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16 **Attorneys for Defendant HK TEA BASE, INC.**

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

18 **IN AND FOR THE COUNTY OF SAN DIEGO**

19 **KELLY NG, an individual,**

20 **Plaintiff,**

21 **vs.**

22 **HK TEA BASE, INC., a corporation; and**
23 **DOES 1-100, inclusive,**

24 **Defendants.**

Case No.: 37-2022-00025604-CU-OE-CTL

**STIPULATION OF SETTLEMENT UNDER
PRIVATE ATTORNEYS GENERAL ACT OF
2004; [PROPOSED] ORDER**

25 The Parties hereto, Plaintiff Kelly Ng ("Plaintiff") as a representative for the Labor and
26 Workforce Development Agency ("LWDA"), and Defendant HK Tea Base, Inc. ("Defendant"), by
27 and through their respective counsel of record, hereby stipulate and agree as follows:

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Stipulation of Settlement Under Private Attorneys General Act of 2004; [Proposed] Order
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1 1. WHEREAS, on May 13, 2022, counsel for Plaintiff sent a letter to the LWDA and
2 Defendant alleging violations of the Labor Code alleged to have occurred during Plaintiff's
3 employment with Defendant ("LWDA Letter").

4 2. WHEREAS, on June 29, 2022, Plaintiff filed a complaint in the above-captioned
5 matter, bringing individual employment claims, and also a claim under the Private Attorneys
6 General Act ("PAGA", Lab. Code, § 2698, *et seq.*). Under this "PAGA Claim", Plaintiff alleges,
7 *inter alia*, that she and other employees were not provided with all meal periods to which they were
8 entitled, and were furnished wage statements which omitted the address of the employer.

9 3. WHEREAS, subsequent to the filing of the Complaint, the Parties engaged in
10 formal discovery through which Defendant provided information regarding the number of
11 California employees believed to have been affected by the alleged violations during the relevant
12 time period. The total number of aggrieved employees potentially affected by the PAGA Claim as
13 of the date of this order is approximately 46.

14 4. WHEREAS, Defendant denies all of Plaintiff's allegations, both on factual and legal
15 bases.

16 5. WHEREAS, the Parties engaged in settlement negotiations primarily through their
17 respective attorneys: John P. Briscoe, a shareholder of Mayall Hurley P.C. and a member of that
18 firm's employment litigation group; and John Ly, a partner at the firm of Liang Ly LLP, both
19 experienced litigators with knowledge of employment law and the PAGA.

20 6. WHEREAS, the Parties have reached agreement on the terms of settlement
21 regarding the PAGA Claims. (Plaintiff's individual claims shall be resolved by way of a separate,
22 confidential settlement agreement.)

23 7. WHEREAS, Labor Code section 2699(l) requires that the court review and approve
24 any proposed settlement agreement pursuant to PAGA.

25 8. WHEREAS, Plaintiff and Plaintiff's counsel concluded—after taking into account
26 the sharply disputed factual and legal issues involved in the Action, the risks attending further
27 prosecution, the discovery and investigation conducted to date, and the substantial benefits

received and to be received pursuant to the compromise and settlement of the Action, the nature of the claimed violations and the wide discretion of the Court to reduce civil penalties imposed—that settlement on the terms herein set forth is in the best interest of all interested parties, including the Labor and Workforce Development Agency (the “LWDA”), and that the settlement adequately serves the deterrent purposes of the PAGA.

9. WHEREAS, Plaintiff and Plaintiff’s counsel have balanced their evaluation of the validity and strength of the asserted claims against the problems of proof and the legal standards governing the claims alleged. Following extensive discovery and analysis, and applying the appropriate civil penalties as provided by the Labor Code, Plaintiff’s counsel estimates the absolute maximum recoverable civil penalties under the PAGA to be in excess of \$130,000. However, this assumes continuous and uniform violations of rest and meal break laws which, Plaintiff’s counsel can concede, cannot be assumed to be proven at trial. Additionally, half of this exposure would result from Defendant’s failure to include its address on wage statements furnished to its employees. A trial court, per the PAGA, has discretion to reduce the assessed amount of civil penalties if to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory. (See Lab. Code, § 2699, subd. (e)(2).) The settlement reached represents a recovery that is nearly fifteen percent the estimated maximum recoverable civil penalties. Based on this evaluation, Plaintiff’s counsel believes that the settlement reached satisfies the public policies of PAGA to punish past violations and deter future violations of the Labor Code.

10. WHEREAS, similarly, Defendant and Defendant’s counsel concluded there were benefits associated with settling. Although Defendant denies the various allegations and challenges the validity of each of the causes of action in the Action, Defendant took into account the sharply disputed factual and legal issues involved in the Action, the risk attending further defense, the expense, time, and burden of protracted litigation and potential appeal following a judgment, and the desire to put the controversy to rest. Based on these factors, Defendant and Defendant’s counsel agreed to this settlement without any admission of fault or liability. Nothing in this Agreement, nor any action taken in implementation thereof, nor any statements, discussions

1 or communications, nor any materials prepared, exchanged, issued, or used during the course of the
2 negotiations leading to this Agreement, is intended by the Parties to constitute, nor will any of the
3 foregoing constitute, be introduced, be used or be admissible in any way in this case or any
4 judicial, arbitral, administrative, investigative, or other forum or proceeding as evidence of any
5 violation of any federal, state, or local law, statute, ordinance, regulation, rule, or executive order,
6 or any obligation or duty at law or in equity, against Defendant or any other Released Party (as
7 defined in paragraph 14, *infra*).

8 11. WHEREAS, the Parties hereby agree to settle the PAGA Claims at issue in the
9 Action ("the PAGA Settlement") for a total payment of **\$17,500.00** and dismiss with prejudice the
10 Fifth Cause of Action under the PAGA.

11 12. WHEREAS, the persons covered by the PAGA Settlement will be Plaintiff and all
12 other persons who were employed by Defendant in California at any time from April 25, 2021 to
13 the date of approval of this PAGA Settlement. The time period covered by the PAGA Settlement
14 will be from April 25, 2021 through the date of the order approving this PAGA Settlement ("the
15 PAGA Timeframe"). The Released Parties include Defendant, its parents, predecessors,
16 successors, related companies, subsidiaries, affiliates, partners, owners, shareholders, officers,
17 directors, managers, servants, agents, employees, former employees, future employees, attorneys,
18 insurers, future entities, trusts, employment agencies and professional employer organizations, and
19 their employees, officers, agents, representatives, attorneys, past or present, insurers, stockholders,
20 fiduciaries, and other service providers, and their successors and assigns, and all persons acting
21 under, by, through, or in concert with any of them (hereinafter collectively referred to as the
22 "Released Parties").

23 13. WHEREAS, due to the financial condition of Defendant, Defendant will need until
24 December 31, 2023 to satisfy its obligations under this settlement.

25 14. Upon the Effective Date (the date the Court signs this stipulated order), the LWDA
26 and each of the Other Aggrieved Employees, including Plaintiff, hereby voluntarily and knowingly
27 release and forever discharge any and all claims against the Released Parties that could have been

1 premised or predicated on any claims, causes of action, or legal theories of relief described or
2 pleaded in the operative complaint filed in this action and the written notice of any such claims
3 submitted to the LWDA by Plaintiff under PAGA, specifically for violations of Labor Code
4 sections 226, 226.7, and 512, arising from April 25, 2021 through the date of this order ("PAGA
5 Released Claims").

6 15. Neither the distribution of Individual Settlement Payment checks to, nor the use or
7 enjoyment of any Individual Settlement Payment checks by Other Aggrieved Employees shall
8 constitute consideration offered or exchanged for the release of any Other Aggrieved Employees or
9 private rights of action against any person.

10 16. This Stipulation of Settlement shall not operate as a waiver of any of Plaintiff's
11 individual (i.e., non-PAGA) claims, which are to be resolved by a separate agreement.

12 17. WHEREAS, the sum of \$17,500 (the "Gross PAGA Settlement Sum") shall be
13 allocated as follows:

- 14 a. \$5,833, representing approximately 33 1/3% of the Gross PAGA Settlement
15 Sum as attorneys' fees incurred for prosecution of the PAGA Claims;
16 b. \$2,750, representing the costs of administration of this settlement, as conducted
17 by Phoenix Settlement Administrators; and
18 c. \$2,155 for costs of suit.

19 The Net PAGA Settlement Amount of \$6,762 will be further allocated as follows:

- 20 e. \$1,690.50, or 25 percent (25%) of the Net PAGA Settlement Sum will be
21 distributed by Defendant to Plaintiff and the Other Aggrieved Employees who
22 worked during the PAGA Timeframe. Each employee will receive a
23 proportional share of the net PAGA Settlement Sum based on the number of pay
24 periods he/she was employed during the PAGA Timeframe. Any such
25 employees still employed with or on behalf of Defendant will receive the
26 appropriate credit apart from their regular pay. Phoenix Settlement
27 Administrators will send each Other Aggrieved Employee their portion of the
28 settlement by mail to the last known address. Settlement checks issued to the
Other Aggrieved Employees pursuant to this Agreement shall expire 120 days
from the date they are issued. Any unclaimed funds after 120 days shall be
remitted to the unclaimed property for the State Controller's Office (SCO) of
California.

f. \$5,071.50 or 75 percent (75%) of the Net PAGA Settlement Sum shall be paid to the LWDA in accordance with Section 2699(i) of the California Labor Code.

18. In no event shall Defendant pay more than \$17,500.00 pursuant to this Stipulation of Settlement.

19. WHEREAS, on the condition that the Court approves this Stipulation and enters the attached Order: the PAGA Settlement Sum will be paid as follows:

- a. Within twenty (20) calendar days after the Court enters the attached Order or December 31, 2023, whichever is later, Defendant shall pay \$17,500 to Phoenix Settlement Administrators, and shall also provide to Phoenix Settlement Administrators the names and last-known addresses of all Other Aggrieved Employees who worked for Defendant during the PAGA timeframe. Within 10 days after receiving the aforementioned sum and employee information, Phoenix Settlement Administrators shall (1) pay to Mayall Hurley P.C. attorney's fees in the amount of \$5,833 and costs in the amount of \$2,155; (2) pay \$5,071.50 to the LWDA; (3) pay the Individual Settlement Payments to the Other Aggrieved Employees; and (4) retain \$2,750 for administration costs.
- b. With regard to the Other Aggrieved Employees with the exception of Plaintiff, their Individual Settlement Payments shall be sent by Defendant as follows. With respect to Other Aggrieved Employees who are no longer employed by Defendant, Defendant shall mail Individual Settlement Payments to those Other Aggrieved Employees by U.S. First Class mail to the Other Aggrieved Employee's last known address. A letter explaining this Settlement Agreement will be included in the mailing of each Other Aggrieved Employee's check. Plaintiff's payment will be sent with the other consideration provided for resolution of his individual claims. It will be conclusively presumed that any Other Aggrieved Employee's check was received if the payment check has not been returned within thirty (30) days after the original mailing of the payment check. With respect to Other Aggrieved Employees who are employed with Defendant, Defendant shall issue Individual Settlement Payments via direct deposit, with no withholdings therefrom. Those persons shall be provided with a letter explaining this Settlement Agreement, either via mail or personal delivery.
- c. Settlement checks shall remain valid and negotiable for one hundred twenty (120) calendar days from the date of their issuance. If there are uncashed checks following this period, Phoenix Settlement Administrators will ensure that uncashed funds shall be forwarded to the unclaimed property for the State Controller's Office (SCO) of California in the name of the Other Aggrieved Employee who did not cash his or her Individual Settlement Payment.

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d. The settlement payments set forth above will be reported on IRS Form 1099s. The Parties acknowledge and agree that all settlement payments set forth under this Agreement are attributable as penalties. None are attributable as wages. Accordingly, the parties acknowledge and agree that Defendant is not responsible for any employer-side taxes in connection with any PAGA settlement payments under this Agreement. Plaintiff, Mayall Hurley P.C., and the Other Aggrieved Employees shall be solely responsible for the reporting and payment of their share of any federal, state and/or municipal income or other taxes on payments made pursuant to this Agreement, and shall hold Defendant and Defendant's counsel free and harmless from any claims resulting from treatment of such payments as non-taxable, including the treatment of such payments as not subject to withholding or deduction for payroll and employment taxes. No party has made any representation to any of the other Parties as to the taxability of any payments pursuant to this Agreement, including the payments to Plaintiff and the Other Aggrieved Employees, the payments to Plaintiff's counsel, or otherwise as to the tax implications of any provision of this Agreement.

20. The Parties jointly request that the Court approve the penalties sought as part of the PAGA Settlement and approve the dismissal of the PAGA Claims in the Complaint attendant therewith.

21. This Stipulation is made for the sole purpose of settling this Action. This Stipulation and the settlement it evidences are made in compromise of disputed claims. Because this action was pleaded as a PAGA action, this Stipulation must receive approval by the Court. Accordingly, the Parties enter into this Stipulation and associated settlement on a conditional basis. If the Court does not enter an order granting approval of this Stipulation, this Stipulation shall be deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and the negotiation, terms and entry of the Stipulation shall remain subject to the provisions of California Evidence Code sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable. If the Court does enter an order granting approval of this Stipulation, and following payment of the PAGA Settlement Sum as set forth in Section 20(a), *supra*, Plaintiff shall cause to be filed a Request for Dismissal as to the Fifth Cause of Action, with prejudice.

22. The Parties and their counsel agree that they will not issue any press releases,

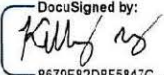
1 initiate any contact with the press, respond to any press inquiry or have any communication with
2 the press about the fact, amount or terms of this Stipulation. In addition, the Parties and their
3 counsel agree that they will not engage in any advertising or distribute any marketing materials
4 relating to this Stipulation or this action in any manner that identifies Defendant, including but not
5 limited to any postings on any websites maintained by Plaintiff's counsel. Neither Plaintiff nor
6 Plaintiff's Counsel will discuss the terms or the fact of this Agreement with third parties other than
7 (1) their immediate family members, or (2) their respective accountants or lawyers as necessary for
8 tax purposes. Plaintiff and Plaintiff's Counsel agree not to publish any of the terms or conditions
9 of this Stipulation in any manner that identifies Defendant.

10 23. Plaintiff's attorney has calculated the attorneys' fees included in paragraph 18. The
11 Parties agree that if the Court approves an amount of attorneys' fees less than the amount set forth
12 in Paragraph 16, the unapproved portion shall revert to the Net PAGA Settlement Amount to be
13 distributed between the Plaintiff, the Other Aggrieved Employees and the LWDA in the same
14 percentages as set forth in Paragraph 16.

15 **IT IS SO STIPULATED.**

16 **PLAINTIFF AND PLAINTIFF'S COUNSEL**

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18 DATED: 6/8/2023

DocuSigned by:

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Plaintiff Kelly Ng

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21 DATED: 6/8/2023

MAYALL HURLEY P.C.

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24 By: 

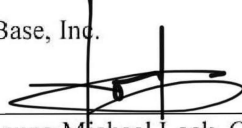
John P. Briscoe
Attorneys for Plaintiff

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DEFENDANT AND DEFENDANT'S COUNSEL

DATED: **6/9/2023**

HK Tea Base, Inc.

By: 
Chi Leung Michael Lock, CEO

DATED: **6/12/2023**

LIANG LY, LLP

By: 
John Ly
Attorneys for Defendant

ORDER

Upon review of the foregoing stipulation entered into by and between the parties in the above-referenced action, and good cause appearing therefor,

IT IS HEREBY ORDERED that the foregoing stipulation is hereby approved and the Court approves the Parties' PAGA Settlement pursuant to Labor Code § 2699(l). The parties are ordered to perform their respective duties as stipulated thereto.

DATED:

Judge of the Superior Court

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