$87,500.

16 42. Plaintiff's claims for inaccurate wage statements and waiting time penalties are
17 derivative of the unpaid wage claims. Should those claims fail, Plaintiff's claim for inaccurate wage
18 statements and waiting time penalties would also fail. Defendants also contend they would not be
19 liable for waiting time penalties because a "good faith dispute" exists over the payment of past
20 wages. Further, Defendants contend Plaintiff would have to prove that Defendants "willfully" failed
21 to pay Class Members appropriate wages due upon separation of employment. Defendants contend
22 that any failure to pay wages upon separation was not willful. Without taking into consideration
23 any of Defendants' defenses to certification or on the merits, Plaintiff calculated Defendants'
24 maximum exposure for wage statement penalties as \$966,700 and waiting time penalties as
25 \$2,391,600.

26 43. As far as potential PAGA liability, per Plaintiff's experts the theoretical civil
27 penalties likely exceed \$5 million should Plaintiff prevail on all claims and establish violations of
28 the multiple Labor Code sections at issue, and secure the maximum allowable penalty. As with the

1 class claims, Plaintiff discounted the potential PAGA penalties based on Defendants' various
2 defenses on the merits and also accounted for the Court's wide discretion to reduce such penalties,
3 or to decline to award penalties at all. Accordingly, the Parties allocated \$25,000 to PAGA
4 penalties. Plaintiff submits this amount is reasonable under the circumstances and in line with
5 comparable settlements in other wage and hour class actions in California. Additionally, the LWDA
6 has been informed of the terms of the PAGA portion of the settlement, and will be able to weigh
7 in as necessary.

8 44. Plaintiff and his counsel discounted the value of the class claims consistent with the
9 risks discussed above, as well as the potential applicability of arbitration agreements signed by
10 many class members. They carefully weighed the likelihood of the class receiving substantially
11 greater benefit if the litigation continued, and concluded – in light of these very real and substantial
12 risks – settlement on the proposed terms and without prolonged and costly litigation was in the best
13 interests of the class. The overall \$989,940 recovery represents a significant percentage of
14 Defendants' potential exposure and, given Defendants' multi-layered defenses and all other
15 potential risks of continued litigation, a total recovery for the class of \$989,940, which will result
16 in average award of some \$249 per class member, plus additional sums under PAGA, is a
17 significant result well within the range of reasonableness considering all potential outcomes, and it
18 will provide direct monetary awards to all Class Members without further delay.

19 **Provisional Class Certification Should be Granted**

20 45. The class is both sufficiently numerous, consisting of approximately 2,373
21 individuals, and ascertainable by reference to Defendants' personnel and payroll records.

22 46. Plaintiff contends his claims are typical of the Class Members' claims because they
23 arise from the same factual basis and are based on the same legal theories applicable to the Class
24 Members. Plaintiff further contends Defendants' policies applied to all Class Members and each
25 Class Member is challenging the same policies and practices. As such, the typicality requirement
26 is satisfied for purposes of settlement.

27 47. Plaintiff has been and will continue to be committed to vigorously prosecuting this
28 case, and she has no conflicts of interest with the Class. Plaintiff has been and will continue to be

1 committed to vigorously prosecuting this case, and he has no conflicts of interest with the Class.
2 For these reasons, Plaintiff contends he is an adequate class representative.

3 48. Common questions of law and fact predominate – particularly for purposes of a
4 settlement class – as the Class Members all were subject to the same meal and rest break policies
5 and alleged “de facto” policies resulting in meal period violations, and similarly subject to the same
6 improper “editing” of their work time. Since the focus of the claims against Defendants concerns
7 the legality of common policies applied uniformly to the entire class, common issues predominate
8 over individualized inquiries concerning liability. For instance, Defendants’ meal and rest break
9 policy is company-wide policy applied equally and consistently to all class members, and this
10 policy is either compliant with California law or it is not. Regardless of that determination, it will
11 decide liability for all class members one way or another.

12 49. Resolving this matter as a class action is superior to other available means
13 for the fair and efficient adjudication of this controversy for multiple reasons, including
14 inter alia: (a) individual joinder of all members of the class is impractical, (b) class action
15 treatment will permit a large number of similarly situated persons to resolve their
16 common claims in a single forum simultaneously, efficiently, and without unnecessary
17 duplication of effort and expense; and (c) the damages suffered by many of the individual
18 class members are relatively small and the expenses and burden of individual litigation
19 would make it difficult or impossible for them to seek redress on their own.

20 **Atticus Should be Appointed as the Settlement Administrator**

21 50. The Parties agreed to use Atticus Administration, LLC as the Settlement
22 Administrator in this matter. (Agreement, § 1.2). Atticus is highly qualified and experienced as a
23 settlement administrator, committed to the security of data, carries insurance for the theft of money
24 or data, and has no relationship with Counsel.

25 **Notice to Class Members Complies With California Rule of Court 3.769(f)**

26 51. California Rule of Court 3.769(f), provides: “If the court has certified the action as
27 a class action, notice of the final approval hearing must be given to class members in the manner
28 specified by the court. The notice must contain an explanation of the proposed settlement and

1 procedures for class members to follow in filing written objections to it and in arranging to appear
2 at the settlement hearing and state any objections to the proposed settlement.” Here, the proposed
3 Notice meets all of these requirements, as it advises Class Members of their rights to participate in
4 the settlement, how to and when to object to or request exclusion from the settlement, and the date,
5 time, and location of the final approval hearing. Class Members need not do anything to receive

6 52. After inquiry to all other attorneys at Crosner Legal, I am unaware of any other
7 pending case that would overlap with the claims alleged in this matter, or that would have
8 overlapping class membership/aggrieved employees.

9 53. For all the foregoing reasons, I respectfully request that the Court preliminarily
10 approve the settlement in all particulars.

11 I declare under penalty of perjury under the laws of the State of California that the
12 foregoing is true and correct. Executed this 15th day of April 2024, at Berkeley, California.

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15 _____
Declarant
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EXHIBIT

1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Vijay Sheth (“Plaintiff”) and defendant ICON BURGER ACQUISITION LLC, SMASHBURGER ACQUISITION-SO CAL LLC, SMASHBURGER ACQUISITION - SAN FRANCISCO LLC, SMASHBURGER ACQUISITION - SAN DIEGO LLC, SMASHBURGER ACQUISITION - SACRAMENTO LLC, (“DEFENDANTS”). The Agreement refers to Plaintiff and Defendants collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1 “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against DEFENDANTS captioned *Vijay Sheth v. Icon Burger Acquisition LLC, et al.*, Case No. 22STCV09093, initiated on March 14, 2022, and pending in Superior Court of the State of California, County of Los Angeles.
- 1.2 “Administrator” means Atticus Administration, LLC, 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 Preliminary Approval of the Settlement.
- 1.4 “Aggrieved Employee” means all current and former non-exempt hourly employees employed by DEFENDANTS in California during the PAGA Period.
- 1.5 “Class” means all current and former non-exempt hourly employees employed by DEFENDANTS in California during the Class Period.
- 1.6 “Class Counsel” means Zach Crosner, Jamie Serb, and Chad Saunders of Crosner Legal, PC.
- 1.7 “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8 “Class Data” means Class Member identifying information in DEFENDANTS’ possession including the Class Member’s name, last-known mailing address, Social Security number, email address (if available), 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 March 14, 2018 to the date of preliminary approval or the total number of workweeks totals 77,781, whichever date is sooner.
- 1.13 “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14 “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15 “Court” means the Superior Court of California, County of Los Angeles.
- 1.16 “DEFENDANTS” means named Defendants Icon Burger Acquisition LLC, Smashburger Acquisition-So Cal LLC, Smashburger Acquisition - San Francisco LLC, Smashburger Acquisition - San Diego LLC, Smashburger Acquisition - Sacramento LLC.
- 1.17 “Defense Counsel” means Atkinson, Andelson, Loya, Ruud & Romo.
- 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 on the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court confirms the Judgment and issues a remittitur.
- 1.19 “Final Approval” or “Final Approval Order” 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 \$989,940.00 which is the total amount DEFENDANTS agree to pay under the Settlement except as provided in Paragraph 8 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 Litigation Expenses Payment, Class Representative Service Payment and the Administrator's Expenses.

- 1.23 "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.
- 1.24 "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.
- 1.25 "Judgment" means the judgment entered by the Court based upon the Final Approval.
- 1.26 "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.27 "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.28 "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 Payment, 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.
- 1.29 "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.
- 1.30 "Operative Complaint" means the Original Complaint filed on March 14, 2022.
- 1.31 "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for DEFENDANTS for at least one day during the PAGA Period.
- 1.32 "PAGA Period" means the period from March 14, 2021, to the date of preliminary approval or the total number of workweeks totals 77,781, whichever date is sooner (subject to Paragraph 8 below).
- 1.33 "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.34 "PAGA Notice" means Plaintiff's March 4, 2022 letter to DEFENDANTS and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.35 "PAGA Penalties" means the total amount of PAGA civil penalties (\$25,000) to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$6,250) and the 75% to LWDA (\$18,750) in settlement of PAGA claims.

- 1.36 “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.37 “Plaintiff” means Vijay Sheth, the named plaintiff in the Action.
- 1.38 “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.39 “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval of the Settlement.
- 1.40 “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.
- 1.41 “Released PAGA Claims” means the claims being released as described in Paragraph 5.3 below.
- 1.42 “Released Parties” means: Icon Burger Acquisition LLC, Smashburger Acquisition – So Cal LLC, Smashburger Acquisition - San Francisco LLC, Smashburger Acquisition - San Diego LLC, Smashburger Acquisition - Sacramento LLC, and each of their former and present directors, officers, shareholders, owners, members, managing agents, attorneys, insurers, predecessors, successors, assigns, subsidiaries, affiliates.
- 1.43 “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.
- 1.44 “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 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.
- 1.45 “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.46 “Workweek” means any week during which a Class Member worked for DEFENDANTS for at least one day, during the Class Period.

2. RECITALS.

- 2.1 On March 14, 2022, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendants’ for: 1) Recovery of Unpaid Minimum Wages and Liquidated Damages; 2) Recovery of Unpaid Overtime Wages; 3) Failure to Provide Meal Periods or Compensation in Lieu Thereof; 4) Failure to Provide Rest Periods or Compensation in Lieu Thereof, 5) Failure to Furnish Accurate Itemized

Wage Statements; 6) Failure to Reimburse Business Expenses; and 7) Unfair Competition. On May 11, 2022, Plaintiff filed a separate PAGA Complaint (Case No. 22STCV15786) seeking civil penalties against DEFENDANTS for Labor Code violations. Pursuant to the Parties' stipulation, on August 4, 2022, the Court consolidated this Action and the PAGA Complaint for all purposes. DEFENDANTS denies the allegations in the Action, denies any failure to comply with the laws identified in in the Action and denies any and all liability for the causes of action alleged.

- 2.2 Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to DEFENDANTS and the LWDA by sending the PAGA Notice.
- 2.3 On January 22, 2024, the Parties participated in an all-day mediation presided over by Todd Smith, Esq., which led to this Agreement to settle the Action.
- 2.4 Prior to mediation, Plaintiff obtained, through informal discovery, policy and procedure manuals relevant to the claims in the Action, a 20% sample of time and pay records for Class Members, and the number of Class Members and workweeks at issue. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").
- 2.5 The Court has not granted class certification. Pursuant to the Parties' stipulations, the Court continued Plaintiff's deadline to file a motion for class certification so that the Parties could engage in mediation.
- 2.6 The Parties, Class 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 below, DEFENDANTS promise to pay \$989,940.00 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. DEFENDANTS have no obligation to pay the Gross Settlement Amount (or any payroll taxes) 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 Participating Class Members or 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 Order:

- 3.2.1 **To Plaintiff:** Class Representative Service Payment to the Class Representative of not more than \$5,000 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). DEFENDANTS will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the Final Approval motion, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.
- 3.2.2 **To Class Counsel:** A Class Counsel Fees Payment of not more than one-third, which is currently estimated to be \$329,947 and a Class Counsel Litigation Expenses Payment of not more than \$20,000. DEFENDANTS will not oppose requests for these payments provided that do not exceed these amounts. As part of the Final Approval motion, Plaintiff and Class Counsel will request approval of the Class Counsel Fees Payment and Class Litigation Expenses Payment. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds DEFENDANTS harmless, and indemnifies DEFENDANTS, from any dispute or controversy regarding any division or sharing of any of these Payments.
- 3.2.3 **To the Administrator:** An Administrator Expenses Payment not to exceed \$20,000 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 \$20,000, the Administrator will retain the remainder in the Net Settlement Amount.
- 3.2.4 **To Each Participating Class Member:** An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class

Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1 Tax Allocation of Individual Class Payments. 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (excluding any portion of the share of the PAGA Penalties) (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The remaining 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and non-wage statutory damages (excluding any portion of the share of the PAGA Penalties) (the "Non-Wage Portion"). The Non-Wage Portions and PAGA Penalties are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2 Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$25,000 to be paid from the Gross Settlement Amount, with 75% (\$18,750) allocated to the LWDA PAGA Payment and 25% (\$6,250) allocated to the Individual PAGA Payments.

3.2.5.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$6,250) 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.

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

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1 **Class Workweeks and Aggrieved Employee Pay Periods.** Based on a review of its records to date, DEFENDANTS estimate there are 2,373 Class Members who collectively worked a total of 70,710 Workweeks as of January 22, 2024, and 1,082 Aggrieved Employees who worked a total 14,542 PAGA Pay Periods as of January 22, 2024.
- 4.2 **Class Data.** Not later than 15 days after the Court grants Preliminary Approval of the Settlement, DEFENDANTS will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. 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 Data to effect and perform under this Agreement. DEFENDANTS have a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which DEFENDANTS must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.3 **Funding of Gross Settlement Amount.** DEFENDANTS shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay DEFENDANTS' share of payroll taxes by transmitting the funds to the Administrator no later than 30 days after the Effective Date.
- 4.4 **Payments from the Gross Settlement Amount.** Within 14 days after DEFENDANTS fund the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
 - 4.4.1 The Administrator will issue checks for the Individual Class Payments and Individual PAGA Payments and send them to the Participating Class Members and Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was

returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

- 4.4.2 The Administrator must conduct a Class Member Address Search for all other Participating Class Members and Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Participating Class Members and Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Participating Class Member and/or Aggrieved Employee whose original check was lost or misplaced, requested by the Participating Class Member and/or Aggrieved Employee prior to the void date.
- 4.4.3 For any Participating Class Member and/or Aggrieved Employee whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks 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 Section 384, subd. (b).
- 4.4.4 The payment of Individual Class Payments and Individual PAGA Payments shall not obligate DEFENDANTS to confer any additional benefits or make any additional payments to Participating Class Members or Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS. Effective on the date when DEFENDANTS fully fund the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, and Class Members will release claims against all Released Parties as follows:

- 5.1 **Plaintiff's Release.** Plaintiff and his 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 that occurred during the Class Period, 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, Plaintiff's PAGA Notice. ("Plaintiff's Release.") Plaintiff's 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. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

5.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542.

For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes 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: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint during the Class Period. Participating Class Members' only release these claims for the duration of the Class Period. 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 by Aggrieved Employees: 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 facts stated in the Operative Complaint and the PAGA Notice during the PAGA Period. Aggrieved Employees only release these claims for the duration of the PAGA Period.

6. **MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s current checklist for Preliminary Approvals.

6.1 **DEFENDANTS’ Declaration in Support of Preliminary Approval.** Within 15 days of the full execution of this Agreement, DEFENDANTS will prepare and deliver to Class Counsel a signed Declaration from DEFENDANTS and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator. In their Declaration, DEFENDANTS shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.2 **Plaintiff’s Responsibilities.** Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, or the Administrator (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (vi) a redlined version of the parties’ Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.3 **Responsibilities of Counsel.** Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing

in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

- 6.4 **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 to serve as the Administrator and verified that, as a condition of appointment, Atticus Administration, LLC 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 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 section 468B-1.
- 7.4 **Notice to Class Members.**
- 7.4.1 No later than three (3) 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 the Class Data.
- 7.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice with Spanish translation, substantially in the form attached to this Agreement as **Exhibit A**. The first page of the Class Notice shall prominently estimate the dollar amounts of

any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

- 7.4.3 Not later than 3 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- 7.4.4 The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 45 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- 7.4.5 If the Administrator, DEFENDANTS or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet 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, which ever 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 or his/her representative 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, including the Participating Class Members' Release and Aggrieved Employee Release under Paragraphs 5.2 and 5.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- 7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.4 of this Agreement and are eligible for an Individual PAGA Payment.
- 7.6 **Challenges to Calculation of Workweeks.** Each Class Member shall have 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

7.7 Objections to Settlement.

- 7.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the 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. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. 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.

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 **Email Address and Toll-Free Number.** The Administrator will 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 5 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 ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
- 7.8.3 **Weekly Reports.** The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class

Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

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

7.8.5 **Administrator’s Declaration.** Not later than 14 days after the Response Deadline, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of the Class Notice, the total number of Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from the Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.

7.8.6 **Final Report by Settlement Administrator.** Within 10 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 15 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. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE.

8.1 Based on its records, DEFENDANTS estimate that, as of January 22, 2024, (1) there are 2,373 Class Members and 70,710 Total Workweeks during the Class period and (2) there were 1,082 Aggrieved Employees who worked 14,542 Pay Periods during the PAGA Period.

8.2 The Gross Settlement Amount was agreed upon based on DEFENDANTS’ representations of the total number of Workweeks in the Class Period. If the number

of Workweeks during the Class Period exceeds 70,710 by more than ten percent (10%), DEFENDANTS have the election to either (a) cut off the Class Period at that point, or (b) the Gross Settlement Amount shall be increased on a pro rata basis per Workweek exceeding the 10% increase (i.e. if the number increases by 11%, the Gross Settlement Amount shall be increased by 1%).

9. **MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff 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 section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiff shall provide drafts of these documents to Defense Counsel as soon as practicable 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 Participating Class Members or Aggrieved Employees), 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, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, 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 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment.

If the 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 Participating Class Members or Aggrieved Employees), 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, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. 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. AMENDED JUDGMENT. If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

11. 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 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 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, DEFENDANTS reserve the right to contest certification of any class for any reasons, and DEFENDANTS reserve all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest DEFENDANTS' defenses. The Settlement, this Agreement, and the 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, DEFENDANTS 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, advertise, market, publish, report, post, or promote to the public, or cause or permit another person to disclose, disseminate or publicize, advertise, market, publish, report, post, or promote to the public, any of the terms of the Agreement (or the negotiations leading to this Agreement) directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, DEFENDANTS' insurers, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, DEFENDANTS and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 12.3 **No Solicitation.** The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 12.4 **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.
- 12.5 **Attorney Authorization.** Class 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.
- 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 a mediator 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, DEFENDANTS 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.
- 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 Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class 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. 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, Plaintiff shall destroy, all paper and electronic versions of Class Data received from DEFENDANTS unless, prior to the Court's discharge of the Administrator's obligation, DEFENDANTS makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.

- 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:

Chad Saunders
chad@crosnerlegal.com
Jamie Serb
jamie@crosnerlegal.com
Zachary Crosner
zach@crosnerlegal.com
CROSNER LEGAL, P.C.
9440 Santa Monica Blvd., Suite 301
Beverly Hills, CA 90210

To DEFENDANTS:

Ann K. Smith
ASmith@aalrr.com
Sarkis A Atoyan
Sarkis.Atoyan@aalrr.com
ATKINSON, ANDELSON, LOYA, RUUD & ROMO
12800 Center Court Drive, Suite 300,
Cerritos, CA 90703

- 12.18 **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.
- 12.19 **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.

Dated: 04 / 12 / 2024

Vijay Sheth

Plaintiff Vijay Sheth

Dated: _____

Denise Nelsen for:

Defendants ICON BURGER ACQUISITION LLC,
SMASHBURGER ACQUISITION-SO CAL LLC,
SMASHBURGER ACQUISITION - SAN
FRANCISCO LLC, SMASHBURGER
ACQUISITION - SAN DIEGO LLC,
SMASHBURGER ACQUISITION -
SACRAMENTO LLC

Dated: 04/12/2024

CROSNER LEGAL, PC



Chad Saunders, Esq.
Zachary Crosner, Esq.
Jamie Serb, Esq.
Attorneys for Plaintiff and the Class

Dated: _____

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

Ann K. Smith, Esq.
Sarkis A. Atoyan, Esq.
Attorneys for Defendants

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.

Dated: _____

Plaintiff Vijay Sheth

Dated: 4/11/24

Denise Nelsen
Denise Nelsen for:

Defendants ICON BURGER ACQUISITION LLC,
SMASHBURGER ACQUISITION-SO CAL LLC,
SMASHBURGER ACQUISITION - SAN
FRANCISCO LLC, SMASHBURGER
ACQUISITION - SAN DIEGO LLC,
SMASHBURGER ACQUISITION -
SACRAMENTO LLC

Dated: _____

CROSNER LEGAL, PC

Chad Saunders, Esq.
Zachary Crosner, Esq.
Jamie Serb, Esq.
Attorneys for Plaintiff and the Class

Dated: April 12, 2024

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

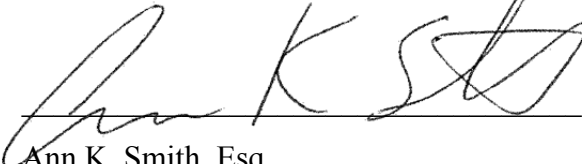

Ann K. Smith, Esq.
Sarkis A. Atoyan, Esq.
Attorneys for Defendants

EXHIBIT A

LOS ANGELES COUNTY SUPERIOR COURT

NOTICE OF CLASS ACTION SETTLEMENT
VIJAY SHETH V. ICON BURGER ACQUISITION, LLC, et al.

If you are currently or were employed at a Smashburger in California at any time between March 14, 2018, and [DATE], a class action settlement may affect your rights.

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. The Superior Court for the County of Los Angeles has authorized this notice in the matter of *Sheth v. Icon Burger Acquisition, LLC, et al.*, Case No. 22STCV09093 (the “**Litigation**”). This is not a solicitation from a lawyer.

- Defendants Icon Burger Acquisition LLC, Smashburger Acquisition - So Cal LLC, Smashburger Acquisition - San Francisco LLC, Smashburger Acquisition - San Diego LLC, Smashburger Acquisition - Sacramento LLC operate restaurants known as “Smashburger” in California (together they are called “**Smashburger**” in this Notice).
- On March 14, 2022, Plaintiff Vijay Sheth (called the “**Plaintiff**” in this notice), a former employee of Smashburger, filed a class action lawsuit against Smashburger. On May 11, 2022, Plaintiff filed a representative lawsuit under the Private Attorneys General Act (“**PAGA**”) against Smashburger. Both lawsuits are consolidated and pending before Hon. Yvette M. Palazuelos, in Department 9 of the Los Angeles County Superior Court (together the lawsuits are called the “**Action**”).
- In the Action, Plaintiff claims that Smashburger failed to pay all minimum wages and overtime wages, failed to provide meal periods and rest periods, failed to provide accurate wage statements, failed to timely pay all wages after the end of employment, failed to reimburse all business expenses, violated California’s Unfair Competition Law, and is liable for civil penalties under the PAGA.
- Smashburger disputes Plaintiff’s claims. Smashburger expressly and specifically denies violating any laws and believes it has complied with the law in all respects and denies any liability for the claims asserted by Plaintiff. Smashburger is not admitting liability of any of the factual and legal allegations asserted in the lawsuit and denies that the lawsuit should proceed as a class action for any purpose other than this Settlement.
- After investigating the claims at issue, and the possible defenses to those claims, the Parties have agreed to settle this case to avoid the cost and risk of further litigation. In view of the costs and risks that continued litigation would entail, Plaintiff and his counsel believe the Settlement is in the best interests of all non-exempt hourly employees who worked for Smashburger in California during the Class Period and PAGA Period.
- For settlement purposes only, the Court has conditionally certified the Action to be a class action on behalf of all non-exempt employees employed by Smashburger in California from March 14, 2018, through [date] (the “**Class Period**”).
- Your legal rights may be affected by this Settlement whether you act or do not act. Your options are explained in this notice. Thus, please read this notice carefully and in its entirety.

To request to be excluded from, or object to, this Settlement, you must act before **45 calendar days from date of notice**.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT

(1) DO NOTHING	(1) Receive part of the Settlement. <i>If you do not do anything upon receipt of this notice, you will receive a sum of money based on your dates of employment with Smashburger; you will give up your right to sue for alleged violations and related claims released by the Settlement; you will have no right to appeal; and you will forfeit your right to bring or participate in a similar action against Smashburger.</i>
(2) OPT-OUT	(2) Opt-out or exclude yourself from the Settlement. <i>If you make a valid and timely written request to be excluded from the Settlement, you will not receive any money from the Class portion of the Settlement, and you will not give up any rights you may have, except as to the PAGA portion of the Settlement.</i>
(3) OBJECT	(3) Write to the Court about why you object to the Settlement. <i>If you object to the Settlement, you can write to the Court about why you don’t agree</i>

with the Settlement. You may also present oral objections to the Court at the Final Approval Hearing. The Court may or may not agree with your objection. If the Court approves the Settlement, you will still be bound by its terms.

THIS LEGAL NOTICE AFFECTS YOUR RIGHTS. PLEASE READ IT CAREFULLY.

WHAT THIS NOTICE CONTAINS

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You are receiving this notice because the Superior Court for the County of Los Angeles has granted preliminary approval to a class action settlement for settlement purposes only, and Smashburger's records indicate that you may be a member of the settlement Class. As such, you may be eligible for compensation from this Settlement.

As a Class Member, your interests are being represented at no expense to you by Zachary Crosner, Jamie Serb, and Chad Saunders of Crosner Legal, P.C. ("**Class Counsel**"). You may also hire your own lawyer at your own expense.

I. BACKGROUND OF THE CASE

On March 14, 2022, Plaintiff filed a complaint in Superior Court for the County of Los Angeles ("**the Court**") on behalf of all current and former non-exempt employees employed by Smashburger in the State of California (referred to as "**Class Members**"). The complaint made claims for: 1) Failure to Pay Minimum Wage for All Hours Worked; 2) Failure to Pay Wages for All Hours Worked at Overtime; 3) Failure to Provide Meal Periods; 4) Failure to Authorize or Permit Rest Periods; 5) Failure to Provide Complete and Accurate Wage Statements; 6) Failure to Pay All Wages Timely Upon Separation of Employment; 7) Failure to Reimburse Business Expenses; and 8) Unfair Business Practices. Plaintiff's separate complaint, filed on May 11, 2022, alleged violations of PAGA against Smashburger.

The Parties thoroughly investigated the case. Plaintiff and Smashburger were then able to agree on a Settlement of the case.

Class Counsel believe the Settlement is fair, reasonable, and in the best interests of the Class. Smashburger expressly and specifically denies any liability or wrongdoing of any kind associated with the claims alleged in the Action. Smashburger settled the Action to avoid costly, disruptive, and time-consuming litigation.

On [date of preliminary approval], the Court gave preliminary approval to the Settlement and conditionally certified the Settlement Class for settlement purposes only. The Court was not asked to make and did not make any ruling as to whether any violations by Smashburger had occurred.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. What Are the Terms of the Settlement?

Smashburger have agreed to pay \$989,940.00 to settle the Action ("**Gross Settlement Amount**"). The Gross Settlement Amount includes attorneys' fees and costs, costs of settlement administration, PAGA penalties, and the Class Representative's Enhancement Award.

The “**Net Settlement Amount**” is the remainder of the Gross Settlement Amount after the deductions have been made for the following items: (1) up to \$329,947 (one-third of the Gross Settlement Amount) for Class Counsel’s attorneys’ fees; (2) Class Counsel’s actual litigation costs, not to exceed \$20,000; (3) the costs of settlement administration, not to exceed \$20,000; (4) \$18,750 to the California Labor and Workforce Development Agency (“LWDA”) for its share of the PAGA penalties; and (5) up to \$5,000.00 to Plaintiff for serving as a Class Representative.

B. Who is Included in the Settlement?

Included in the Settlement are all non-exempt employees employed by Smashburger in California from March 14, 2018, through [date].

C. How Are Settlement Payments Calculated?

Any Class Member who does not submit a written request to be excluded from the Settlement will have his or her “Settlement Payment” calculated as follows:

a. All Participating Class Members: Each Participating Class Member will receive a proportionate share of the Net Settlement Amount (“NSA”) that is equal to (i) the number of weeks he or she worked for Smashburger during the Class Period in California based on the Class data provided by Smashburger, divided by (ii) the total number of weeks worked by all Participating Class Members during the Class Period based on the same Class data, which is then multiplied by the NSA.

b. PAGA Penalties Subclass: This Settlement covers claims brought under PAGA. “PAGA Members” are all non-exempt employees of Smashburger who were employed in California from March 14, 2021, to [date] (“PAGA members” or “PAGA Subclass”). The Settlement designates a total of \$25,000.00 as penalties under the PAGA. From this amount, \$6,250 (25%) will be allocated to the PAGA Members. The remainder of the PAGA penalties (\$18,750) will be paid to the LWDA, as required by law. Each PAGA Member will receive a proportionate share of the PAGA Payment which equals (i) the number of weeks he or she worked for Smashburger during the PAGA Period in California based on the Class data provided by Smashburger, divided by (ii) the total number of weeks worked by all PAGA Members during the PAGA Period based on the same Class data, which is then multiplied by \$6,250.

d. Tax Treatment of Settlement Payments: Twenty percent (20%) of each Settlement Payment will be designated as wages, which shall be reduced by your lawful deductions and withholdings. You will also receive a W-2 form for the wages portion. Eighty percent (80%) of each Settlement Payment will be allocated to penalties and interest for which you will receive a 1099 form.

D. Your Settlement Calculation

Your Settlement Payment is estimated to be \$/[amount], based on the following dates of employment as reflected in Smashburger’s records, and the calculations described above:

[insert start date(s) and end date(s) of employment and number of work weeks].

If you do not opt-out of the Settlement, then you will receive a check for your Settlement Payments. Your check will be void if you do not cash or deposit your check within 180 days following the issuance of the check. Whether or not you cash or deposit your check, you will be bound by the Settlement and will be deemed to have waived irrevocably any right or claim to your Settlement share and/or to appeal the approval of the Settlement. After the expiration of 180 days, the sum of any uncashed/undeposited checks shall be deposited with the California Controller’s Unclaimed Property division.

E. Release of Claims Against Smashburger.

Upon the Final Approval of the Settlement by the Court, all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Icon Burger Acquisition LLC, Smashburger Acquisition – So Cal LLC, Smashburger Acquisition - San Francisco LLC, Smashburger Acquisition - San Diego LLC, Smashburger Acquisition - Sacramento LLC, and each of their former and present directors, officers, shareholders, owners, members, managing agents, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates from (i) all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint during the Class Period. Participating Class Members’ only release these claims for the duration of the Class Period. 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.

Only those Class Members who were employed during the PAGA Period, will release their claims for PAGA penalties.

These claims are referred to in this Notice as the “**Released Claims.**”

III. LEGAL RIGHTS AND OPTIONS OF CLASS MEMBERS

A. **Option 1: Do Nothing and Receive a Settlement Payment.**

You do not need to do anything in order to receive a Settlement Payment. If you do nothing, you will automatically be included in the Settlement and will receive a Settlement Payment so long as the Settlement is approved and becomes Final. As set forth above, your Settlement Payment will be based upon whether you worked during the Class Period and, if so, the number of work weeks you worked during the Class Period.

Please keep your address current! To assist the Court and the parties in maintaining accurate lists of Class Members, please mail notice of any change in your address to the Settlement Administrator (address below), or call [Administrator 800 #]. *Please say that you are a part of the Sheth v. Icon Burger Settlement Class.*

B. **Option 2: Exclude Yourself from the Settlement.**

IMPORTANT: You will be bound by the terms of the Settlement unless you submit a timely and signed written request to be excluded from the Settlement. To exclude yourself from the Settlement, you must mail your request for exclusion, postmarked no later than [45 calendar days after notice date], to:

[SETTLEMENT ADMINISTRATOR]
[ADDRESS]

Your request for exclusion must contain your full name and a statement that you wish to be excluded. Your request for exclusion must be returned by mail to the Settlement Administrator at the address above and must be postmarked on or before [45 calendar days after notice date]. If you request exclusion, you will not be excluded from the PAGA Subclass. If you request exclusion, you will still be entitled to receive your share of the PAGA portion of the Settlement, if any, and will still be bound by the PAGA portion of the Settlement if you are a member of the PAGA Subclass.

C. **Option 3: Object to the Settlement.**

Any Settlement Class Member who has not submitted a request for exclusion may object to the terms of the Settlement. You may object to the proposed settlement in writing and/or orally at the Final Approval Hearing. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing should: (1) clearly identify the case name and number (*Sheth v. Icon Burger Acquisition, LLC, et al.*, Case No. 22STCV09093); and (2) be mailed to the Settlement Administrator postmarked on or before [45 calendar days after notice date]. A Settlement 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.

CLASS COUNSEL

Zachary M. Crosner
Jamie Serb
Chad Saunders
CROSNER LEGAL, P.C.
9440 Santa Monica Blvd., Ste. 301
Beverly Hills, CA 90210
Tel: (866) 276-7637

YOU MAY OBJECT TO THE SETTLEMENT AND STILL RECEIVE YOUR SHARE OF THE NET SETTLEMENT AMOUNT. IF THE COURT APPROVES THE SETTLEMENT DESPITE YOUR OBJECTIONS, YOU WILL RECEIVE YOUR SHARE OF SETTLEMENT PROCEEDS.

NO MATTER WHICH OPTION YOU CHOOSE, SMASHBURGER WILL NOT RETALIATE AGAINST YOU.

IV. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing on [DATE], at [TIME], in Department 9 at the Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA 90012, Hon. Yvette M. Palazuelos presiding, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The hearing may be continued or rescheduled without further notice to Class Members. You can check whether the Final Approval Hearing has been continued or rescheduled by visiting the Court's website: <https://www.lacourt.org/casesummary/ui/index.aspx?casetype=civil>, and then entering the case number for this action, 22STCV09093.

You may attend the Final Approval Hearing but are not required to do so. Written objections will be considered at the Final Approval Hearing whether or not the person objecting appears at the hearing. If you object and wish to appear at the Final Approval Hearing, you may appear personally or through counsel hired at your own expense, as long as you provide the Court with timely notice of your intent to appear.

At no expense to you, Class Counsel will represent your interests as a Class Member. Or, you may hire your own lawyer at your own expense.

V. ADDITIONAL INFORMATION

This Notice is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you may request the detailed Settlement Agreement, from Class Counsel. You may also request Plaintiff's Motion for Preliminary Approval, Plaintiff's Motions for Final Approval and Attorneys' Fees (when available), and other important documents related to this case, by contacting Class Counsel. If you have any questions regarding this Notice, the Settlement, or the Litigation, you may contact Class Counsel.

DO NOT TELEPHONE THE COURT OR DEFENSE COUNSEL

EXHIBIT

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EXHIBIT

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LOS ANGELES COUNTY SUPERIOR COURT

NOTICE OF CLASS ACTION SETTLEMENT
VIJAY SHETH V. ICON BURGER ACQUISITION, LLC, et al.

If you are currently or were employed at a Smashburger in California at any time between March 14, 2018, and [DATE], a class action settlement may affect your rights.

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. The Superior Court for the County of Los Angeles has authorized this notice in the matter of *Sheth v. Icon Burger Acquisition, LLC, et al.*, Case No. 22STCV09093 (the “**Litigation**”). This is not a solicitation from a lawyer.

- Defendants Icon Burger Acquisition LLC, Smashburger Acquisition - So Cal LLC, Smashburger Acquisition - San Francisco LLC, Smashburger Acquisition - San Diego LLC, Smashburger Acquisition - Sacramento LLC operate restaurants known as “Smashburger” in California (together they are called “**Smashburger**” in this Notice).
- On March 14, 2022, Plaintiff Vijay Sheth (called the “**Plaintiff**” in this notice), a former employee of Smashburger, filed a class action lawsuit against Smashburger. On May 11, 2022, Plaintiff filed a representative lawsuit under the Private Attorneys General Act (“**PAGA**”) against Smashburger. Both lawsuits are consolidated and pending before Hon. Yvette M. Palazuelos, in Department 9 of the Los Angeles County Superior Court (together the lawsuits are called the “**Action**”).
- In the Action, Plaintiff claims that Smashburger failed to pay all minimum wages and overtime wages, failed to provide meal periods and rest periods, failed to provide accurate wage statements, failed to timely pay all wages after the end of employment, failed to reimburse all business expenses, violated California’s Unfair Competition Law, and is liable for civil penalties under the PAGA.
- Smashburger disputes Plaintiff’s claims. Smashburger expressly and specifically denies violating any laws and believes it has complied with the law in all respects and denies any liability for the claims asserted by Plaintiff. Smashburger is not admitting liability of any of the factual and legal allegations asserted in the lawsuit and denies that the lawsuit should proceed as a class action for any purpose other than this Settlement.
- After investigating the claims at issue, and the possible defenses to those claims, the Parties have agreed to settle this case to avoid the cost and risk of further litigation. In view of the costs and risks that continued litigation would entail, Plaintiff and his counsel believe the Settlement is in the best interests of all non-exempt hourly employees who worked for Smashburger in California during the Class Period and PAGA Period.
- For settlement purposes only, the Court has conditionally certified the Action to be a class action on behalf of all non-exempt employees employed by Smashburger in California from March 14, 2018, through [date] (the “**Class Period**”).
- Your legal rights may be affected by this Settlement whether you act or do not act. Your options are explained in this notice. Thus, please read this notice carefully and in its entirety.

To request to be excluded from, or object to, this Settlement, you must act before **45 calendar days from date of notice**.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT

(1) DO NOTHING	(1) Receive part of the Settlement. <i>If you do not do anything upon receipt of this notice, you will receive a sum of money based on your dates of employment with Smashburger; you will give up your right to sue for alleged violations and related claims released by the Settlement; you will have no right to appeal; and you will forfeit your right to bring or participate in a similar action against Smashburger.</i>
(2) OPT-OUT	(2) Opt-out or exclude yourself from the Settlement. <i>If you make a valid and timely written request to be excluded from the Settlement, you will not receive any money from the Class portion of the Settlement, and you will not give up any rights you may have, except as to the PAGA portion of the Settlement.</i>
(3) OBJECT	(3) Write to the Court about why you object to the Settlement. <i>If you object to the Settlement, you can write to the Court about why you don’t agree</i>

with the Settlement. You may also present oral objections to the Court at the Final Approval Hearing. The Court may or may not agree with your objection. If the Court approves the Settlement, you will still be bound by its terms.

THIS LEGAL NOTICE AFFECTS YOUR RIGHTS. PLEASE READ IT CAREFULLY.

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As a Class Member, your interests are being represented at no expense to you by Zachary Crosner, Jamie Serb, and Chad Saunders of Crosner Legal, P.C. ("**Class Counsel**"). You may also hire your own lawyer at your own expense.

I. BACKGROUND OF THE CASE

On March 14, 2022, Plaintiff filed a complaint in Superior Court for the County of Los Angeles ("**the Court**") on behalf of all current and former non-exempt employees employed by Smashburger in the State of California (referred to as "**Class Members**"). The complaint made claims for: 1) Failure to Pay Minimum Wage for All Hours Worked; 2) Failure to Pay Wages for All Hours Worked at Overtime; 3) Failure to Provide Meal Periods; 4) Failure to Authorize or Permit Rest Periods; 5) Failure to Provide Complete and Accurate Wage Statements; 6) Failure to Pay All Wages Timely Upon Separation of Employment; 7) Failure to Reimburse Business Expenses; and 8) Unfair Business Practices. Plaintiff's separate complaint, filed on May 11, 2022, alleged violations of PAGA against Smashburger.

The Parties thoroughly investigated the case. Plaintiff and Smashburger were then able to agree on a Settlement of the case.

Class Counsel believe the Settlement is fair, reasonable, and in the best interests of the Class. Smashburger expressly and specifically denies any liability or wrongdoing of any kind associated with the claims alleged in the Action. Smashburger settled the Action to avoid costly, disruptive, and time-consuming litigation.

On [date of preliminary approval], the Court gave preliminary approval to the Settlement and conditionally certified the Settlement Class for settlement purposes only. The Court was not asked to make and did not make any ruling as to whether any violations by Smashburger had occurred.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. What Are the Terms of the Settlement?

Smashburger have agreed to pay \$989,940.00 to settle the Action ("**Gross Settlement Amount**"). The Gross Settlement Amount includes attorneys' fees and costs, costs of settlement administration, PAGA penalties, and the Class Representative's Enhancement Award.

The “**Net Settlement Amount**” is the remainder of the Gross Settlement Amount after the deductions have been made for the following items: (1) up to \$329,947 (one-third of the Gross Settlement Amount) for Class Counsel’s attorneys’ fees; (2) Class Counsel’s actual litigation costs, not to exceed \$20,000; (3) the costs of settlement administration, not to exceed \$20,000; (4) \$18,750 to the California Labor and Workforce Development Agency (“LWDA”) for its share of the PAGA penalties; and (5) up to \$5,000.00 to Plaintiff for serving as a Class Representative.

B. Who is Included in the Settlement?

Included in the Settlement are all non-exempt employees employed by Smashburger in California from March 14, 2018, through [date].

C. How Are Settlement Payments Calculated?

Any Class Member who does not submit a written request to be excluded from the Settlement will have his or her “Settlement Payment” calculated as follows:

a. All Participating Class Members: Each Participating Class Member will receive a proportionate share of the Net Settlement Amount (“NSA”) that is equal to (i) the number of weeks he or she worked for Smashburger during the Class Period in California based on the Class data provided by Smashburger, divided by (ii) the total number of weeks worked by all Participating Class Members during the Class Period based on the same Class data, which is then multiplied by the NSA.

b. PAGA Penalties Subclass: This Settlement covers claims brought under PAGA. “PAGA Members” are all non-exempt employees of Smashburger who were employed in California from March 14, 2021, to [date] (“PAGA members” or “PAGA Subclass”). The Settlement designates a total of \$25,000.00 as penalties under the PAGA. From this amount, \$6,250 (25%) will be allocated to the PAGA Members. The remainder of the PAGA penalties (\$18,750) will be paid to the LWDA, as required by law. Each PAGA Member will receive a proportionate share of the PAGA Payment which equals (i) the number of weeks he or she worked for Smashburger during the PAGA Period in California based on the Class data provided by Smashburger, divided by (ii) the total number of weeks worked by all PAGA Members during the PAGA Period based on the same Class data, which is then multiplied by \$6,250.

d. Tax Treatment of Settlement Payments: Twenty percent (20%) of each Settlement Payment will be designated as wages, which shall be reduced by your lawful deductions and withholdings. You will also receive a W-2 form for the wages portion. Eighty percent (80%) of each Settlement Payment will be allocated to penalties and interest for which you will receive a 1099 form.

D. Your Settlement Calculation

Your Settlement Payment is estimated to be \$/[amount], based on the following dates of employment as reflected in Smashburger’s records, and the calculations described above:

[insert start date(s) and end date(s) of employment and number of work weeks].

If you do not opt-out of the Settlement, then you will receive a check for your Settlement Payments. Your check will be void if you do not cash or deposit your check within 180 days following the issuance of the check. Whether or not you cash or deposit your check, you will be bound by the Settlement and will be deemed to have waived irrevocably any right or claim to your Settlement share and/or to appeal the approval of the Settlement. After the expiration of 180 days, the sum of any uncashed/undeposited checks shall be deposited with the California Controller’s Unclaimed Property division.

E. Release of Claims Against Smashburger.

Upon the Final Approval of the Settlement by the Court, all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Icon Burger Acquisition LLC, Smashburger Acquisition – So Cal LLC, Smashburger Acquisition - San Francisco LLC, Smashburger Acquisition - San Diego LLC, Smashburger Acquisition - Sacramento LLC, and each of their former and present directors, officers, shareholders, owners, members, managing agents, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates from (i) all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint during the Class Period. Participating Class Members’ only release these claims for the duration of the Class Period. 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.

Only those Class Members who were employed during the PAGA Period, will release their claims for PAGA penalties. These claims are referred to in this Notice as the **"Released Claims."**

III. LEGAL RIGHTS AND OPTIONS OF CLASS MEMBERS

A. **Option 1: Do Nothing and Receive a Settlement Payment.**

You do not need to do anything in order to receive a Settlement Payment. If you do nothing, you will automatically be included in the Settlement and will receive a Settlement Payment so long as the Settlement is approved and becomes Final. As set forth above, your Settlement Payment will be based upon whether you worked during the Class Period and, if so, the number of work weeks you worked during the Class Period.

Please keep your address current! To assist the Court and the parties in maintaining accurate lists of Class Members, please mail notice of any change in your address to the Settlement Administrator (address below), or call [Administrator 800 #]. *Please say that you are a part of the Sheth v. Icon Burger Settlement Class.*

B. **Option 2: Exclude Yourself from the Settlement.**

IMPORTANT: You will be bound by the terms of the Settlement unless you submit a timely and signed written request to be excluded from the Settlement. To exclude yourself from the Settlement, you must mail your request for exclusion, postmarked no later than [45 calendar days after notice date], to:

[SETTLEMENT ADMINISTRATOR]
[ADDRESS]

Your request for exclusion must contain your full name and a statement that you wish to be excluded. Your request for exclusion must be returned by mail to the Settlement Administrator at the address above and must be postmarked on or before [45 calendar days after notice date]. If you request exclusion, you will not be excluded from the PAGA Subclass. If you request exclusion, you will still be entitled to receive your share of the PAGA portion of the Settlement, if any, and will still be bound by the PAGA portion of the Settlement if you are a member of the PAGA Subclass.

C. **Option 3: Object to the Settlement.**

Any Settlement Class Member who has not submitted a request for exclusion may object to the terms of the Settlement. You may object to the proposed settlement in writing and/or orally at the Final Approval Hearing. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing should: (1) clearly identify the case name and number (*Sheth v. Icon Burger Acquisition, LLC, et al.*, Case No. 22STCV09093); and (2) be mailed to the Settlement Administrator postmarked on or before [45 calendar days after notice date]. A Settlement 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.

CLASS COUNSEL

Zachary M. Crosner
Jamie Serb
Chad Saunders
CROSNER LEGAL, P.C.
9440 Santa Monica Blvd., Ste. 301
Beverly Hills, CA 90210
Tel: (866) 276-7637

YOU MAY OBJECT TO THE SETTLEMENT AND STILL RECEIVE YOUR SHARE OF THE NET SETTLEMENT AMOUNT. IF THE COURT APPROVES THE SETTLEMENT DESPITE YOUR OBJECTIONS, YOU WILL RECEIVE YOUR SHARE OF SETTLEMENT PROCEEDS.

NO MATTER WHICH OPTION YOU CHOOSE, SMASHBURGER WILL NOT RETALIATE AGAINST YOU.

IV. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing on [DATE], at [TIME], in Department 9 at the Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA 90012, Hon. Yvette M. Palazuelos presiding, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The hearing may be continued or rescheduled without further notice to Class Members. You can check whether the Final Approval Hearing has been continued or rescheduled by visiting the Court's website: <https://www.lacourt.org/casesummary/ui/index.aspx?casetype=civil>, and then entering the case number for this action, 22STCV09093.

You may attend the Final Approval Hearing but are not required to do so. Written objections will be considered at the Final Approval Hearing whether or not the person objecting appears at the hearing. If you object and wish to appear at the Final Approval Hearing, you may appear personally or through counsel hired at your own expense, as long as you provide the Court with timely notice of your intent to appear.

At no expense to you, Class Counsel will represent your interests as a Class Member. Or, you may hire your own lawyer at your own expense.

V. ADDITIONAL INFORMATION

This Notice is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you may request the detailed Settlement Agreement, from Class Counsel. You may also request Plaintiff's Motion for Preliminary Approval, Plaintiff's Motions for Final Approval and Attorneys' Fees (when available), and other important documents related to this case, by contacting Class Counsel. If you have any questions regarding this Notice, the Settlement, or the Litigation, you may contact Class Counsel.

DO NOT TELEPHONE THE COURT OR DEFENSE COUNSEL

EXHIBIT

4



CROSNER LEGAL

Public Interest Rights

Zachary Crosner, Esq.
Managing Attorney
Los Angeles Office
9440 Santa Monica Blvd.,
Ste. 301
Beverly Hills, CA 90210

zach@crosnerlegal.com
office: (310) 496-5818
fax: (310) 510-6429

March 4, 2022

VIA ONLINE FILING ONLY:

PAGAfilings@dir.ca.gov
California Labor & Workforce
Development Agency
ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

VIA U.S. CERTIFIED MAIL:

Matthew E. Farmer, Esq.
Littler Mendelson, Counsel for:
Icon Burger Acquisition LLC
18565 Jamboree Rd, Suite 800
Irvine, CA 92612

National Registered Agents Inc.
Agent for Service of Process for:
Icon Burger Acquisition LLC
818 W. 7th Street, Suite 930
Los Angeles, CA 90071

National Registered Agents, Inc.
Agent for Service of Process for:
Icon Burger Acquisition LLC
330 N Brand Blvd Ste 700
Glendale CA 91203

Icon Burger Acquisition LLC
ATTN: Human Resources/Legal Department
3900 East Mexico Avenue, Suite 1100
Denver, CO 80210

National Registered Agents, Inc.
Agent for Service of Process for:
Smashburger Acquisition-So Cal LLC
330 N Brand Blvd Ste 700
Glendale CA 91203

National Registered Agents, Inc.
Agent for Service of Process for:
Smashburger Acquisition-San Francisco LLC
330 N Brand Blvd Ste 700
Glendale CA 91203

CT Corporation System
Agent for Service of Process for:
Smashburger Acquisition – San Diego LLC
330 N Brand Blvd Ste 700
Glendale CA 91203

National Registered Agents Inc.
Agent for Service of Process for:
Smashburger Acquisition – Sacramento LLC
818 West Seventh Street, Suite 930
Los Angeles, CA 90071

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; Icon Burger Acquisition LLC; Smashburger Acquisition-So Cal LLC; Smashburger Acquisition-San Francisco LLC; Smashburger Acquisition – San Diego, LLC, and Smashburger Acquisition – Sacramento LLC

Date: March 4, 2022

Subject: *Vijay Sheth v. Icon Burger Acquisition LLC, Smashburger Acquisition-So Cal LLC; Smashburger Acquisition-San Francisco LLC; Smashburger Acquisition – San Diego, LLC, and Smashburger Acquisition – Sacramento LLC*

Introduction

This office represents COMPLAINANT, Vijay Sheth (hereinafter “COMPLAINANT”) in connection with COMPLAINANT’s claims under the California Labor Code. COMPLAINANT

was, at all relevant times herein mentioned, an employee of the following entities and individual managing agents of said entities: Icon Burger Acquisition LLC; Smashburger Acquisition-So Cal LLC; Smashburger Acquisition-San Francisco LLC; Smashburger Acquisition – San Diego, LLC, and Smashburger Acquisition – Sacramento LLC, (hereinafter, these entities and their managing agents are referred to collectively as “EMPLOYER”). EMPLOYER may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, COMPLAINANT, on behalf of COMPLAINANT, and on behalf of all current and former non-exempt employees employed by EMPLOYER within one year of the date of this notice (“NON-EXEMPT AGGRIEVED EMPLOYEES”), and on behalf of all current and former exempt employees employed by EMPLOYER within one year of the date of this notice (“EXEMPT AGGRIEVED EMPLOYEES”), hereby gives written notice (“NOTICE”) of COMPLAINANT’s claims against EMPLOYER. This NOTICE is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and EMPLOYER via certified mail to counsel for EMPLOYER and/or to its Agent(s) for Service of Process as provided to the California Secretary of State.

This NOTICE also serves to demonstrate COMPLAINANT’s reasonable attempt at settlement with EMPLOYER. If EMPLOYER is interested in settling this matter before a lawsuit is filed, EMPLOYER may contact Crosner Legal, P.C. at the address listed at the close of this NOTICE. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

This NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699, 2699.3 and 2699.5. This NOTICE further reserves any and all rights by COMPLAINANT to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—COMPLAINANT reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this NOTICE. Consequently, EMPLOYER is on notice that COMPLAINANT continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. For violations that are curable under § 2699.3(c) and that EMPLOYER intends to cure within the statutory time period set forth in §§ 2699 and 2699.3(c), the EMPLOYER shall provide notice including a description of actions taken to cure. If the alleged violation is not cured within the statutory time period, COMPLAINANT will commence a civil action pursuant to section 2699. For all other violations that are not curable, an action pursuant to 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

Based on the following summary of the facts and theories upon which COMPLAINANT will base COMPLAINANT's claims, COMPLAINANT requests that the LWDA regard this NOTICE as written notice of COMPLAINANT's intent to seek civil penalties against EMPLOYER. The specific provisions of California law that EMPLOYER has violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 204, 216, 221-223, 226, 226.7, 245-248.5, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.3, 1199, 2802, 2810.5 and all applicable Wage Orders.

The Named Entities Are Joint Employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES AND EXEMPT AGGRIEVED EMPLOYEES

California courts have recognized that the definition of "employer" for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California's labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

COMPLAINANT is informed and believes and thereon alleges that at all relevant times EMPLOYER and unknown entities operated as a single integrated enterprise with common ownership and centralized human resources as set forth herein. Under California law, in determining whether two defendant entities are liable as an integrated enterprise, courts consider four factors: (1) centralized control of labor relations; (2) interrelation of operations; (3) common management; and (4) common ownership or financial control. *Laird v. Capital Cities/Abc, Inc.* (1998) 68 Cal.App.4th 727, 737 (overruled on other grounds, *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512 (2010).)

COMPLAINANT is informed and believes and hereon asserts that EMPLOYER and unknown entities must be classified as joint employers of COMPLAINANT for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted COMPLAINANT to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of COMPLAINANT at all relevant times herein, so as to be considered the joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

By reason of their status as joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, they are each liable for civil penalties for violation of the California Labor Code and applicable Wage Orders as to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code Section 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. EMPLOYER, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' rights by violating various sections of the California Labor Code. The California Legislature defines "other person acting on behalf of an employer" as "*a natural person* who is an owner, director, officer, or managing agent of the employer." The "managing agent" definition mirrors that found in California's punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, "managing agents" are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, the above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code sections 203, 226, 226.7, 1194 and 2802 as further described in detail below.

COMPLAINANT intends to further name any unknown individuals responsible for violations arising under Labor Code sections 558 and 558.1 after further discovery. COMPLAINANT will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the date of filing of these charges. COMPLAINANT asks and demands that EMPLOYER put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, COMPLAINANT also offers to EMPLOYER to place those individuals on notice if EMPLOYER voluntarily provides their contact information.

General Information

EMPLOYER, owns, operates, or otherwise manages restaurants in California including but not limited to locations operating under the name Smashburger in, including but not limited to, Redondo Beach, Manhattan Beach, Carson, San Diego, Sacramento, and San Francisco. At all times mentioned herein, EMPLOYER conducted and continues to conduct substantial business in the State of California. At all times mentioned herein, EMPLOYER was and is an employer covered by the Labor Code and the applicable California Industrial Welfare Commission ("IWC") Wage Order. While EMPLOYER may operate successful companies/have a noble mission, EMPLOYER does not comply with California labor law.

COMPLAINANT worked for EMPLOYER as a full-time non-exempt employee during the relevant time period, until he went out on medical leave, in or about April 2021. COMPLAINANT began his employment with EMPLOYER, on or about January 24, 2019, as a cook/other similar title, and was thereafter promoted to a non-exempt shift manager/other similar title, in or about March of 2020.

COMPLAINANT worked primarily at Smashburger restaurants/facilities that are owned and operated by EMPLOYER in the cities of Redondo Beach and Carson. COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES typically worked at least eight (8) hours per day, at least five (5) days per week. COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES worked in various positions, including but not limited to cashiers, cooks, kitchen prep, servers, managers, supervisors, and/or restaurant staff and/or similar titles.

Among other things, EMPLOYER (1) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wages for all hours worked and overtime/regular rates for corresponding work; (4) failed and continues to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (5) failed and continues to fail to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with proper meal or rest breaks, and/or compensate COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium pay at the employee's regular rate of compensation for missed/improper meal and/or rest periods; (6) refused and continues to refuse to make and/or falsely denied the amount of payments due to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (7) failed and continues to fail to place COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (8) failed and continues to fail to provide legally compliant wage statements to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES; (9) made unlawful deductions from COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' paychecks; (10) failed and continues to fail to timely pay wages to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES during employment and/or upon separation of employment; (11) failed and continues to fail to reimburse COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses incurred on behalf of EMPLOYER; (12) failed and continues to fail to provide suitable resting facilities and suitable seating; (13) conducted and continues to conduct illegal background criminal and/or financial checks as a condition of COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT EMPLOYEES' hire or maintaining their employment; and (14) required and continues to require COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer or employment and/or otherwise impermissibly inquired and continues to inquire into COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES, and/or EXPEMPT AGGRIEVED EMPLOYEES' criminal history on their employment applications and sign off on same as a condition of employment. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep “accurate and complete” payroll records showing, among other things, the hours worked daily by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES. The applicable IWC Wage Order, including but not limited to Wage Order 5-2001, section 7 similarly requires employers to keep time records reflecting the times during which all owed meal periods were provided each day.

At all relevant times, EMPLOYER failed, and continues to fail, to keep accurate and complete payroll records as required by law, including but not limited to the following records: total daily hours worked, applicable rates of pay, time records showing when COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES began and ended each work period, time records of meal periods, and accurate itemized wage statements.

EMPLOYER failed and continues to fail to keep accurate and complete records showing total hours worked by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES by virtue of EMPLOYER’s time rounding, automatic meal break deductions, and practices, and other off-the-clock work policies and practices described below.

EMPLOYER further failed and continues to fail to keep accurate and complete records showing total hours worked by virtue of EMPLOYER’s failure to relieve COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER’s control for unpaid meal periods, resulting in unpaid hours worked.

EMPLOYER further failed and continues to fail, to record the true start and end times of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES’ work shifts.

EMPLOYER further failed and continues to fail, to record the true start and end times of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES’ meal periods.

Additionally, EMPLOYER failed, and continues to fail to keep accurate records and issue accurate wage statements by not documenting accrued sick time for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES.

EMPLOYER’s failure to keep “accurate and complete” payroll records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and Wage Order 5-2001, section 7. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate civil penalty.¹

¹ See Lab. Code section 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”).

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Ibid.*

Employers covered by any and all applicable IWC Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), *and* (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. IWC Wage Order 5-2001, section 7(A)(3) ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing section 7(A)(3) ("If an employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided").

Employers must pay employees an additional hour of wages at the employees' regular rate of pay for each missed or improper meal period (e.g., less than 30 minutes, interrupted meal period, first meal period provided after five (5) hours, second meal period provided after 10 hours). Lab. Code section 226.7; all applicable IWC Wage Orders, section 11(B) ("If an employer fails to provide an employee a meal period in accordance with the applicable provision of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided"); *Brinker, supra*, 53 Cal.4th 1004.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES consistently worked shifts of five and a one-half (5 ½) hours or more.

COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods and/or work through part or all their meal periods due to the nature and constraints of their job duties, lack of relief workers available, requirement to stay on premises, and/or commentary from supervisors pressuring them to take non-compliant meal breaks and/or skip meal breaks completely. COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were instructed by their supervisors to clock out for meal periods but to continue working due to understaffing, lack of coverage, and/or lack of relief workers. For example, oftentimes, COMPLAINANT's

supervisor required that COMPLAINANT clock out for a meal period but continue working during the purported meal period.

Moreover, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods interrupted and/or cut short/skipped completely due to their need to assist customers and/or cook or prep food and/or complete other work-related tasks. For example, COMPLAINANT estimates his meal periods were interrupted or skipped completely approximately four out of every five shifts he worked due to lack of coverage/relief kitchen staff available. On information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were also unable to take timely thirty-minute meal periods due to the nature of their job, workload, and/or lack of relief workers.

Despite failing to provide lawful meal periods, EMPLOYER implemented a policy and/or practice of automatically deducting at least thirty minutes per shift for these missed/unlawful meal periods, despite having actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES did not receive compliant meal periods.

Based on information and belief, EMPLOYER implemented policies and practices that failed to relieve COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during unpaid meal breaks.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its policies and practices resulted in the denial of uninterrupted meal periods owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

EMPLOYER also failed to keep accurate records of the start and end times of COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' meal period start and end times. Based on further information and belief, EMPLOYER illegally rounded the start and end times of meal periods resulting in COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES not being paid for all time worked as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

Based on further information and belief, EMPLOYER did not have a written meal break policy, nor did EMPLOYER have any sort of compliant policy in practice. Liability for the aggrieved employees can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable Wage Order requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

COMPLAINANT is further informed and believes and thereon alleges that EMPLOYER had actual and/or constructive knowledge that its time-rounding and auto-deduction policies and practices resulted in the denial of meal periods owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

Moreover, NON-EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute second meal break. EMPLOYER failed to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with a second meal period despite COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES consistently working over ten hours in a workday and thus being entitled to a second duty-free, uninterrupted, thirty-minute meal period before the end of the tenth hour of work. Per EMPLOYER's unlawful meal period policies and practices, EMPLOYER only provided a single meal period per shift, regardless of the number of hours worked, and that single meal period was non-compliant. For example, COMPLAINANT regularly worked over ten hours per shift, but was only provided with one meal period, and that single meal period was non-compliant.

Upon information and belief, EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of compensation for each workday a proper meal period was not provided. EMPLOYER either failed to pay a meal period premium at all for each workday a proper meal period was not provided and/or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses/incentive pay and/or other non-discretionary compensation into the regular rate or compensation for purposes of calculating the owed meal period premium.

Based on information and belief, EMPLOYER was informed of NON-EXEMPT AGGRIEVED EMPLOYEES' inability to take compliant meal periods due to their need to tend to customers, assist in the kitchen, and/or complete other job duties, and lack of relief workers available. Yet, EMPLOYER failed to take any action to remedy the situation in order to allow COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES to take compliant, non-interrupted meal periods. EMPLOYER failed to timely relieve COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES for meal periods and failed to maintain accurate record of non-compliant meal periods taken by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, EMPLOYER regularly recorded NON-EXEMPT AGGRIEVED EMPLOYEES' meal breaks as if they were timely taken, even though a meal period was not actually afforded at this time and/or were otherwise not in accordance with California law.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and IWC Wage Order No. 5-2001, section 11(A), (B) and (C) along with all applicable IWC Wage Orders. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated.² EMPLOYER's failure to provide valid meal periods, and the automatic

² See Lab. Code section 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code section 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); IWC Wage Order 4-2001, section 20 (establishing that "[i]n addition

deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violation of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order, including but not limited to No. 5-2001, section 12(A). In *Brinker v. Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shift more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s)). Lab. Code section 226.7; IWC Wage Order No. 5-2001, section 12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided").

EMPLOYER did not properly authorize and provide COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES with lawful rest periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work period, as required by law.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest periods per California law.

Any purported rest periods would be interrupted, cut short, on duty, restricted to premises, and/or late due to the nature and constraints of NON-EXEMPT AGGRIEVED EMPLOYEES' job duties, need to assist customers, understaffing, and/or commentary from supervisors pressuring them to skip rest breaks completely and/or take non-compliant rest breaks.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were pressured to complete their work duties according to a designated schedule such that rest breaks were only taken once jobs were completed/as time permitted. For example, COMPLAINANT regularly worked shifts lasting over ten hours, but was not provided with a single compliant rest period.

to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during rest breaks.

Based on information and belief, EMPLOYER had no policy in place nor instruction as to the taking, timing, or duty-free nature of rest periods. Furthermore, EMPLOYER failed to pay a rest period premium for each day in which there was a missed/improper rest period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872. Based on information and belief, EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of pay for each workday a proper rest period was not provided. EMPLOYER either failed to pay a rest period premium at all for each workday a proper rest period was not provided and/or failed to pay the proper rest period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, non-discretionary bonuses/incentive pay and/or other non-discretionary compensation into the regular rate of compensation for purposes of calculating the owed rest period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and IWC Wage Order 5-2001, section 12(A). These violations subject EMPLOYER to civil penalties under Labor Code section §§ 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated.³

Failure to Provide Suitable Resting Facilities: Per section 13 of all applicable IWC Wage Orders, including but not limited to Wage Order 5, employees shall be provided with suitable resting facilities. Section 13(B) of the Wage Orders provides: "Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours."

EMPLOYER's restaurants/locations are generally similar in layout and design, and there was, and continues to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. EMPLOYER could have provided COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with a resting facility within the restaurant with reasonable or no modification, but instead denied and continues to deny, employees with suitable areas to rest (e.g. a breakroom). As a result, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were forced to adjust to areas not conducive to resting, including

³ See Lab. Code section 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); IWC Wage Order 5-2001, section 20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

but not limited to leaning up against the restaurant wall, or search for facilities outside of the restaurant which are not designated or reserved for their rest, such as their personal vehicles.

EMPLOYER did not provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with suitable resting facilities during their hours of work, particularly during meal and/or rest periods. Based on information and belief, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not allowed to sit in the restaurant during working hours, nor were they provided with a break room. Moreover, EMPLOYER did not inform COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of their rights to suitable resting facilities under California law.

EMPLOYER's failure to provide suitable resting facilities to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES violated and continues to violate the applicable Wage Order, including but not limited to IWC Wage Order 5-2001, section 13(B) and the California Labor Code, including but not limited to section 1198.

Minimum Wage Violations: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit." *Cal. Lab. Code* § 1194.

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Therefore, an employer's failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, "in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon..." *Cal. Lab. Code* § 1194.2.

EMPLOYER failed to compensate COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked by virtue of EMPLOYER's automatic deductions and time rounding policies, payment according to scheduled hours worked instead of actual time worked, mandated pre-shift/post shift/ and/or other off-the-clock work policies and/or practices and failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or improper meal periods.

COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take off duty, thirty-minute, uninterrupted meal periods, often being forced to work through part or all their meal periods due to understaffing, lack of relieve workers, the nature and constraints of their job duties and/or commentary from supervisors pressuring COMPLAINANT and other

NON-EXEMPT AGGRIEVED EMPLOYEES to take non-compliant breaks or skip breaks completely.

Based on information and belief, EMPLOYER implemented a policy and/or practice of automatically deducting at least thirty minutes per shift for meal periods and/or requiring COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES to clock out for at least thirty minutes per shift for meal periods, despite having actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were working through part or all these meal periods.

Based on further information and belief, EMPLOYER rounded the start and end times of employee meal periods and shift start and end times resulting in COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES not being paid for all time worked.

COMPLAINANT alleges on information and belief that EMPLOYER implemented a time-rounding system that as applied systematically deprived COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of compensable time because the time-rounding system implemented by EMPLOYER would almost always, if not always, result in understating actual compensable work time. EMPLOYER's failure to pay for all time worked by virtue of its time-rounding practices resulted in the underpayment of minimum wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or forty hours in a week.

Based on information and belief, EMPLOYER had and continue to have a policy and practice of paying NON-EXEMPT AGGRIEVED EMPLOYEES according to scheduled hours rather than actual time worked due to EMPLOYER's mandated off-the-clock work policies and practices, such as but not limited to, requiring COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES to perform pre-shift and post-shift off-the-clock work. For example, prior to clocking in for their shifts each day, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to undergo a COVID-related temperature check, but this time spent under employer control undergoing EMPLOYER' mandated COVID-temperature screening was not recorded and not compensated, resulting in unpaid minimum and overtime wages to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, EMPLOYER did not compensate NON-EXEMPT AGGRIEVED EMPLOYEES for time spent donning and doffing personal protective equipment and/or uniforms during meal periods, rest periods, before the start of a scheduled shift, and after completing a scheduled shift. For example, upon arriving to work, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to walk to the back of the restaurant to retrieve a company-provided apron and hat. After changing into the required uniform, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES clocked in. When working as a cook, COMPLAINANT was also required to wash his hands and don gloves prior to clocking in for the start of his shift each day. Similarly, COMPLAINANT and other NON-

EXEMPT AGGRIEVED EMPLOYEES were required to remove their company-provided uniform after clocking out. COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not compensated for off-the-clock work, which resulted in the underpayment of minimum wages and overtime wages owed as well as record-keeping violations.

EMPLOYER also did not compensate COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES for pre-shift and post-shift off-the-clock work when opening or closing the restaurants. For example, when COMPLAINANT opened the restaurant, he was required to first unlock the door and disable the alarm before clocking in to work, resulting in at least a few minutes of off-the-clock work each shift he opened. When closing the restaurant, COMPLAINANT was required to first clock out, then perform required closing duties such as, but not limited to, “grinding the system,” i.e., electronically submit that day’s restaurant/facility data to corporate and only after performing such closing duties would COMPLAINANT then enable the alarm and then close the doors. This resulted in at least an additional twenty minutes of post-shift off-the-clock work each time COMPLAINANT closed the restaurant.

Based on information and belief, EMPLOYER failed to compensate COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES for time they were required to spend completing training, orientation, certification and/or the onboarding process. For example, based on information and belief, EMPLOYER required COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES to perform online training through EMPLOYER’ online training platform, “Smashconnect,” review and sign various types of policies and documents, including but not limited to, safety guidelines/safety awareness certifications, acknowledgment(s) of receipt of employee handbook, confidentiality agreement, among other documents, but they were not paid for all time spent reviewing and/or completing certification as directed by EMPLOYER. Based on information and belief, EMPLOYER had a uniform policy and practice of requiring Class Members to complete mandatory off-the-clock administrative tasks, onboarding, training, certification, and/or other tasks without compensating for all hours worked.

Based on further information and belief, EMPLOYER required/requires COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES to undergo Covid testing outside of their scheduled shift times without compensating COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES for the travel time to/from the testing sites, time spent waiting for the tests to be performed and/or time spent undergoing testing/fulfilling EMPLOYER’ testing requirements, resulting in significant off-the-clock work and unpaid minimum and overtime wages.

Based on information and belief, EMPLOYER engaged in systemic time record manipulation to shave time worked off COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES’ workdays, by, for example, manually editing electronic time records to delete portions of total hours worked or otherwise understate actual hours worked by COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES. For example, COMPLAINANT reports he consistently worked an average of sixty hours per week, but EMPLOYER would only compensate COMPLAINANT for up to his scheduled forty hours per week. When

COMPLAINANT reported the underpayment of wages to management, he was told “not to worry about it,” or words to that effect, and that he would later be “reimbursed” for the uncompensated worktime, which did not occur.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its time-rounding and auto-deduction policies and practices, failure to provide off-duty meal periods, and other mandated off-the-clock work described above resulted in the underpayment of minimum wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's minimum wage laws.

These violations subject EMPLOYER, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and Wage Order and 5-2001, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code section 510; IWC Wage Order 5-2001, (and all applicable IWC Wage Orders) section 3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day or work in a work week. *Ibid.*

EMPLOYER violated California’s overtime laws by, among other things, failing to correctly calculate, or record at all, the total number of hours worked by COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and not paying proper overtime rates for overtime worked by virtue of same.

Namely, EMPLOYER’s automatic deduction and time rounding policies and practices for meal periods, start shift times and end times, and mandated pre-shift and post shift off-the-clock work, and other off-the-clock work (including, but not limited to, off-the-clock donning and doffing and training) described above resulted in the failure to account for all hours worked and thus the denial of minimum wages as well as overtime wages to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty hours in a week.

Based on information and belief, EMPLOYER failed to pay twice NON-EXEMPT AGGRIEVED EMPLOYEES’ regular rate(s) of pay for time worked beyond twelve (12) hours per workday and

⁴ See Lab. Code section 1197.1(a) (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); IWC Wage Order 5-2001, section 20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation of California overtime laws.

Based on information and belief, EMPLOYER failed to incorporate all non-discretionary remuneration, including but not limited to, non-discretionary bonus/incentive pay, shift differential pay and/or other non-discretionary pay into the regular pay rate(s) of pay used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on further information and belief, EMPLOYER failed to properly blend multiple rates of regular pay in calculating the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and IWC Wage Order 5-2001, section 12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and the applicable Wage Order, including but not limited to Wage Order 5-2001, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

Violation of California Labor Code Sections 245-248.5: Based on information and belief, EMPLOYER failed to provide proper paid sick leave to COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES. EMPLOYER either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES by failing to base the accrued sick leave hours on the correct number of hours worked (as a result of the rounding/automatic deduction policies and practices for meal periods and shift start and end times/ or other required off-the-clock work described herein) and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary bonuses/incentive pay, and/or other non-discretionary compensation into the sick leave pay rate calculation.

EMPLOYER further failed to provide notice of the correct sick leave amount balance available to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES on their wage statements or other written statement.

⁵ See Lab. Code section 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Lab. Code section 558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); IWC Wage Order, section 20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

EMPLOYER further failed to put them on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code section 2810.5 notice.

In addition, based on information and belief, EMPLOYER failed to maintain accurate records of used sick leave and the balance of paid sick leave left to NON-EXEMPT AGGRIEVED EMPLOYEES throughout the relevant time period.

Throughout the relevant time period, EMPLOYER failed to provide notice of sick leave amount balance left for COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES, and thus affected their intelligent exercise of their paid sick leave.

But for this failure, COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES would have used their paid sick leave at least prior to their respective separation, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

This illegal retention of paid sick leave is unlawful, and COMPLAINANT seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES.

In violation of Labor Code section 247.5, EMPLOYER failed to maintain records documenting the hours worked and paid sick days accrued and used by COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES, permitting the presumption that COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES were entitled to the maximum number of hours accruable under this article.

Upon information and belief, EMPLOYER further failed and continues to fail to comply with Labor Code section 246, by failing to provide COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES with a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages.

EMPLOYER also unlawfully retained and continues to retain paid sick leave that should have been paid and was not because of EMPLOYER's failure to properly institute a paid sick leave program.

On information and belief, COMPLAINANT alleges that all of these practices were experienced and continue to be experienced by NON-EXEMPT AGGRIEVED EMPLOYEES.

COMPLAINANT requests all appropriate relief under the PAGA and these statutes, including but not limited to the restitution of earned paid sick leave that could have been used, but was not due to EMPLOYER's sole failure to institute such a paid sick leave entitlement or paid sick leave bank as required by California law.

Accordingly, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as permitted by law. COMPLAINANT requests all relief pursuant to the aforementioned code provisions, including but not limited to Labor Code sections 233 and 234, which incorporates the paid sick leave requirements.

Refusal to Make Payment: Labor Code section 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

EMPLOYER violated and continues to violate Labor Code section 216 by failing to pay COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked at the proper wage rate and by failing to pay COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for each meal or rest period not provided or that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

These violations subject EMPLOYER to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the statute provisions were violated.⁶

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his or her employees with an accurate itemized wage statement in writing that contains the following: (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; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and only 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. Cal. Lab. Code. section 226.

EMPLOYER's wage statements that it provided to COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES failed to among other things, indicate earned gross and net wages earned during the pay period, the correct applicable rates of pay for all hours worked, and the "total hours worked" by the COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES (by virtue of the automatic deduction for meal periods and time-rounding policies and practices and other off-the-clock work policies and practices, all described in greater detail *supra*) which results in a violation of Labor Code section 226(a). Failure to list all hours worked

⁶ Labor Code section 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

on a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

Employer's failure to accurately list all hours worked on all wage statements caused confusion to COMPLAINANT and caused and continues to cause confusion to the NON-EXEMPT AGGRIEVED EMPLOYEES over whether they received all wages owed to them. COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were injured by EMPLOYER's failure to provide accurate wage statements.

In addition, because of the violations detailed above, including but not limited to, not paying regular and overtime wages for all hours worked and failing to provide meal and rest break premiums, EMPLOYER violated California Labor Code section 226 by willfully failing to furnish COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES with accurate, itemized wage statements.

Based on information and belief, EMPLOYER's wage statements further violate Labor Code section 226(a), by among other things, failing to list the correct name and address of the legal entity that is the employer.

As a result, the wage statements provided to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were not accurate and did not include all of the statutorily required information.

These violations subject EMPLOYER to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.⁷

Semimonthly Payment Violations: Labor Code section 204 requires that all earned wages must be paid to employees twice during each calendar month. EMPLOYER violated this section by failing to pay NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked and by failing to pay proper premium wage rates for all hours worked. These violations subject EMPLOYER to civil penalties under Labor Code § 210. Each violation results in a separate civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.

Seating Violations: Per section 14(A-B) of all applicable IWC Wage Orders, employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats and when they are not actively engaged in the work duties that would not permit them to be seated.

IWC Wage Order 5-2001 (and all applicable IWC Wage Orders), Section 14(A-B) provides:

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

⁷ See Lab. Code section 226.3 (establishing that the civil penalty is "per employee per violation").

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

Suitable seating is one of the worker protections covered by California's Wage Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

EMPLOYER failed to provide COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES with suitable seating, and when such employees were not engaged in duties which required them to stand, no seating was placed in reasonable proximity to their workstations.

Moreover, the nature of the work reasonably permitted the use of seats for at least part of the time that COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were working. Lastly, there were periods of time when COMPLAINANT and the NON-EXEMPT AGGRIEVED EMPLOYEES were not engaged in active duties of their employment, yet there were no suitable seats in reasonable proximity to the work area and use of seats would not interfere with the performance of their duties.

COMPLAINANT and the other NON-EXEMPT AGGRIEVED EMPLOYEES worked in various positions. The nature of COMPLAINANT's and the other NON-EXEMPT AGGRIEVED EMPLOYEES' work reasonably permitted the use of seats. However, EMPLOYER failed to provide suitable seating in reasonable proximity to COMPLAINANT and the other NON-EXEMPT AGGRIEVED EMPLOYEES' work areas in violation of IWC Wage Order 5-2001 (and all applicable wage orders), section 14 (A-B) and Labor Code sections 1198 and 1199, subjecting EMPLOYER to civil penalties under Labor Code sections 1199 and 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.⁸

Standard Conditions of Labor Violations: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission.

Therefore, EMPLOYER's violations with respect to meal periods, rest periods, recordkeeping provisions, seating, unreimbursed business expenses, minimum wages and overtime wages result in separate violations of sections 1198 and 1199, which subject EMPLOYER to civil penalties under Labor Code sections 1197.1 and 2699.

⁸ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

Statutory Wage Violations: California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

As described above, EMPLOYER willfully and systematically denied COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES minimum wage and overtime compensation which resulted in the payment of less than statutorily required wages to them. EMPLOYER acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, EMPLOYER paid COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES were properly paid. COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(f)-(g).

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. California Labor Code section 201(a) provides, in relevant part, that "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." California Labor Code section 202(a) provides, in relevant part, that "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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." Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

Based on information and belief, EMPLOYER failed to timely pay NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES all wages that were due and owing upon termination or resignation. Based on information and belief, EMPLOYER provides final wages to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES on the regular pay day without regard to the timing requirements of Labor Code sections 201-202.

Upon separation of employment, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' final paychecks were not timely provided and/or were not timely provided with all owed vacation pay. Moreover, NON-EXEMPT AGGRIEVED EMPLOYEES' final paychecks, once provided, did not include all wages owed as they were devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly accrued rates.

These violations subject EMPLOYER to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.⁹

Business Expense Violations: California law requires employers to indemnify their employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of their duties or of their obedience to the directions of the employer. *See* Cal. Lab. Code § 2802(a) and all applicable Wage Orders, § 9 (b). Furthermore, “for purposes of [section 2802], the term ‘necessary expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees incurred by the employee enforcing the rights granted by this section.”

Among other things, under California law, when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. *See* applicable IWC Wage Order, § 9 (b).

Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. Further, “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” *See* Cal. Lab. Code § 2804.

COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to provide and maintain work tools that are supposed to be the responsibility of EMPLOYER.

At all relevant times hereto, EMPLOYER shifted its costs of doing business onto COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for its business expenses, including but not limited to, use of COMPLAINANT’s and other NON-EXEMPT AGGRIEVED EMPLOYEES’ and EXEMPT AGGRIEVED EMPLOYEES’ mobile phone and data usage, use of personal computers and other expenses incurred as a result of being required to perform work at home, as well as costs associated with the purchase and or maintenance of uniforms/clothing/and/or protective gear including,. For example, COMPLAINANT regularly received work-related calls and messages to his phone and used his personal computer to complete required training.

⁹ (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee”).

EMPLOYER also required COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to use their personal vehicles in the performance of their job duties, such as but not limited to, to make deliveries on behalf of EMPLOYER. COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the business use of their personal vehicles/expenses incurred in connection therewith, including but not limited to, gas, mileage, and the wear and tear on their personal vehicles.

COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of EMPLOYER, including but not limited to, cell phone/data plan/internet charges incurred as a result of being required to use their personal cell phones/other mobile communication devices as well as personal computers, and costs associated with the purchase and maintenance of work uniforms/clothing and protective gear as well as costs associated with being required to use their personal vehicles to perform their job duties.

Based on information and belief, COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of undergoing EMPLOYER's mandated Covid testing, including but not limited to purchasing the test, and/or the cost of traveling and/or using a personal vehicle to travel to and from a testing site.

As a pattern and practice, EMPLOYER regularly failed to reimburse and indemnify COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses. Pursuant to California Labor Code section 2802, COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were entitled to be reimbursed for all reasonable expenses associated with carrying out orders by their EMPLOYER and/or carrying out the duties assigned by EMPLOYER.

As described herein, EMPLOYER regularly failed to reimburse and indemnify COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for all reasonable expenses associated with carrying out their job duties. EMPLOYER's failure to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with carrying out their duties required that COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

Violation of Labor Code section 351 and 352: Labor Code Section 351 prohibits employers and their agents from sharing in or keeping any portion of a gratuity left for or given to one or more employees by a patron. Furthermore, it is illegal for employers to make wage deductions from gratuities, or from using gratuities as direct or indirect credits against an employee's wages. Labor Code Section 353 mandates employers keep accurate records of all gratuities received.

Based on information and belief, EMPLOYER failed to ensure that NON-EXEMPT AGGRIEVED EMPLOYEES fully received the gratuities left for them by patrons, in that EMPLOYER and its agents would collect and/or take a portion of the gratuities for themselves, in violation of Labor Code Section 351. Based on further information and belief, EMPLOYER also failed/fails to keep accurate records of all tips received, in violation of Labor Code Section 353.

Pursuant to PAGA, EMPLOYER is liable for penalties of \$100 per pay period payable to each NON-EXEMPT AGGRIEVED EMPLOYEE for the first violation of Labor Code Section 351 and 353 they experienced within the statutory period, and \$200 per pay period for each additional violation.

Unlawful Agreements/ Unlawful Criminal and Financial Background Checks:

Unlawful Financial and Criminal Background Checks:

The California Labor Code places certain procedural and substantive limits on employers' ability to conduct employee background checks and on how employers can use the information they obtain through those background checks. Labor Code section 1024.5 states that employers, except for financial institutions, may order a credit check only if the individual works (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions, and certain government positions). Additionally, the Investigative Consumer Reporting Agencies Act (ICRAA- CA Civil Code section 1786, et seq.) and the Fair Credit Reporting Act (FCRA - 15 U.S.C. section 1681, et seq.) mandate several requirements prior to and following an employee background check, including but not limited to identifying an appropriate reason for the background check, a separate consent form with required disclosures and certain formatting requirements, additional forms such as a summary of rights, a way by which to request a copy of the report, as well as proper notice of adverse actions taken, among other statutory requirements.

Based on information and belief, EMPLOYER ordered unlawful financial credit checks on NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, in violation of Labor Code section 1024.5, and required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to provide ongoing written consent to the unlawful credit checks as a condition of employment, in violation of California and Federal law, which results in a further violation of Labor Code section 432.5.

Based on information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to submit and/or agree to submit in writing to unlawful criminal background checks as a condition of obtaining and/or holding employment in violation of the ICRAA and the FCRA.

Based on information and belief, EMPLOYER required COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a background check which failed to abide by the requirements set forth in CA Civil

Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by failing to provide a clear and conspicuous disclosure, failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for the background check, failing to provide a summary of rights under the ICRAA and/or the FCRA, failing to provide a way by which the individual could request a copy of the report, and failing to properly obtain authorization or consent to such a background check, and thus was an unlawful background check.

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful criminal and/or financial checks not in conformance with the applicable laws, EMPLOYER also violated Labor Code section 432.5.

Based on further information and belief, EMPLOYER also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to provide ongoing consent to EMPLOYER to conduct background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by requiring applicants and employees to agree to an unlawful provision as a condition of employment.

Based on further information and belief, EMPLOYER knew that requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree to these unlawful criminal and/or financial background checks as a condition of obtaining and/or holding employment was unlawful.

By having NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES sign off on the illegal background and financial checks, EMPLOYER also violated Labor Code section 432.5 (stating that “no employer...shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer...to be prohibited by law.”).

Unlawful Inquires into Criminal History

Labor Code section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on information and belief, EMPLOYER asked NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about arrests not resulting in convictions on its employment application, in violation of California law.

Upon information and belief, EMPLOYER, in violation of California law, including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act (“FEHA”), asked NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about convictions prior to extending an offer of employment and/or otherwise impermissibly inquired into criminal history on its employment application in violation of California law.

By asking about arrests not resulting in convictions, EMPLOYER violated Labor Code 432.7. By asking about convictions at the application phase or prior to extending an employment offer, EMPLOYER violated California’s Fair Chance Act, and thereby violated Labor Code 432.5 by

unlawfully requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to disclose arrests and/or convictions as a condition of employment.

As such, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES continue to be subject to various unlawful provisions as a condition of employment.

Conclusion

EMPLOYER has violated the above-referenced California Labor Code provisions, and the applicable Wage Order (including but not limited to Wage Order 5), as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys' fees, and costs. The civil penalties COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Labor Code section 2699.3 requires that a claimant send a certified letter (i.e. this NOTICE) to the employer in question and file an online claim to the LWDA setting forth the claims and the basis for the claims, thereby giving the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this NOTICE is to satisfy the requirement created by Labor Code sections 2699, 2699.3(a), 2699.3(c), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the LWDA intends to take any action in reference to these claims. We kindly ask that you respond to this NOTICE according to the time frame contemplated by the code.

If the LWDA elects not to take any action with respect to any of the foregoing claims, COMPLAINANT will seek these penalties in a civil action, on behalf of COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES of EMPLOYER within one year of the date of this letter as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty-five days of this NOTICE to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Zachary Crosner
Crosner Legal, PC
9440 Santa Monica Blvd., Ste. 301
Beverly Hills, CA 90210
Main: 310.496.5818
Fax: 310.510.6429
Email: zach@crosnerlegal.com

Thank you for your attention to this matter.

Best Regards,

Zachary M. Crosner

Zachary M. Crosner, Esq.
CROSNER LEGAL, PC



Ashley Gutierrez <agutierrez@crosnerlegal.com>

Thank you for submission of your PAGA Case.

1 message

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
To: "zach@crosnerlegal.com" <zach@crosnerlegal.com>

Fri, Mar 4, 2022 at 2:47 PM

3/4/2022

LWDA Case No. LWDA-CM-871624-22
Law Firm : Crosner Legal PC
Plaintiff Name : Vijay Sheth
Employer: Icon Burger Acquisition LLC, Smashburger Acquisition-So Cal LLC; Smashburger Acq
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT

5



Ashley Gutierrez <agutierrez@crosnerlegal.com>

Thank you for your Court Complaint Submission.

1 message

DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
To: agutierrez@crosnerlegal.com

Mon, Sep 18, 2023 at 2:10 PM

09/18/2023 02:10:26 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Court Complaint

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT

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