

1 **LAW OFFICE OF SCOTT ERNEST WHEELER**

2 Scott Ernest Wheeler (SBN 187998)
3 Justin A. Wheeler (SBN 342226)
4 250 West First Street, Suite 216
5 Claremont, California 91711
6 Telephone: (909) 621-4988
7 Facsimile: (909) 621-4622
8 Email: sew@scottwheelerlawoffice.com
9 jaw@scottwheelerlawoffice.com

10 *Attorneys for Plaintiff and the aggrieved employees*

11 Alden J. Parker (SBN 196808)
12 Email: aparker@fisherphillips.com
13 David B. Witkin (SBN 344145)
14 Email: dwitkin@fisherphillips.com

15 **FISHER & PHILLIPS LLP**

16 621 Capitol Mall, Suite 1400
17 Sacramento, California 95814
18 Telephone: (916) 210-0400
19 Facsimile: (916) 210-0401

20 *Attorneys for Defendant, Underdogs Cantina*

21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

22 **COUNTY OF SAN FRANCISCO**

23 DIEGO ANGEL GONZALEZ, individually,
24 and on behalf of all other aggrieved
25 employees,

26 Plaintiff,

27 v.

28 UNDERDOGS RESTAURANT GROUP
LLC, a California limited liability company;
UNDERDOGS CANTINA, a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: CGC-23-607060

**JOINT STIPULATION AND AGREEMENT
FOR PAGA REPRESENTATIVE ACTION
SETTLEMENT**

1 This Stipulation and Agreement for Settlement of this PAGA Representative Action is made
2 and entered into by and between Plaintiff Diego Angel Gonzalez (“Plaintiff”) and Underdogs Cantina
3 (“Underdogs”) (collectively the “Parties”), and is made in compromise of disputed claims. The Parties
4 agree that the above-entitled representative action shall be settled on the terms and conditions set forth
5 in this Stipulation, subject to the approval of the Court pursuant to Section 2699(l) of the California
6 Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* (“PAGA”).

7 **DEFINITIONS**

8 1. **“Action”** means and refers to *Diego Angel Gonzalez v. Underdogs Cantina, et al.*, Case
9 No. CGC-23-607060, which is currently pending in the San Francisco County Superior Court.

10 2. **“Aggrieved Employees”** means all non-exempt employees who were employed by
11 Underdogs Cantina, in the state of California, at any time from April 10, 2022, through May 1, 2024.

12 3. The terms **“Agreement,” “Settlement,”** and **“Settlement Agreement”** mean this
13 Stipulation and Agreement for Settlement of this PAGA Representative Action, which the Parties
14 acknowledge sets forth all material terms and conditions of the Settlement between them, and which is
15 subject to Court approval pursuant to Section 2699(l) of the California Labor Code Private Attorneys
16 General Act of 2004, Labor Code §§ 2698, *et seq.*

17 4. **“Court”** means the San Francisco County Superior Court.

18 5. **“Defendant”** mean Underdogs Cantina.¹

19 6. **“Effective Date”** of this Agreement shall be the later of: (i) after service of notice of
20 entry of the Final Order and Judgment, if no appeal, review, or writ has been filed; or (ii) if an appeal,
21 review, or writ is sought from the Final Order and Judgment, the day after the Final Order and Judgment
22 is affirmed or the appeal, review, or writ is dismissed or denied, and the Final Order and Judgment are
23 no longer subject to further judicial review. The Effective Date is conditioned upon all of the following
24 occurring: (a) this Agreement has been signed by the Parties, PAGA Counsel, and Defendant’s counsel;
25 and (b) the Court has entered the Final Order and Judgment.

26
27 _____
28 ¹ Plaintiff will file a Request for Dismissal – without prejudice, as to Underdogs Restaurant Group LLC, at the
time Plaintiff seeks approval of this Settlement.

1 7. **“Final Order and Judgment”** means the proposed order granting approval of the
2 Settlement and entering Judgment, in a form substantially similar to that attached to this Agreement as
3 **Exhibit A.**

4 8. **“General Release Payment”** means the amount the Court authorizes to be paid to
5 Plaintiff, up to \$7,000, as compensation for Plaintiff’s general release of all claims Plaintiff may have,
6 or may have had, against Defendant, including those under Section 1542 of the California Civil Code.

7 9. **“Gross Settlement Amount”** means a maximum total of \$100,000.00, which includes
8 all payments owing as a result of this Agreement, including: the Net Settlement Fund; Representative
9 Plaintiff’s General Release Payment; Settlement Administration Costs; and PAGA Counsel Attorney’s
10 Fees and Costs as awarded by the Court.

11 10. **“LWDA Payment”** means a payment to the California Labor Workforce and
12 Development Agency in an amount equal to 75% of the PAGA Payment Amount.

13 11. **“Net Settlement Fund”** and **“PAGA Payment Amount”** mean the Gross Settlement
14 Amount less all of the following: PAGA Counsel’s Attorneys’ Fees and Costs, Representative
15 Plaintiff’s General Release Payment, and Settlement Administration Costs. It is comprised of the
16 LWDA Payment and the PAGA Aggrieved Employee Payment.

17 12. **“PAGA Aggrieved Employee Payment”** means a payment of 25% of the PAGA
18 Payment Amount, which the Parties have agreed to pay the Aggrieved Employees out of the Gross
19 Settlement Amount in connection with the settlement of the PAGA Claim.

20 13. **“PAGA Claim”** means the claim for civil penalties under the California Labor Code
21 Private Attorneys General Act of 2004 (Cal. Lab. Code sections 2698 *et seq.*, “PAGA”) alleged in the
22 Action.

23 14. **“PAGA Counsel”** means Scott Ernest Wheeler and Justin Wheeler of the Law Office
24 of Scott Ernest Wheeler.

25 15. **“PAGA Period”** means April 10, 2022, through May 1, 2024.

26 16. **“Plaintiff”** means Diego Angel Gonzalez.

27 17. **“Parties”** means Plaintiff and Underdogs Cantina.

28 18. **“Released Claims by Aggrieved Employees”** means Plaintiff and the State of

California hereby releases all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action contingent or accrued for, during the time period from April 10, 2022, through May 1, 2024, arising out of the PAGA claim asserted in the operative complaint and Plaintiff's LWDA letter based upon the following: 1) failure to provide meal periods; 2) failure to provide rest periods, 3) failure to pay overtime wages, 4) failure to pay minimum wages, 5) failure to timely pay wages during employment; 6) failure to pay all wages due to discharged and quitting employees, 7) failure to furnish accurate itemized wage statements, 8) failure to maintain required records; (9) failure to reimburse for necessary expenditures incurred in the discharge of duties; and (10) failure to provide supplemental COVID-19 sick leave. This release shall include a release for PAGA claims under California Labor Code Sections 201-203, 204, 210, 226, 226.3, 226.7, 246, 248.6, 510, 512, 558, 1174, 1194, 1198 and 2802 only.

19. **"Released Parties"** means Defendant Underdogs Cantina, and all current or former agents, employees, officers, directors and attorneys only.

20. **"Representative Plaintiff"** or **"Plaintiff"** means Diego Angel Gonzalez.

21. **"Settlement Administrator"** shall mean Phoenix Settlement Administrators or a neutral third-party administrator chosen by the Parties, subject to approval by the Court.

RECITALS

22. On March 23, 2023, Plaintiff sent a PAGA Notice to the Labor Workforce and Development Agency ("LWDA"), with a copy to Defendant via United States Certified Mail.

23. On June 13, 2023, Plaintiff filed a Complaint in San Francisco County Superior Court, in a case styled *Diego Angel Gonzalez v. Underdogs Cantina, et al.*, Case No.: CGC-23-607060 (the "Action").

24. The Action asserts a PAGA Claim for civil penalties and seeks an award of reasonable attorneys' fees and costs.

25. The Parties have conducted a thorough investigation into the facts of the Action and have informally exchanged extensive data and information, as well as pertinent documents, relating to the underlying alleged violations. After attending a full-day mediation with Glenn Lerman, Esq., the Parties reached the Settlement, which each Party believes is fair, reasonable, and adequate. The Parties

understand, acknowledge, and agree that this Settlement Agreement constitutes a compromise of Representative Plaintiff's and the Aggrieved Employees' PAGA Claim, and that it is the desire and intention of the Parties to effect a final and complete resolution of the PAGA Claim that the Representative Plaintiff and the Aggrieved Employees have against Defendant.

26. The Parties enter into this Settlement Agreement on a conditional basis. In the event the Court does not enter a Final Order and Judgment as defined in this Settlement Agreement, this Settlement Agreement will be deemed null and void *ab initio* and will be of no force or effect whatsoever, and will not be referred to or utilized for any purpose whatsoever.

27. Defendant denies all of the claims in the Action, and does not waive, but rather expressly reserve, all rights to challenge all such claims and allegations upon all legal, procedural and factual grounds should this Settlement Agreement not become final. This Settlement Agreement reflects a compromise reached to end litigation.

28. The Parties stipulate and agree to the following terms of this Settlement Agreement with the intent that this Agreement finally disposes of the Action with prejudice as to Defendant, Underdog Cantina.

TERMS AND CONDITIONS

29. **Settlement Payments and Calculation of Claims.** Subject to final Court approval and the conditions specified in this Agreement, and in consideration of the mutual covenants and promises set forth in this Agreement, Defendant agrees to pay the Gross Settlement Amount of \$100,000.00. For the avoidance of doubt, Defendant shall not be required to pay any amount over \$100,000.00 for this Settlement. The following table summarizes the allocation of the Gross Settlement Amount:

Gross Settlement Amount of \$100,000.00 Is Broken Down As Follows:

- **\$41,750.00** for the PAGA Payment Amount (Net Settlement Fund)
- **\$31,312.50** for the LWDA Payment
- **\$10,437.50** for the PAGA Aggrieved Employee Payment
- PAGA Counsel Attorneys' Fees not to exceed **\$33,000.00**
- PAGA Counsel Costs not to exceed **\$15,000.00**.
- Up to **\$7,000.00** for Named Plaintiff Diego Angel Gonzalez's General Release Payment
- Settlement Administration Costs, not to exceed **\$3,250.00**

30. **Settlement Escalator.** It is currently estimated that Aggrieved Employees worked

1 3,324 PAGA Pay Periods. Plaintiff will provide Defendant with at least five (5) days' notice of his
2 intent to file a Motion for Approval of the PAGA Settlement or Stipulation and Order Requesting
3 Approval of the PAGA Settlement. If more than 3,657 (10%) PAGA Pay Periods are identified as
4 "Aggrieved Employees", the Gross Settlement Amount will be increased on a pro rata basis according
5 to the number of additional PAGA Pay Periods worked by all Aggrieved Employees in excess of 3,657
6 (10%) with respect to the total number of PAGA Pay Periods worked by all of the Aggrieved
7 Employees.

8 31. **Apportionment of Gross Settlement Amount.** The Parties agree, subject to Court
9 approval and the conditions specified in this Agreement, that the Gross Settlement Amount shall be
10 apportioned as follows:

11 a. **Settlement Administration Fees And Costs:** The fees and costs associated with
12 settlement administration (*e.g.*, preparing and mailing payments to the Aggrieved Employees, tax
13 documentation, etc.) (the "Settlement Administration Costs") will be paid from the Gross Settlement
14 Amount and are estimated to be \$3,250.00. The Parties agree to use Phoenix Settlement Administrators
15 as the Settlement Administrator.

16 b. **PAGA Counsel's Attorneys' Fees And Costs:** The Parties agree that, subject to
17 the Court's review and approval, PAGA Counsel will be paid from the Gross Settlement Fund an
18 amount that is up to one third of the Gross Settlement Amount for attorneys' fees, or \$33,000.00, plus
19 actual litigation costs not to exceed \$15,000.00.

20 c. **Representative Plaintiff's General Release Payment:** The Parties agree that,
21 subject to the Court's review and approval, Representative Plaintiff will receive a \$7,000.00 General
22 Release Payment, which will be paid from the Gross Settlement Fund.

23 d. **Net Settlement Fund/PAGA Payment Amount:** After deducting PAGA
24 Counsel's Attorneys' Fees and Costs, Settlement Administration Costs, and Representative Plaintiff's
25 General Release Payment from the Gross Settlement Amount, the remaining amount will comprise the
26 Net Settlement Fund/PAGA Payment Amount. The Net Settlement Fund/PAGA Payment Amount is
27 comprised of the LWDA Payment and the PAGA Aggrieved Employee Payment. The Net Settlement
28 Fund of approximately \$41,750 shall be allocated 75% to the LWDA Payment, which is estimated to

total \$31,312.50 (\$41,750 x 75%). The remaining 25% of the Net Settlement Fund, estimated to total \$10,437.50 (\$41,750 x 25%), shall be allocated to the PAGA Aggrieved Employee Payment to be paid to the Aggrieved Employees on a *pro rata* basis as noted below, which shall be referred to as each Aggrieved Employee's "Individual PAGA Payment."

Example:

Aggrieved Employee A was actively employed during the PAGA Period for 25 pay periods. All Aggrieved Employees were actively employed a combined total of 3,324 pay periods during the PAGA Period. Aggrieved Employee A's Individual PAGA Payment would be calculated as follows:

- 25 pay periods for Aggrieved Employee A ÷ 3,324 total pay periods for all Aggrieved Employees = 0.0075%.
- Aggrieved Employee A is entitled to an Individual PAGA Payment in an amount that is 0.0075% of the PAGA Aggrieved Employee Payment.²

e. Taxes and Reporting: The Individual PAGA Payments will be treated as non-wage income to the Aggrieved Employees and reported by the Settlement Administrator on IRS Form 1099.

32. **Release By Aggrieved Employees And State Of California.**

a. Terms Of Release: In exchange for the consideration recited in this Settlement Agreement, Representative Plaintiff, as the representative for the State of California and all Aggrieved Employees, and on behalf of their current, former, and future heirs, executors, administrators, attorneys, agents, and assigns will forever completely release and discharge the Released Parties of any and all Released Claims. The Aggrieved Employees and the State of California are deemed by operation of the Final Order and Judgment to have agreed not to sue or otherwise make a claim against any of the Released Parties for any Released Claims.

b. No Claims Based On Stipulation And Agreement. No Aggrieved Employee will have any claim against any of the Released Parties, Defendant's counsel, the Representative Plaintiff, or PAGA Counsel, based on errors in administering claims or performing the mailing and skip-tracing

² The Individual PAGA Payment will be rounded to the nearest penny with .5 rounded up.

requirements of the Settlement Administrator under this Agreement.

33. **General Release By Representative Plaintiff.**

a. **Terms Of Release:** In exchange for the consideration recited in this Settlement Agreement, including the Representative General Release Payment, the Representative Plaintiff, on behalf of himself and his current, former, and future heirs, executors, administrators, attorneys, agents, and assigns, does hereby and forever release, waive, acquit and discharge the Released Parties from all claims (known or unknown) which he has, had or might otherwise have had against the Released Parties, from the beginning of time to the date he signs this Agreement, regarding any aspect of his employment including, but not limited to, the Released Claims, any common law or statutory torts, any federal, state or governmental constitution, statute, regulation or ordinance, and any claim for wages, tips or any other compensation or benefit.

b. **California Civil Code Section 1542:** Upon the Effective Date, the Representative Plaintiff will be deemed to have, and by operation of the Final Order and Judgment will have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of section 1542 of the California Civil Code which provides as follows:

“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.”

c. **No Other Actions.** The Representative Plaintiff is deemed by operation of the Final Order and Judgment to have agreed not to sue or otherwise make any claim against any of the Released Parties based upon any action, event, or occurrence prior to the date he signs this Settlement Agreement.

34. **Settlement Funding.**

Defendant is responsible for paying the entire Gross Settlement Amount subject to the following payment plan: Seventy Thousand Dollars (\$70,000) payable within thirty (30) days of the Court approving the PAGA Settlement and the balance of Thirty Thousand Dollars (\$30,000) due by November 1, 2024.

1 35. **PAGA List.**

2 Within 30 days after the Effective Date, Defendant will provide a PAGA List to the Settlement
3 Administrator which will identify all Aggrieved Employees by name, social security number, and last
4 known home address (“PAGA List”). The PAGA List will also contain the number of pay periods
5 credited to each Aggrieved Employee.

6 36. **List Of Individual Settlement Amounts.**

7 Within 20 days after the Settlement Administrator receives the PAGA List, the Settlement
8 Administrator will provide to PAGA Counsel and Defendant’s counsel a Proceeds List reflecting the
9 Individual PAGA Payment for each Aggrieved Employee (“Proceeds List”). The Proceeds List
10 provided to PAGA Counsel will not include the Aggrieved Employees’ names, social security numbers
11 or contact information.

12 37. **PAGA Payments To Aggrieved Employees.**

13 a. On the Payment Date, the Settlement Administrator will mail to each Aggrieved
14 Employee, via first-class United States Mail, the following: (a) the PAGA Settlement Notice in English
15 and Spanish, attached as **Exhibit B** to this Agreement; and (b) their Individual PAGA Payment
16 (collectively, the “PAGA Packet”).

17 b. Prior to mailing, the Settlement Administrator will update all addresses using the
18 National Change of Address System (NCOA). In the event that a PAGA Packet is returned to the
19 Settlement Administrator with a forwarding address, the Settlement Administrator will re-send the
20 PAGA Packet to the forwarding address identified. If no forwarding address is provided, then the
21 Settlement Administrator will promptly conduct a “standard search,” sometimes called, “Skip Trace”
22 or “Credit Header” searches, to locate a better address. If a better address is found, the Settlement
23 Administrator will promptly re-send the PAGA Packet. If a better address is not found or the PAGA
24 Packet is ultimately returned without a forwarding address, neither the Settlement Administrator,
25 Defendant, or PAGA Counsel shall be required to take further action.

26 c. Aggrieved Employees shall have 180 calendar days after the date the PAGA
27 Packet is mailed to them to cash their settlement payment checks. If any Aggrieved Employee’s check
28 is not cashed within that period, the settlement payment check will be voided and a stop-payment will

1 be issued. Neither Defendant, Defendant's counsel, Plaintiff, nor PAGA Counsel will have any liability
2 for lost or stolen settlement payment checks, forged signatures on settlement payment checks,
3 unauthorized negotiation of settlement payment checks, or failure to timely cash a settlement payment
4 check within the 180 day period.

5 d. Any unpaid cash residue or unclaimed Aggrieved Employee funds, plus any
6 accrued interest that has not otherwise been distributed pursuant to order of the Court, shall be
7 transmitted to the California State Controller's Office – Division of Unclaimed Funds in the name of
8 the Aggrieved Employee.

9 38. **Payments Of General Release Payment, Attorneys' Fees And Costs, And The**
10 **LWDA Settlement Payment.**

11 a. On the Payment Date, the Settlement Administrator will pay from the Gross
12 Settlement Fund the Representative Plaintiff's General Release Payment as awarded by the Court. The
13 payment will be made by sending to Plaintiff a check payable to "Diego Angel Gonzalez" in the amount
14 of the Court-approved General Release Payment. This payment is conditional upon PAGA Counsel
15 providing Defendant's counsel with a completed Form W-9 for the Representative Plaintiff.

16 b. On the Payment Date, the Settlement Administrator will pay from the Gross
17 Settlement Fund to PAGA Counsel its Court-approved Attorneys' Fees and Costs. Such payment is
18 conditional upon PAGA Counsel providing the Settlement Administrator with a completed Form W-9.

19 c. On the Payment Date, the Settlement Administrator will pay the LWDA
20 Payment from the Net Settlement Fund by issuing a check in the approximate amount of \$31,312.50
21 payable to "California Labor Workforce and Development Agency."

22 39. **Deadlines.**

23 If any deadline specified in this Agreement falls on a Saturday, Sunday, or Court holiday, the
24 deadline will be automatically extended to the next regular business day. Unless specified otherwise,
25 all references to "days" shall mean calendar days.

26 40. **Enforcement And Continuing Jurisdiction Of The Court.**

27 Pursuant to the Parties agreement, this Settlement Agreement will be approved by the Court and
28 will be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6. Even

1 after the entry of the Final Order and Judgment, this Court will have and retain continuing jurisdiction
2 over the Action and over all Parties and the Aggrieved Employees, to the fullest extent necessary or
3 convenient to enforce and effectuate the terms and intent of this Settlement Agreement and all matters
4 provided for in it, and to interpret it.

5 41. **Mutual Full Cooperation.**

6 The Parties will fully cooperate with each other to accomplish the terms of this Settlement
7 Agreement, including, but not limited to, execution of such documents and taking such other action as
8 may be reasonably necessary or convenient to implement it.

9 42. **Non-Admission Of Liability.**

10 The Parties enter into this Agreement to resolve the dispute that has arisen between them and
11 to avoid the burden, expense and risk of continued litigation. In entering into this Agreement,
12 Defendant does not admit, and specifically denies, that it has violated any federal, state, or local law;
13 violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws,
14 regulations or legal requirements; violated or breached any duty; engaged in any misrepresentation or
15 deception; or engaged in any other unlawful conduct with respect to the Action. Neither this
16 Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be
17 construed as an admission or concession by Defendant of any such violations or failures to comply with
18 any applicable law. Except as necessary in a proceeding to enforce the terms of this Agreement, this
19 Agreement and its terms and provisions shall not be offered or received as evidence in any action or
20 proceeding to establish any liability or admission on the part of Defendant or to establish the existence
21 of any condition constituting a violation of, or a non-compliance with, federal, state, local or other
22 applicable law.

23 43. **Effective Date Of Defendant's Obligations Under This Agreement.**

24 Defendant's obligations under this Settlement Agreement will become final and effective only
25 upon the occurrence of the Effective Date. In the event that any of the conditions specified in this
26 Settlement Agreement are not satisfied, or in the event that this Settlement does not obtain approval of
27 the Court for any reason, all matters covered by this Agreement will be null and void. In such event,
28 neither this Agreement nor any negotiations leading to this Settlement will be used or construed by or

1 against any Party as a determination, admission, or concession of any issue of law or fact in the
2 litigation; and the Parties do not waive, and instead expressly reserve, their respective rights regarding
3 the prosecution and defense of the Action, including all available defenses and affirmative defenses,
4 and to challenge any claim, as if this Settlement Agreement never existed.

5 44. **Nullification.**

6 If: (1) the Court should for any reason fail to enter the Final Order and Judgment; or (2) the
7 Court's Final Order and Judgment is reversed or modified as to any material term as defined above, or
8 declared or rendered void as to any material term as defined above, then (a) the Settlement Agreement
9 shall become null and void; (b) the Parties will revert to their respective positions immediately prior to
10 reaching the settlement; and (c) Defendant will be responsible for any Settlement Administration Costs.

11 45. **Invalidation.**

12 Invalidation of any material term of this Settlement Agreement will invalidate this Agreement
13 in its entirety unless the Parties subsequently agree in writing that the remaining provisions will remain
14 in full force and effect.

15 46. **No Publicity.**

16 Plaintiff and PAGA counsel agree not to disclose or publicize the settlement, including the
17 Memorandum of Understanding, the fact of the Settlement, its terms or contents, and the
18 negotiations underlying the Settlement, in any manner or form, directly or indirectly, to any person
19 or entity, except potential class members and as shall be contractually required to effectuate the
20 terms of the Settlement as set forth herein. For the avoidance of doubt, this section means Plaintiff
21 and PAGA counsel will not to issue press releases, communicate with, or respond to any media or
22 publication entities, publish information in manner or form, whether printed or electronic, on any
23 medium or otherwise communicate, whether by print, video, recording or any other medium, with
24 any person or entity concerning the Settlement, including the fact of the Settlement, its terms or
25 contents and the negotiations underlying the Settlement, except as shall be contractually required
26 to effectuate the terms of the Settlement as set forth herein. However, for the limited purpose of
27 allowing Plaintiff's counsel to prove adequacy as class or PAGA counsel in other actions, PAGA
28 counsel may disclose the name of the Parties in this action and the venue/case number of this action

(but not any other settlement details) for such purposes.

47. **Entire Agreement.**

This Settlement Agreement constitutes the entire integrated agreement between the Parties relating to the Action, and no oral representations, warranties, or inducements have been made to any party concerning this Settlement Agreement other than the representations, warranties, and covenants contained and memorialized in this Settlement Agreement.

48. **Authorization To Act.**

PAGA Counsel warrants and represents that they are authorized by the Representative Plaintiff, and counsel of record for Defendant warrants that they are authorized by Defendant, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement Agreement, except for any documents, including but not limited to this Settlement Agreement, that are required to be executed by the Parties.

49. **Modification Only In Writing.**

This Settlement Agreement may be amended or modified only by a written instrument signed by all Parties or their successors in interest.

50. **Binding On Successors.**

This Settlement Agreement is binding upon and will inure to the benefit of the Parties to this Agreement, as well as their respective attorneys, past, present, and future predecessors, successors, shareholders, officers, directors, employees, agents, trustees, representatives, administrators, fiduciaries, assigns, insurers, executors, partners, parent corporations, subsidiaries, and related or affiliated entities.

51. **No Prior Assignments.**

The Aggrieved Employees are deemed by operation of the Final Order and Judgment to represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, cause of action, or rights released and discharged by this Agreement.

1 52. **Governing Law.**

2 All terms of this Settlement Agreement will be governed by and interpreted according to the
3 laws of the State of California.

4 53. **Counterparts.**

5 This Settlement Agreement may be executed in one or more counterparts. All executed
6 counterparts and each of them will be deemed to be one and the same instrument. Counsel for the
7 Parties will exchange among themselves any signed counterparts.

8 54. **Headings For Convenience Only.**

9 The descriptive headings of any paragraphs or sections of this Settlement Agreement are
10 inserted for convenience of reference only and do not constitute a part of this Settlement Agreement.

11 55. **Construction Of This Agreement.**

12 The Parties agree that the terms and conditions of this Settlement Agreement are the result of
13 arms-length negotiations between the Parties and that this Settlement Agreement will not be construed
14 in favor of or against any Party by reason of the extent to which any Party, or her or its counsel
15 participated in the drafting of this Agreement. This Settlement Agreement constitutes the entire
16 agreement between the Parties. Except as expressly provided in this Agreement, this Settlement
17 Agreement has not been executed in reliance upon any other oral or written representations or terms
18 and no such extrinsic oral or written representations or terms will modify, vary, or contradict the terms
19 of this Settlement Agreement. In entering this Settlement Agreement, the Parties explicitly recognize
20 California Civil Code section 1625 and California Code of Civil Procedure section 1856(a), which
21 provide that a written agreement is to be construed according to its terms and may not be varied or
22 contradicted by extrinsic evidence. The Representative Plaintiff and Defendant had available to them
23 the advice and assistance of independent counsel. As such, neither Representative Plaintiff nor
24 Defendant may claim that any ambiguity in this Settlement Agreement should be construed against the
25 other.

26 56. **Corporate Signatories.**

27 Any person executing this Settlement Agreement or any related document on behalf of a
28 corporate signatory warrants and promises for the benefit of all Parties that such person has been duly

1 authorized by such corporation to execute this Settlement Agreement or any related document.

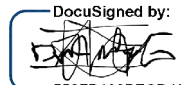
2 57. **Representation By Counsel.**

3 All of the Parties hereto acknowledge that they have been represented by counsel throughout
4 all negotiations which preceded the execution of this Settlement Agreement and that this Agreement
5 has been executed with the consent and advice of counsel.

6 58. **Attorneys' Fees And Costs.**

7 Except as otherwise provided in this Agreement, the Parties will bear responsibility for their
8 own attorneys' fees and costs, taxable or otherwise, incurred by them or arising out of this Action and
9 will not seek reimbursement thereof from any Party to this Settlement Agreement. In the event of a
10 proven breach of this Agreement, the breaching party will be required to pay the prevailing Party's
11 reasonable attorneys' fees and costs incurred in enforcing this Agreement.

12 Dated: 6/18/2024
13 _____

12 DocuSigned by:
13 
14 _____
15 Diego Angel Gonzalez
16

17 Dated: _____
18

17 By: _____
18 Underdogs Cantina

19 Name: _____
20

21 Title: _____
22

22 **AS TO FORM ONLY:**

23 Dated: June 18, 2024

LAW OFFICE OF SCOTT ERNEST WHEELER

24 By: 
25 SCOTT ERNEST WHEELER
26 JUSTIN A. WHEELER

27 Attorneys for Plaintiff and the other Aggrieved
28 Employees

1 authorized by such corporation to execute this Settlement Agreement or any related document.

2 57. **Representation By Counsel.**

3 All of the Parties hereto acknowledge that they have been represented by counsel throughout
4 all negotiations which preceded the execution of this Settlement Agreement and that this Agreement
5 has been executed with the consent and advice of counsel.

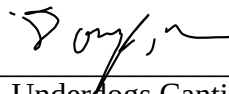
6 58. **Attorneys' Fees And Costs.**

7 Except as otherwise provided in this Agreement, the Parties will bear responsibility for their
8 own attorneys' fees and costs, taxable or otherwise, incurred by them or arising out of this Action and
9 will not seek reimbursement thereof from any Party to this Settlement Agreement. In the event of a
10 proven breach of this Agreement, the breaching party will be required to pay the prevailing Party's
11 reasonable attorneys' fees and costs incurred in enforcing this Agreement.

12
13 Dated: _____

By: _____
Diego Angel Gonzalez

14
15
16
17 Dated: 07/03/2024

By:  _____
Underdogs Cantina

18
19 Name: Douglas Marschke

20 Title: CEO

21
22 **AS TO FORM ONLY:**

23 Dated: June ____, 2024

LAW OFFICE OF SCOTT ERNEST WHEELER

24 By: _____
25 SCOTT ERNEST WHEELER
26 JUSTIN A. WHEELER

27 Attorneys for Plaintiff and the other Aggrieved
28 Employees

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FISHER & PHILLIPS LLP

Dated: June 30, 2024

By: 
ALDEN J. PARKER
DAVID B. WITKIN

Attorneys for Defendant

EXHIBIT A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

DIEGO ANGEL GONZALEZ, individually,
and on behalf of all other aggrieved employees,

Plaintiff,

vs.

UNDERDOGS CANTINA, a California
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. CGC-23-607060

**[PROPOSED] ORDER AND JUDGMENT
GRANTING APPROVAL OF PAGA
SETTLEMENT**

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Having received and considered the Settlement Agreement, the supporting papers filed by Plaintiff ¹, and the evidence and arguments received by the Court, the Court grants approval of the Settlement and **HEREBY ORDERS AND MAKES THE FOLLOWING DETERMINATIONS:**

2. The California Labor Workforce and Development Agency (“LWDA”) has been provided notice of the Settlement in accordance with PAGA, California Labor Code § 2699(1)(2), (1)(4). In particular, on the date Plaintiff filed the Stipulation and related pleadings seeking approval of the Settlement with the Court, he submitted to the LWDA a notice of the Settlement enclosing a copy of the Settlement Agreement. Plaintiff’s notice of the Settlement to the LWDA complied with the notice requirements of PAGA.

4. The Settlement is approved under Labor Code § 2699(1)(2).

5. The PAGA Settlement Notice to Aggrieved Employees, attached as **Exhibit A** to this

¹ The Court has also reviewed and considered the records and files of this case, as well as all documents submitted in connection with the Joint Stipulation for Approval of PAGA Settlement and the Declaration of Scott Ernest Wheeler in support of the PAGA Settlement.

1 Order, fairly and adequately describes the Action, the approved Settlement, and is the best notice
2 practicable under the circumstances.

3 6. The Court finds that each Aggrieved Employee, in accordance with the Settlement,
4 releases all Released Claims against the Released Parties.

5 7. The Gross Settlement Amount and the methodology used to calculate the PAGA
6 Payment and Individual PAGA Payments set forth in the Settlement Agreement are approved.

7 8. The Court approves the General Release Payment to Plaintiff in the amount of
8 \$7,000. The Court authorizes the Settlement Administrator to make this payment, in accordance
9 with the terms of the Settlement Agreement.

10 9. The Court approves Phoenix Settlement Administrators to act as the Settlement
11 Administrator. The Court awards the Settlement Administrator in this Action its actual fees and
12 costs in accordance with the terms of the Settlement Agreement, not to exceed \$3,250.

13 10. The Court approves the Law Office of Scott Ernest Wheeler as PAGA Counsel.

14 11. The Court awards PAGA Counsel attorneys' fees in the amount of \$33,000 and costs
15 of \$ [REDACTED], which the Court finds to be fair and reasonable. The Court authorizes the
16 Settlement Administrator to make these payments, in accordance with the terms of the Settlement
17 Agreement.

18 12. The Court authorizes the Settlement Administrator to calculate the PAGA Payment
19 Fund, inclusive of the LWDA Payment and PAGA Aggrieved Employee Payment (which is
20 comprised of the Individual PAGA Payments), in accordance with the terms of the Settlement
21 Agreement.

22 13. The Court finds that payment to the LWDA of 75% of the PAGA Payment as its
23 share of the settlement of PAGA civil penalties is fair and reasonable. The Court authorizes the
24 Settlement Administrator to pay the LWDA payment, in accordance with the terms of the Settlement
25 Agreement.

26 14. The Court finds that payment to the PAGA Aggrieved Employee Payment of 25%
27 of the PAGA Payment as the Aggrieved Employees' share of the settlement of civil penalties is fair
28 and reasonable. The Court authorizes the Settlement Administrator to pay the PAGA Aggrieved

1 Employee Payment, in accordance with the terms of the Settlement Agreement.

2 15. Checks for Individual PAGA Payments sent to Aggrieved Employees shall be valid
3 for 180 calendar days after issuance. Funds remaining from any checks for Individual PAGA
4 Payments uncashed after 180 calendar days will be dispersed to the California State Controller's
5 Unclaimed Property fund in the name(s) of the employee(s) who did not cash their checks, in
6 accordance with the terms of the Settlement Agreement.

7 16. Without affecting the finality of this order and entry of judgment, the Court retains
8 exclusive and continuing jurisdiction over the Action for purposes of supervising, administering,
9 implementing, and enforcing this Order and the Settlement.

10 17. Nothing in this Order or the Settlement shall be construed as an admission or
11 concession by any party. The Settlement and this resulting Order and entry of judgment simply
12 represent a compromise of disputed allegations.

13 18. The Court enters final judgment in accordance with the terms of the Settlement
14 Agreement and this Order.

15 19. A Final Report Hearing regarding compliance with the terms of the Settlement is set
16 for _____, 2025 at ____ a.m./p.m. in Department _____. The Final Report from Phoenix
17 Settlement Administrators regarding distribution of the Settlement funds shall be filed no later than
18 ten (10) Court days prior to the Final Report Hearing. The report from Phoenix Settlement
19 Administrators shall be in the form of a Declaration from the Settlement Administrator, by a
20 declarant with personal knowledge of the facts, and describes: (i) the date the checks were mailed,
21 (ii) the total number of checks mailed to Aggrieved Employees, (iii) the average amount of those
22 checks, (iv) the number of checks that remain uncashed, (v) the total value of those uncashed checks,
23 (vi) the average amount of the uncashed checks, and (vii) the nature and date of the disposition of
24 those unclaimed funds.

25 20. The Parties Joint Stipulation for Approval of the Settlement Pursuant to the Private
26 Attorneys General Act ("PAGA") is hereby granted and the Court directs that a judgment shall be
27 entered in accordance with the terms of this Order.

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1 21. This document shall constitute a Judgment for purposes of California Rule of Court
2 3.769(h).

3 22. The Court has continuing jurisdiction of this matter pursuant to Code of Civil
4 Procedure §664.6 and California Rules of Court, Rule 3.769.

5 **IT IS SO ORDERED:**

6 DATED: _____, 2024

JUDGE OF THE SUPERIOR COURT

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EXHIBIT B

NOTICE TO AGGRIEVED EMPLOYEES

[Date], 2024

PHOENIX SETTLEMENT ADMINISTRATORS

[Street Address]

[City, State Zip]

[Employee Name]

[Employee Street Address]

[City, State Zip]

Re: PAGA Settlement Payment

Dear Current or Former Employee of Underdogs Cantina (hereinafter referred to as “Underdogs”):

You have received this notice because Underdogs indicates that you have been employed by Underdogs at some time between April 10, 2022, through May 1, 2024. This notice relates to the settlement of a lawsuit styled *Diego Angel Gonzalez v. Underdogs Cantina, et al.*, San Francisco Superior Court, Case No. CGC-23-607060 (the “Lawsuit”).

In the Lawsuit, Plaintiff Diego Angel Gonzalez (“Plaintiff”) seeks civil penalties pursuant to the California Private Attorneys General Act (“PAGA”), a law which allows Plaintiff to attempt to recover penalties on behalf of the State of California and on behalf of employees who Plaintiff claims were “aggrieved” by alleged wage and hour violations on the part of Underdogs which includes: 1) failure to provide meal periods; 2) failure to provide rest periods, 3) failure to pay overtime wages, 4) failure to pay minimum wages, 5) failure to timely pay wages during employment; 6) failure to pay all wages due to discharged and quitting employees, 7) failure to furnish accurate itemized wage statements, 8) failure to maintain required records; (9) failure to reimburse for necessary expenditures incurred in the discharge of duties; and (10) failure to provide supplemental COVID-19 sick leave.

Underdogs strongly disputes Plaintiff’s allegations and maintains that it has fully complied with all applicable wage and hour laws. The Court has not issued any ruling regarding the merits of the Lawsuit. Nonetheless, to avoid the cost and distraction of litigation, Underdogs made a business decision to settle the Lawsuit, which settlement has been approved by the Court. As part of the Settlement, Underdogs agreed to pay a certain amount of penalties under PAGA. Under the PAGA statutes, penalties are divided between the State of California and aggrieved employees, with the State receiving 75 percent of the penalties. Under the Settlement, Plaintiff and the State have released the following claims on behalf of the aggrieved employees:

All claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys’ fees, damages, action or causes of action contingent or accrued for, during the time period from April 10, 2022, through May 1, 2024, arising out of the PAGA claim asserted in the operative complaint and Plaintiff’s LWDA letter based upon the following: 1) failure to provide meal periods; 2) failure to provide rest periods, 3) failure to pay overtime wages, 4) failure to pay minimum wages, 5) failure to timely pay wages during employment; 6) failure to pay all wages due to

discharged and quitting employees, 7) failure to furnish accurate itemized wage statements, 8) failure to maintain required records; (9) failure to reimburse for necessary expenditures incurred in the discharge of duties; and (10) failure to provide supplemental COVID-19 sick leave. This release shall include a release for PAGA claims under California Labor Code Sections 201-203, 204, 210, 226, 226.3, 226.7, 246, 248.6, 510, 512, 558, 1174, 1194, 1198 and 2802 only.

The Released Parties refers to Defendant Underdogs Cantina, and all current or former agents, employees, officers, directors and attorneys only.

The enclosed settlement check represents your portion of the Court-approved PAGA settlement. You will not be retaliated against for cashing your check. Checks that are not cashed within 180 calendar days of issuance will be voided and the funds will be distributed to the California State Controller's Unclaimed Property Fund in the name of the employee who did not cash the check.

Regardless of what you do with the settlement check, you will have released claims for penalties arising under PAGA as asserted in the Lawsuit.

If you have any questions about this notice, please contact Phoenix Settlement Administrators, at [REDACTED].

THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE MERITS OF THE CLAIMS OR DEFENSES BY EITHER SIDE IN THE LAWSUIT. PLEASE DO NOT CONTACT THE COURT REGARDING THE CASE.