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13 ADRIANNA TORCIVIA

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **FOR THE COUNTY OF ORANGE**

16 **COMPLEX CIVIL DIVISION**

17 ADRIANNA TORCIVIA, individually, on
18 behalf of the State of California and on behalf of
other aggrieved employees,

19 Plaintiff,

20 vs.

21 BAILEY FOOD AND BEVERAGE GROUP,
22 LLC, dba THE LIBRARY GENTLEMEN'S
CLUB (ANAHEIM), a California Limited
23 Liability Company; BOB MARTIN, INC., dba
THE LIBRARY GENTLEMEN'S CLUB
24 (WESTMINSTER); a California Corporation;
CBDM REDLANDS, LLC dba THE LIBRARY
25 GENTLEMEN'S CLUB (REDLANDS), a
California Limited Liability Company; and
26 DOES 1 through 100, inclusive,

27 Defendants.

CASE NO. 30-2022-01290665-CU-OE-
CXC

Randall J. Sherman
Dept: CX-105

**AMENDED JOINT STIPULATION
OF SETTLEMENT AND RELEASE
OF PAGA ACTION**

Complaint Filed: November 7, 2022
Discovery Cut-off: Per Code
Trial Date: September 30, 2024

1 This Joint Stipulation of Settlement and Release of PAGA Action (“Agreement”) is
2 made and entered into between Plaintiff Adrianna Torcivia (“Plaintiff”), individually and on
3 behalf of the proposed Settlement Group, (defined below), and Defendants Bailey Food and
4 Beverage Group, LLC (“BFBG”), Bob Martin, Inc. (“Bob Martin”), CBDM Redlands, LLC
5 (“CBDM”) (BFBG, Bob Martin and CBDM collectively, “Defendants”). This Agreement is
6 subject to approval of the Court and is made for the sole purpose of attempting to consummate
7 settlement of the Action (as defined below) on a PAGA basis subject to the following terms and
8 conditions. As detailed below, if the Court does not enter an order granting approval of the
9 PAGA Settlement (as defined below) and enter judgment, or the conditions precedent are not
10 met for any reason, this Agreement is void and of no force or effect whatsoever.

11 1. **DEFINITIONS**

12 As used in this Agreement, the following terms shall have the meanings specified below.
13 To the extent terms or phrases used in this Agreement are not specifically defined below, but
14 are defined elsewhere in this Agreement, they are incorporated by reference into this definition
15 section.

16 1.1 **Action**. “Action” shall mean: (a) this civil action titled *Adrianna Torcivia,*
17 *individually, on behalf of the State of California and on behalf of other aggrieved employees,*
18 *v. Bailey Food and Beverage Group, LLC, et al*, Orange County Superior Court Case No. 30-
19 2022-01290665-CU-OECXC, filed on or about November 7, 2022, and the underlying PAGA
20 Notices sent to the Labor and Workforce Development Agency (“LWDA”) by Plaintiff on
21 March 31, 2022.

22 1.2 **Administrator**. “Administrator” shall mean Phoenix Administrators, the
23 third-party administrator selected by the Parties and to be approved by the Court, which the
24 Parties have agreed will be responsible for administration of the Settlement and related matters.
25 The Administration Costs are estimated to not exceed the combined gross sum of \$7,000.00.

26 1.3 **Approval and Fairness Hearing**. “Approval and Fairness Hearing” shall
27 mean the hearing held to ascertain the fairness, reasonableness, and adequacy of the PAGA
28 Settlement. At this hearing, the Court will consider PAGA Counsel’s application for Attorneys’

1 Fees and Costs, Enhancement Awards, Administration Costs, and approval of the LWDA
2 Payment.

3 1.4 **Approval Date.** “Approval Date” shall mean the date upon which the Court
4 enters an order granting approval of the PAGA Settlement and enters Judgment.

5 1.5 **Attorneys’ Fees and Costs.** “Attorneys’ Fees and Costs” shall mean
6 attorneys’ fees and costs to be requested and subject to approval by the Court at the time of the
7 Approval Hearing in an amount not to exceed the combined gross sum of \$123,728.42, which
8 is Thirty-Three Percent (33%) of the total Gross Settlement Amount, and costs not to exceed
9 the combined gross sum of \$16,478.42.

10 1.6 **Claims.** “Claims” shall mean the claims and theories alleged and causes of
11 action alleged in the Action, or that could have been alleged in the Action, including the PAGA
12 penalties alleged in the Action.

13 1.7 **Court.** “Court” shall mean the Superior Court of California, County of
14 Orange.

15 1.8 **Defendants.** “Defendants” shall mean Defendants Bailey Food and Beverage
16 Group, LLC, dba The Library Gentlemen’s Club, Bob Martin, Inc., dba The Library
17 Gentlemen’s Club, and CBDM Redlands, LLC dba The Library Gentlemen’s Club.

18 1.9 **Defense Counsel.** “Defense Counsel” shall mean Jeffrey Dinkin and Jared
19 Speier of Stradling Yocca Carlson & Rauth, 800 Anacapa, Suite A, Santa Barbara, California
20 93101.

21 1.10 **Effective Date.** “Effective Date” shall be the later of the time when: (a) the
22 date of final affirmance of the Judgment on an appeal of the Judgment, the expiration of the
23 time for, or the denial of, a petition to review the Judgment, or if review is granted, the date of
24 final affirmance of the Judgment following review pursuant to that grant; (b) the date of final
25 dismissal of any appeal from the Judgment or the final dismissal of any proceeding to review
26 the Judgment, provided that the Judgment is affirmed and/or not reversed in any part; (c) the
27 final resolution (or withdrawal) of any filed appeal in a way that affirms the Final Approval
28 Order and Judgment in a form substantially identical to the form of the Final Approval Order

1 entered by the Court, and the time to petition for review with respect to any appellate decision
2 affirming the Final Approval Order has expired; or (d) if no appeal is filed, the day after the
3 Court enters final approval of the settlement and the Judgment approving this Agreement.

4 1.11 **Enhancement Award.** “Enhancement Award” means a monetary award
5 subject to Court approval of up to \$5,000.00 to Plaintiff.

6 1.12 **Gross Settlement Amount.** “Gross Settlement Amount” means the agreed
7 upon settlement amount of \$325,000, to be paid by Defendants in full settlement of the Released
8 Claims asserted in this case, which includes the Attorneys’ Fees and Costs, Administration
9 Costs, Enhancement Awards to Plaintiff (if any), and LWDA Payment, and Individual
10 Settlement Payments. Defendants shall not be required to pay more than the Gross Settlement
11 Amount. Defendants are not jointly or severally liable for the Gross Settlement Amount.

12 1.13 **Individual Settlement Payment.** “Individual Settlement Payment(s)” shall
13 mean the proportionate share of the Net Settlement Amount to be distributed to each Settlement
14 Group Member based on the number of his or her work weeks worked in the PAGA Periods in
15 relation to the aggregate number of work weeks worked by the Settlement Group during the
16 PAGA Periods.

17 1.14 **Net Settlement Amount.** “Net Settlement Amount” or “NSA” shall mean
18 the Gross Settlement Amount, minus the Court-approved amounts awarded for the Attorneys’
19 Fees and Costs, Administration Costs, Enhancement Awards to Plaintiff (if any), and LWDA
20 Payment. The Parties intend that the NSA shall be sufficient to pay all valid claims of Settlement
21 Group Members. Accordingly, if for any reason the total value of Individual Settlement
22 Payments to Settlement Group Members exceeds this amount, then payment to each Settlement
23 Group Member will be adjusted on a pro-rated basis so that the total payout to Settlement Group
24 Members does not exceed the NSA.

25 1.15 **PAGA.** “PAGA” refers to the Labor Code Private Attorneys General Act of
26 2004, Labor Code sections 2699, *et seq.*

27 1.16 **PAGA List.** “PAGA List” shall mean the information for each Settlement
28 Group Member, which Defendants shall compile from their business records and provide to the

1 Administrator for purposes of providing notice of the Settlement to the Settlement Group. The
2 PAGA List shall be in a readable, ready to use, Microsoft Excel spreadsheet, which will provide
3 for each Settlement Group Member, the following information: (a) full name; (b) last-known
4 mailing address; (c) telephone number(s); (d) Social Security Number; (e) number of pay
5 periods and workweeks employed as a Settlement Group Member during the PAGA Periods.
6 The PAGA List will be provided to the Administrator within twenty-one (21) calendar days of
7 Defendants receiving written notification that the Court granted approval of the Settlement.

8 1.17 **PAGA Counsel.** “PAGA Counsel” refers to STARPOINT, LC, 15233
9 Ventura Boulevard, PH-16, Sherman Oaks, CA 91403.

10 1.18 **PAGA Period.** “PAGA Period” means the period from September 3, 2021
11 through February 28, 2024 or the date of PAGA approval, whichever date occurs first.

12 1.19 **PAGA Release.** See Released Claims.

13 1.20 **Parties.** “Parties” shall mean Plaintiff (as defined below) and Defendants.

14 1.21 **Plaintiff.** “Plaintiff” and “PAGA Representative” shall mean Plaintiff
15 Adrianna Torcivia.

16 1.22 **Released Claims.** “Released Claims” shall mean all claims and theories that
17 were set forth, or that could have been set forth based on the facts alleged in the Action during
18 the PAGA Period, pursuant to *Huff v. Securitas Services USA, Inc.* (2018) 25 Cal.App.5th 745,
19 including, but not limited to, under Labor Code sections 200-204, 210, 221, 225.5, 226, 226.2,
20 226.3, 226.7, 246-247.5, 248.5, 249, 350, 351, 510, 512, 558, 1147, 1174, 1174.5, 1182.12,
21 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800-2802, 2810.5, 3550-53, 3700.5, 2698 *et seq.*,
22 and related IWC Wage Orders, based on the various theories of liability, including, but not
23 limited to: (a) failure to pay all minimum and overtime wages; (b) unlawful deductions from
24 wages and withholding tips, (c) failure to provide and/or pay sick pay, including at the regular
25 rate of pay; (d) failure to provide meal periods; (e) failure to provide rest periods; (f) failure to
26 provide accurate wage statements; (g) failure to issue wages in a legally-permissible manner;
27 (h) failure to pay all wages owing during employment; (i) failure to pay wages upon
28 termination; and (j) failure to reimburse business expenses.

1.23 **Released Parties.** “Released Parties” shall mean Defendants, and includes any of their officers, directors, executives, partners, managers, owners, shareholders, members, employees, agents, attorneys, any of their former and present parents, subsidiaries, successors, assigns and affiliates and related entities, and their officers, directors, managers, owners, executives, partners, employees, shareholders, agents, attorneys, and any other successors, assigns, or legal representatives.

1.24 **Settlement.** “Settlement” shall mean the settlement between Parties, which is memorialized in this Agreement, including any attached exhibits, and subject to Court approval.

1.25 **Settlement Group.** “Settlement Group” shall mean current or former hourly-paid or non-exempt employees of Defendants within the State of California during the PAGA Period. Defendants estimate there are about 899 Settlement Group Members in Settlement Group that worked around 16,147 pay periods from September 3, 2021 through December 12, 2023.

1.26 **Settlement Group Members.** “Settlement Group Members” shall mean members of Settlement Group.

1.27 **Settlement Letter.** “Settlement Letter” shall mean the letter accompanying the Individual Settlement Payments sent to members of Settlement Group attached, in substantial form in English and Spanish, as **Exhibit A.**

2. **FACTUAL AND PROCEDURAL BACKGROUND OF ACTION**

2.1 On March 31, 2022, Plaintiff submitted a letter to the LWDA alleging that Defendants subjected her and other current and former hourly-paid or non-exempt employees of Defendants within the State of California to certain violations under the Labor Code, including sections 201, 202, 203, 204, 210, 226, 226.7, 246, 248.5, 510, 512, 558, 1147, 1174(d), 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, 3550 – 3553 and 3700.5.

2.2 On November 7, 2022, Plaintiff filed a representative PAGA action in the Superior Court of California, County of Orange, seeking civil penalties and attorneys’ fees based on the above-mentioned violations.

1 2.3 On December 26, 2023, Plaintiff submitted an amended letter to the LWDA
2 adding allegations against Defendants under certain violations under the Labor Code, including:
3 221, 225.5 226.2, 226.3, 350, 351, 1174.5, 1182.12, 1199, and 2810.5.

4 2.4 After evaluating the strengths and weaknesses of their positions, considering
5 the time, expense, and risk associated with litigating the Lawsuit to judgment, and engaging in
6 arm's-length settlement negotiations at an all-day mediation session on November 30, 2023
7 with the mediator Steven Serratore, the Parties agreed to fully and finally settle any and all
8 claims in this matter up to and through the PAGA Period.

9 2.5 The Parties and their respective counsel believe this Agreement reflects a fair,
10 adequate, and reasonable settlement of the Action and have arrived at this Agreement as a result
11 of arms'-length negotiations, facilitated by an experienced and neutral mediator, taking into
12 account all relevant factors, present and potential.

13 3. **ALLEGATIONS OF THE PAGA REPRESENTATIVE AND BENEFITS**
14 **OF THE SETTLEMENT**

15 3.1 The investigation and extensive exchange of information and informal
16 discovery conducted in this matter, as well as discussions between counsel have been adequate
17 to give and PAGA Counsel an understanding of the merits of the Parties' respective positions
18 and to evaluate the worth of the claims of the Settlement Group. The information and data
19 exchanged by the Parties prior to, during, and after mediation and settlement negotiations are
20 sufficient to reliably assess the merits of the Parties' positions and to compromise the issues on
21 a fair and equitable basis.

22 3.2 The Parties recognize and acknowledge the expense and delay of continued
23 lengthy proceedings necessary to prosecute the Action against Defendants through trial and
24 through appeals. PAGA Counsel has considered the uncertain outcome of the litigation, risk of
25 continued litigation in complex actions such as this, as well as difficulties and delays inherent
26 in such litigation and trying the claims of the Settlement Group. PAGA Counsel believes that
27 the Settlement set forth in this Agreement confers substantial benefits upon Plaintiff and the
28 Settlement Group Members and that an independent review of this Agreement by the Court in

1 the approval process will confirm this conclusion. Based on their own independent investigation
2 and evaluation, PAGA Counsel has determined that the Settlement set forth in the Agreement
3 is in the best interests of Plaintiff and the Settlement Group Members.

4 4. **NO ADMISSION OF ANY LIABILITY**

5 4.1 Nothing herein shall constitute any admission by Defendants of wrongdoing
6 or liability, or of the truth of any factual allegations in the Action. Nothing herein shall
7 constitute any admission by Defendants regarding the merits of the Claims in this Action.
8 Nothing herein shall constitute an admission by Defendants that the Action was properly
9 brought as a representative action other than for settlement purposes. To the contrary,
10 Defendants have denied and continue to deny each and every material factual allegation and all
11 Claims.

12 4.2 Nothing in this Agreement nor any action taken or made in implementation
13 thereof, nor any statements, discussions, or communications, nor any materials prepared,
14 exchanged, issued, or used during the course of the negotiations leading to the Agreement, is
15 intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used, or
16 be admissible in any way in this case or any other judicial, arbitral, administrative, investigative
17 or other forum or proceeding as evidence of any violation of any federal, state, or local law,
18 statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or in
19 equity. Notwithstanding the foregoing, the Agreement may be used in any proceeding in the
20 Court that has as its purpose the interpretation, implementation, or enforcement of the
21 Agreement or any orders or judgments of the Court entered in connection therewith.

22 4.3 The Parties agree that Plaintiff's motion for approval of the Settlement and
23 Defendants' agreement thereto is for purposes of the Settlement only. If, for any reason, the
24 Settlement is not approved, this Agreement will not be admissible in this or any other
25 proceeding as evidence that: (a) the Action should proceed forward; or (b) Defendants are liable
26 to Plaintiff or the Settlement Group Members as Plaintiff alleged. If this Agreement is not
27 approved by the Court or any appellate court, is terminated, or otherwise fails to be enforceable,
28 Defendants will not be deemed to have waived, limited, or affected in any way any of their

1 objections or defenses in the Action, including, but not limited to, their ability to move to
2 compel arbitration, raise defenses in opposition to the Action, contest the merits of the claims
3 and theories alleged, etc.

4 **5. SETTLEMENT CONSIDERATION**

5 **5.1 Gross Settlement and Net Settlement Amounts and Distribution.** The
6 Gross Settlement Amount and other actions and forbearances taken by Defendants shall
7 constitute adequate consideration for the Settlement and will be made in full and final settlement
8 of the: (a) Released Claims; (b) Attorneys' Fees and Costs; (c) Administration Costs; (d)
9 LWDA Payment; (e) Enhancement Awards to Plaintiff (if any), and (d) Individual Settlement
10 Payments to Settlement Group Members, and any other obligation of Defendants under this
11 Agreement.

12 **5.2 Payments to Settlement Group Members.** Each Settlement Group Member
13 shall be eligible to receive an Individual Settlement Payment. The Parties understand that
14 Settlement Group Members who receive an Individual Settlement Payment pursuant to this
15 Agreement shall be solely responsible for any and all other individual tax obligations associated
16 with the payment. Individual Settlement Payments shall be deemed to consist entirely of civil
17 penalties recovered under PAGA and subject to treatment as IRS Form 1099 income. Thus, an
18 IRS Form 1099 will be issued to each Settlement Group Member in connection with his or her
19 Individual Settlement Payment if it is \$600 or more.

20 5.2.a. The portion of the Gross Settlement Amount remaining after the total
21 Attorneys' Fees and Costs for the Settlement Group, Enhancement Award for the
22 Settlement Group, Administration Costs for the Settlement Group, and LWDA
23 Payment for the Settlement Group are paid shall be designated the "Net
24 Settlement Amount" from which payments deemed to constitute a full and
25 complete satisfaction of any and all claims in the Action for civil penalties under
26 PAGA shall be made.

27 5.2.b. The Net Settlement Amount will be paid to the Settlement Group on a pro
28 rata basis. Each Settlement Group Member will receive a pro-rated share of the

1 Net Settlement Amount based on the total number of workweeks worked by the
2 Settlement Group Member in Settlement Group. The maximum amount that each
3 Settlement Group Member is entitled to receive is determined by multiplying the
4 Net Settlement Amount by a ratio that is determined by dividing the total number
5 of workweeks worked by the Settlement Group Member by the total number of
6 workweeks worked by all Settlement Group Members in, as expressed in the
7 following formula:

8 Individual Settlement Payment = Net Settlement Amount x (total number
9 of workweeks worked by the Settlement Group Member ÷ total number
of workweeks worked by all Settlement Group).

10 5.3 **No Effect on Employee Benefits.** Neither the Settlement nor any amounts
11 paid under the Settlement will modify any previously credited hours, days, or weeks or service
12 under any employee benefit plan, policy or bonus program sponsored by Defendants (or their
13 affiliates, parents, or successors). Such amounts will not form the basis for additional
14 contributions to, benefit under, or any other monetary entitlement under Defendants' sponsored
15 benefit plans, policies, or bonus programs, if any. The payments made under the terms of this
16 Settlement shall not be applied retroactively, currently, or on a going forward basis, as salary,
17 earnings, wages, or any other form of compensation for the purposes of any of Defendants'
18 benefit plans, policies, or bonus programs, if any. Defendants retain the right to modify the
19 language of their benefits plans, policies and bonus programs to effect this intent and to make
20 clear that any amounts paid pursuant to this Agreement are not for "weeks worked," "weeks
21 paid," "weeks of service," or any similar measuring term as defined by applicable plans,
22 policies and bonus programs for purpose of eligibility, vesting, benefit accrual, or any other
23 purpose, and that additional contributions or benefits are not required by this Agreement.
24 Defendants do not consider the Individual Settlement Payments "compensation" for purposes
25 of determining eligibility for, or benefit accrual within, any benefits plan, policy, or bonus
26 program, or any other plan or program sponsored by Defendants (or their affiliates, parents, or
27 successors), if any.

1 5.4 **Attorneys' Fees and Costs.** As part of the motion for approval of the
2 Settlement, PAGA Counsel may submit an application for an award of Attorneys' Fees and
3 Costs. Defendants agree not to object to any such fee, cost, or expense application in line with
4 this Agreement and in an amount not to exceed the combined gross sum of \$107,250.00
5 attorneys' fees and in an amount not to exceed the combined gross sum of \$16,478.42, for
6 recoverable costs. As a condition of this Settlement, PAGA Counsel has agreed to pursue fees
7 and costs only in the manner reflected by this Agreement. Any Attorneys' Fees and Costs
8 awarded by the Court shall be paid from the Gross Settlement Amount. If the PAGA Counsel
9 voluntarily reduces the request for Attorneys' Fees and Costs or the Court awards less than as
10 set forth above, the difference shall remain with the Net Settlement Amount. The Attorneys'
11 Fees and Costs shall be treated as IRS Form 1099 income. Accordingly, the Administrator shall
12 issue an IRS Form 1099 to PAGA Counsel in connection with its Attorneys' Fees and Costs.

13 The Attorneys' Fees and Costs approved by the Court shall encompass: (a) all work
14 performed and costs and expenses incurred by, or at the direction of, any attorney purporting to
15 represent the Settlement Group through the date of this Agreement; (b) all work to be performed
16 and costs to be incurred in connection with approval by the Court of the Settlement set forth in
17 this Agreement; (c) all work to be performed and costs and expenses, if any, incurred in
18 connection with administering the Class Settlement through the Effective Date; and (d) may be
19 based on the Catalyst Theory and/or Common Fund Doctrine.

20 5.5 **Escalator Clause.** This Agreement was reached based on a total number of
21 approximately 16,147 pay periods worked by Settlement Group Members for the time period
22 from September 3, 2021 through December 12, 2023. If it is determined the number of pay
23 periods for the time period September 3, 2021 through December 12, 2023 exceeds ten percent
24 (10%) or more of 16,147 (*i.e.*, more than 1,615 pay periods), the Gross Settlement Amount of
25 \$325,000 shall increase proportionally over the ten percent (10%) increase (*i.e.*, if the number
26 of pay periods increases by 11%, the Gross Settlement Amount of \$325,000 will increase by
27 1%).

1 6. **ADMINISTRATION COSTS AND EXPENSES**

2 6.1 **The Administrator's Costs and Expenses.** All costs and expenses due to
3 the Administrator in connection with its administration of the Settlement described in the
4 Agreement, including, but not limited to; (a) formatting, translating, and mailing the Settlement
5 Letters and Individual Settlement Payments; (b) performing a National Change of Address
6 database search to update Settlement Group Members addresses prior to the mailing; (c)
7 performing skip-traces to locate and update Settlement Group Members' addresses; (d)
8 calculating and distributing Individual Settlement Payments; and (e) performing other tasks
9 requested by the Parties or the Court, among other tasks as reflected within this Agreement,
10 will be paid through the Gross Settlement Amount.

11 7. **FUNDING AND DISTRIBUTION**

12 7.1 **Funding of the Gross Settlement Amount.** Within seven (7) calendar days
13 of the Effective Date, the Administrator will provide Defendants with its bank wire instructions
14 to establish the Qualified Settlement Fund (QSF). The Gross Settlement Amount will be paid
15 in two installments: (1) Within sixty (60) calendar days of the Effective Date, Defendants shall
16 transmit One Hundred Sixty-Two Thousand Five Hundred Dollars (\$162,500) of the Gross
17 Settlement Amount to the Administrator; (2) Within one hundred seventy (170) calendar days
18 of the Effective Date, Defendants shall transmit the remaining One Hundred Sixty-Two
19 Thousand Five Hundred Dollars (\$162,500) of the Gross Settlement Amount to the
20 Administrator.

21 7.2 **Distribution of the Gross Settlement Amount.** Within fifteen (15) calendar
22 days of each installment of the Gross Settlement, the Administrator will pay on a pro-rate basis:
23 (a) Individual Settlement Payments to Settlement Group Members via first-class regular U.S.
24 Mail; (b) Court-awarded Attorneys' Fees and Costs to PAGA Counsel; (c) Court-approved
25 LWDA Payment to the LWDA; (d) Court-approved Enhancement Awards to Plaintiff (if any);
26 and (e) Court-awarded Administration Costs to the Administrator.

27 7.3 **Non-Cashed Settlement Checks.** Settlement Group Members shall have one
28 hundred eighty days (180) calendar to cash their settlement checks. Any funds associated with

uncashed checks after one hundred eighty (180) calendar days will be sent to Human Options, an Orange County non-profit organization assisting victim of relationship violence, or other 501(c)(3) organization approved by the Court.

8. **NULLIFICATION OF THIS AGREEMENT**

8.1 **Non-Approval of the Agreement.** If (a) the Court should for any reason fail to approve this Agreement in the form agreed to by the Parties, or (b) the Court should for any reason fail to enter a judgment on this Action, or (c) the approval of the Settlement and judgment is reversed, modified or declared or rendered void, then the Settlement shall be considered null and void, and neither the Settlement nor any of the related negotiations or proceedings shall be of any force or effect, and all Parties to the Settlement shall stand in the same position, without prejudice, as if the Settlement (and any related filings set forth in this Agreement) has been neither entered into nor filed with the Court. Notwithstanding the foregoing, the Parties may attempt in good faith to cure any perceived defects in the Agreement to facilitate approval. If the Court awards less than the requested amounts for Attorneys' Fees and Costs, Enhancement Awards to Plaintiff (if any), Administration Costs, or LWDA Payment, the difference shall become part of the Net Settlement Amount.

8.2 **Invalidation.** Invalidation of any material portion of the Settlement shall invalidate the Settlement in its entirety, unless the Parties shall subsequently agree in writing that the remaining provisions of the Settlement are to remain in full force and effect.

8.3 **Stay Upon Appeal.** In the event of a timely appeal from the approval of the Settlement and Judgment, the Judgment shall be stayed, and Defendants shall not be obligated to fund the Gross Settlement Amount or take any other actions required by this Agreement until all appeal rights have been exhausted by operation of law.

9. **MOTION FOR COURT APPROVAL**

9.1 **Approval.** PAGA Counsel will submit this Agreement to the Court along with a Motion for an Order Granting Approval of the Settlement.

10. **RELEASES AND WAIVERS**

10.1 **Settlement Group Members' Release.** Upon the Effective Date, Plaintiff,

1 Settlement Group Members, and State of California vis-à-vis the LWDA shall release the
2 Released Parties for the Released Claims for the PAGA Periods.

3 10.2 **Release of Claims by Plaintiff.** Plaintiff shall execute a separate general
4 release of claims based on her individual claims alleged in the Action and anticipated claims of
5 wrongful termination and labor code violations.

6 11. **DUTIES OF THE PARTIES**

7 11.1 **Mutual Full Cooperation.** The Parties agree to cooperate fully with one
8 another to accomplish and implement the terms of this Agreement. Such cooperation shall
9 include, but not be limited to, execution of such other documents and the taking of such other
10 actions as may reasonably be necessary to fulfill the terms of this Settlement. The Parties shall
11 use their best efforts, including all effects contemplated by this Agreement and any other efforts
12 that may become necessary by Court order or otherwise, to effectuate the terms of this
13 Agreement. As soon as practicable after execution of this Agreement, PAGA Counsel, with the
14 cooperation of Defendants and Defense Counsel, shall take all necessary and reasonable steps
15 to secure the Court's final approval of this Agreement.

16 11.2 **Duty to Support and Defend the Settlement.** The Parties agree to abide by
17 all the terms of the Settlement in good faith and to support the Settlement fully and to use their
18 best efforts to defend this Settlement from any legal challenge, whether by appeal or collateral
19 attack.

20 12. **MISCELLANEOUS PROVISIONS**

21 12.1 **Different Facts.** The Parties hereto, and each of them, acknowledge that,
22 except for matters expressly represented herein, the facts in relation to the dispute and all claims
23 released by the terms of this Agreement may turn out to be other than or different from the facts
24 now known by each party and/or their counsel, or believed by such Party or counsel to be true,
25 and each Party therefore expressly assumes the risk of the existence of different or presently
26 unknown facts, and agrees that this Agreement shall be in all respects effective and binding
27 despite such difference.

28 12.2 **No Prior Assignments.** The Parties represent, covenant, and warrant that

1 they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
2 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
3 cause of action, or right herein released and discharged except as set forth herein.

4 12.3 **Media or Press.** Plaintiff and Defendants, and their respective counsel, agree
5 to limit public comment on this Settlement, the Action, and claims in the Action, stating that
6 the matter has been resolved to the satisfaction of the Parties. Plaintiff and Defendants, and their
7 respective counsel shall not initiate public comment and/or discuss with or present to the media
8 or press.

9 12.4 **Construction.** The Parties hereto agree that the terms and conditions of this
10 Agreement are the result of lengthy, intensive, arms-length non-collusive negotiations between
11 the Parties and that this Agreement is not to be construed in favor of or against any party by
12 reason of the extent to which any Party or their counsel participated in the drafting of this
13 Agreement. If any of the dates in the Agreement fall on a weekend, bank or court holiday, the
14 time to act shall be extended to the next business day.

15 12.5 **Governing Law.** This Agreement is intended to and shall be governed by
16 the laws of the State of California, without regard to conflict of law principles, in all respects,
17 including execution, interpretation, performance, and enforcement.

18 12.6 **Captions and Interpretations.** Section titles or captions contained herein
19 are inserted as a matter of convenience and for reference only and in no way define, limit,
20 extend, or describe the scope of this Agreement or any provision thereof.

21 12.7 **Modification.** This Agreement may not be changed, altered, or modified,
22 except in writing signed by the Parties and approved by the Court. This Agreement may not be
23 discharged except by performance in accordance with its terms or by a writing signed by the
24 Parties.

25 12.8 **Integration Clause.** This Agreement contains the entire agreement between
26 the Parties relating to the Settlement of the Action and the transactions contemplated thereby,
27 and all prior or contemporaneous agreements, understandings, representations, and statements,
28 whether oral or written, and whether by a party or such party's legal counsel, are hereby

1 superseded. No rights under this Agreement may be waived except in writing as provided
2 above.

3 **12.9 Successors and Assigns.** This Agreement shall be binding upon and inure to
4 the benefit of the Parties, Settlement Group Members, and their respective past, present, and
5 former heirs, trustees, executors, administrators, representatives, officers, directors,
6 shareholders, agents, employees, insurers, attorneys, accountants, auditors, advisors,
7 consultants, pension and welfare benefit plans, fiduciaries, parent companies, subsidiaries,
8 affiliates, related companies, joint ventures, predecessors, successors, and assigns.

9 **12.10 Corporate Signatories.** Any person executing this Agreement or any such
10 related document on behalf of a corporate signatory or on behalf of a partnership hereby warrants
11 and promises, for the benefit of all Parties hereto, that such person has been duly authorized by
12 such corporation or partnership to execute this Agreement or any such related document.

13 **12.11 Execution in Counterparts.** This Agreement shall become effective upon
14 its execution by all the undersigned. The Parties may execute this Agreement in counterparts,
15 and execution of counterparts shall have the same force and effect as if all Parties had signed
16 the same instrument.

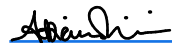
17 **12.12 Attorneys' Fees, Costs, and Expenses.** Except as otherwise specifically
18 provided for herein, each Party shall bear their or its own attorneys' fees, costs, and expenses,
19 taxable or otherwise, incurred by them in or arising out of the Action and shall not seek
20 reimbursement thereof from any other Party to this Agreement.

21 IN WITNESS WHEREOF, the Parties and their counsel have executed this Agreement
22 on the date below their signatures of their representatives. The date of the Agreement shall be
23 the date of the latest signature.

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Dated: 4/11/2024

Adrianna Torcivia


adrianna.torcivia (Apr 11, 2024 19:00 PDT)

Dated: _____

Bailey Food and Beverage Group, LLC

By: David Bailey
Its: Managing Member

Dated: _____

Bob Martin, Inc.

By: David Bailey
Its: President

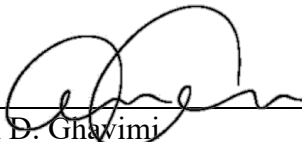
Dated: _____

CBDM Redlands, LLC

By: David Bailey
Its: Managing Member

Dated: 04/10/2024

Starpoint, LC [Approving as to Form Only]

By: 
Aidin D. Ghavimi
Ilana N. Fine,
Attorneys for Plaintiff

(Signatures continue on next page)

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Dated: _____

Adrianna Torcivia

Dated: April 10, 2024

Bailey Food and Beverage Group, LLC

David Bailey

By: David Bailey
Its: Managing Member

Dated: April 10, 2024

Bob Martin, Inc.

David Bailey

By: David Bailey
Its: President

Dated: April 10, 2024

CBDM Redlands, LLC

David Bailey

By: David Bailey
Its: Managing Member

Dated: _____

Starpoint, LC [Approving as to Form Only]

By: _____
Aidin D. Ghavimi
Ilana N. Fine,
Attorneys for Plaintiff

(Signatures continue on next page)

Dated: April 11, 2024

Stradling Yocca Carson & Rauth LLP
[Approving as to Form Only]

By: 

Jeffrey A. Dinkin

Jared W. Speier

Attorneys for Defendants

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Exhibit A

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NOTICE OF PAGA SETTLEMENT

Adrianna Torcivia v. Bailey Food and Beverage Group, LLC, et al.
Superior Court of California, County of Orange
Case No. 30-2022-01290665-CU-OE-CXC

Dear [Settlement Group Member's Name]:

Enclosed with this letter is a settlement check being paid to you pursuant to the settlement of the lawsuit filed in the Superior Court of California, County of Orange, entitled *Adrianna Torcivia v. Bailey Food and Beverage Group, LLC, et al*, Case Number 30-2022-01290665-CU-OE-CXC ("Action"). The purpose of this letter is to provide you with basic information about the Action, the reasons why you are receiving the enclosed settlement check, and the effect of the settlement on your legal rights.

I. The Action

On November 7, 2022, Plaintiff Adrianna Torcivia ("Plaintiff"), an alleged former employee of Defendants Bailey Food and Beverage Group, LLC, Bob Martin, Inc., and CBDM Redlands, LLC ("Defendants"), commenced this Action by filing a complaint against Defendants pursuant to Labor Code section 2698 (Private Attorneys General Act of 2004 ("PAGA")) in the Superior Court of California, County of Orange ("Operative Complaint"), on behalf of the State of California and:

All current or former hourly-paid or non-exempt employees of Bailey Food and Beverage Group, LLC, Bob Martin, Inc., and CBDM Redlands, LLC who directly worked for Bailey Food and Beverage Group, LLC, Bob Martin, Inc., and CBDM Redlands, LLC within the State of California at any time during the period from September 3, 2021 through December 12, 2023.

In the Action, Plaintiffs claimed Defendants owed civil penalties under PAGA to Plaintiffs and the Settlement Group Members for alleged violations of the Labor Code. Defendants deny they violated the Labor Code, deny the allegations in the Operative Complaint, and deny all liability under PAGA to Plaintiff, Settlement Group Members, and the State of California.

The merits of the Action have not been determined. However, on [Approval Date], the Superior Court of California, County of Orange, approved a settlement of the Action that Defendants entered to avoid the costs and disruption of litigation.

II. Why This Settlement Check Is Being Sent to You

The settlement approved by the Superior Court of California, County of Orange, involves a payment of civil penalties. In accordance with PAGA, seventy-five percent (75%) of the civil penalties paid under the settlement goes to the California Labor and Workforce Development Agency. The remaining twenty-five percent (25%) of the civil penalties paid under the settlement will be distributed to all Settlement Group Members. The enclosed settlement check is being sent to you because you have been identified as a Settlement Group Member.

III. How the Amount of Your Settlement Check Was Determined

The enclosed settlement check was calculated based on the total number of pay periods you worked for Defendants from September 3, 2021 through December 12, 2023 relative to all other Settlement Group Members.

Your settlement check will remain negotiable for one hundred eighty (180) calendar days after its mailing. If your settlement check is not cashed, deposited, or negotiated within this timeframe, it will be voided and paid Human Options, an Orange County non-profit organization assisting victim of relationship violence, or other 501(c)(3) organization approved by the Court.

IV. Consequences of the Settlement

The Action was filed exclusively as a representative action under PAGA, which functions as a substitute for an enforcement action by the State of California.

The Court's order and judgment approving the settlement of the Action binds all persons, including nonparty employees, who would be bound by a judgment in an action brought by California itself. As a result, although you are not a "party" to the Action, the judgment entered upon settlement of the Action is binding on you with respect to any claims for civil penalties under PAGA encompassed by the settlement. That is true regardless of whether you choose to cash, deposit, or negotiate the enclosed settlement check.

V. Taxation of Your Individual Settlement Award

You will be issued an IRS Form 1099 in connection with the funds paid to you via the enclosed check if your Individual Settlement Award is \$600 or more. However, you are solely responsible for all tax obligations attributable to you that may arise as a result of receiving the settlement check. If you have any tax-related questions regarding your receipt of the enclosed check, you should direct them your own tax advisor.

VI. Where to Get More Information

Do not call or contact the Superior Court of California, County of Orange, about this letter, settlement, settlement check sent to you, or Action in general. If you have questions about this letter, settlement, settlement check sent to you, or Action in general, you may contact the Administrator at [INSERT CONTACT INFORMATION].

Dated: [INSERT DATE]