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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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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
DOES 1-100, inclusive,
20

21 and DOES 1-100, inclusive,

22 Defendants.
23

CASE NO.: 22STCV09093

Assigned for All Purposes to:
Hon. Elaine Lu
Dept SSC-9

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

DATE: November 5, 2024
TIME: 10:00 a.m.
DEPT.: SSC-9

24 I, CHAD SAUNDERS, declare as follows:

25 1. I am an attorney duly licensed to practice in California and before this Court, and I am
26 associated with Crosner Legal, PC, counsel of record for Plaintiff in the above-captioned matter. If
27 called to testify as to the facts within, I would and could competently do so.
28

2. Attached hereto as **Exhibit 1** is a true and correct copy of the Parties' revised Class Action and PAGA Settlement Agreement and Class Notice (the "Agreement"). Attached hereto as **Exhibit 2** is a redline copy of the Agreement showing the modifications made by the Parties. Attached hereto as **Exhibit 3** is a true and correct copy of Parties' revised Class Action Notice of Settlement. Attached hereto as Exhibit 4 is a redline copy of the Notice showing the modifications made by the Parties.

3. The Agreement has been revised at Sections 1.12 to reflect the class period runs from March 14, 2018, to September 1, 2024, and at Section 1.32 to reflect the PAGA period runs from March 14, 2021, to September 1, 2024. Section 8.2 has been deleted. The Notice has been revised to reflect the dates for the Class and PAGA Periods.

4. The Notice has been revised at Section II.D. to provide a breakdown of the class award and PAGA award.

5. The Notice has been revised at Section II.E. to state the complete PAGA Release language.

6. The Notice has been revised to reflect the correct judicial officer who will preside over final approval.

7. Filed herewith is an executed copy of my declaration submitted with the initial moving papers.

8. My office gave notice of the continued hearing and submitted this supplemental declaration and the revised Agreement to the LWDA via its online portal, and a true and correct copy of the LWDA's acknowledgment of receipt is attached hereto as Exhibit 5.

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 1st day of October 2024, at Berkeley, California.


Declarant

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 September 1, 2024.
- 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 September 1, 2024.
- 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, whichever are later.

7.5 Requests for Exclusion (Opt-Outs).

- 7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member 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 September 1, 2024, (1) there are 2,485 Class Members and 77,131 Total Workweeks during the Class period and (2) there were 1,175 Aggrieved Employees who worked 17,095 Pay Periods during the PAGA Period.

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, 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: 10 / 01 / 2024

Vijay Sheth

Plaintiff Vijay Sheth

Dated: _____

Denise Nelson 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: 09/27/24

CROSNER LEGAL, PC



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

Dated: _____

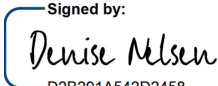
ATKINSON, ANDELSON, LOYA, RUUD & ROMO

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

Dated: _____

Plaintiff Vijay Sheth

Dated: 10/1/2024 _____

Signed by:

D2B291A542D2458...

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: 10/1/2024 _____

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 September 1, 2024, 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 September 1, 2024 (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.

If you object to the Settlement, you can write to the Court about why you don't agree 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 September 1, 2024.

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 September 1, 2024 (“**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 Individual Class 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].

Your Individual PAGA Payment: Defendants’ records reflect that you have <<____>> PAGA Pay Periods during the PAGA Period. Based on this information, your estimated Individual PAGA Payment is <<____>>.

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. Upon the Final Approval of the Settlement by the Court, all PAGA Members 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. PAGA members only release these claims for the duration of the PAGA Period.

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. Elaine Lu 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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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,~~ to September 1, 2024.
- 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)~~ September 1, 2024.
- 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 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~~September 1, 2024, (1) there are ~~2,373~~485 Class Members and ~~70,740~~77,131 Total Workweeks during the Class period and (2) there were ~~1,082~~175 Aggrieved Employees who worked ~~14,542~~17,095 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%).~~

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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, 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: _____

Plaintiff Vijay Sheth

Dated: _____

INSERT 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: _____

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

Ann K. Smith, Esq.

Sarkis A. Atoyán, Esq.
Attorneys for Defendants

EXHIBIT

3

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 September 1, 2024, 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 September 1, 2024 (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.

If you object to the Settlement, you can write to the Court about why you don't agree 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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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 September 1, 2024.

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 September 1, 2024 (“**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 Individual Class 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].

Your Individual PAGA Payment: Defendants’ records reflect that you have <<____>> PAGA Pay Periods during the PAGA Period. Based on this information, your estimated Individual PAGA Payment is <<____>>.

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. Upon the Final Approval of the Settlement by the Court, all PAGA Members 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. PAGA members only release these claims for the duration of the PAGA Period.

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. Elaine Lu 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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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 ~~March 14, 2022~~ September 1, 2024, 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 ~~March 14, 2022~~ September 1, 2024 (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 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.</i>
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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.

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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.

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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] September 1, 2024.

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:

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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.

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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] September 1, 2024 (“**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.

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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/Individual Class 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].

Your Individual PAGA Payment: Defendants’ records reflect that you have << >> PAGA Pay Periods during the PAGA Period. Based on this information, your estimated Individual PAGA Payment is << >>.

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.

Upon the Final Approval of the Settlement by the Court, all PAGA Members 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. PAGA members only release these claims for the duration of the PAGA Period.

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

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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.

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CLASS COUNSEL

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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~~ Elaine Lu 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.

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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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