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7 Attorneys for Plaintiff(s),

8 NATALIAH DEVOL GREEN

(Additional attorneys for Plaintiff(s) on following page)

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF LOS ANGELES**

12 **(UNLIMITED JURISDICTION)**

13 NATALIAH DEVOL GREEN, on behalf of
14 herself and all others similarly situated, and the
15 general public, and as an “aggrieved employee”
16 on behalf of other “aggrieved employees” under
the Labor Code Private Attorneys General Act of
2004,

17 *Plaintiff(s),*

18
19 vs.

20 MORGAN COOKIE GROUP CULVER LLC, a
21 California limited liability company; MORGAN
COOKIE GROUP LLC, a California limited
22 liability company; MORGAN COOKIE
GROUP DOWNEY LLC, a California limited
23 liability company; CRUMBL LLC, a Utah
24 limited liability company; POCKETS SMITTY
LLC, a Utah limited liability company; and
25 DOES 1–50, inclusive,

26 *Defendant(s).*
27
28

Case No. 23STCV11939

**SUPPLEMENTAL DECLARATION
OF DAVID SPIVAK IN SUPPORT OF
PLAINTIFF’S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**



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1 **SUPPLEMENTAL DECLARATION OF DAVID G. SPIVAK IN SUPPORT OF**
2 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

3 I, DAVID SPIVAK, declare as follows:

4 1. I am an attorney duly licensed to practice law in the State of California and am an
5 attorney of record for Plaintiff Nataliah Devol Green (“Plaintiff”) in her lawsuit against
6 Defendants MORGAN COOKIE GROUP CULVER LLC; MORGAN COOKIE GROUP LLC;
7 MORGAN COOKIE GROUP DOWNEY LLC; CRUMBL LLC; and POCKETS SMITTY LLC
8 (collectively “Defendants”). Plaintiffs and Defendants are collectively referred to as the “Parties.”

9 2. Except as otherwise indicated, I have personal knowledge of all matters set forth
10 herein and, if called as a witness, could and would competently testify thereto under oath.

11 3. A true and correct copy of the Court’s Checklist for Preliminary Approval of Class
12 Action Settlement dated June 18, 2025 is attached as **Exhibit A** to this declaration.

13 4. A true and correct copy of the First Amended Class Action and PAGA Settlement
14 Agreement and Class Notice dated September 18, 2025, is attached as **Exhibit B** to this
15 declaration.

16 5. A true and correct copy of the redline comparison between the Class Action and
17 PAGA Settlement Agreement and Class Notice dated December 31, 2024 and the First Amended
18 Class Action and PAGA Settlement Agreement and Class Notice dated September 18, 2025, is
19 attached as **Exhibit C** to this declaration.

20 6. A true and correct copy of the “Attorney Consultation and Fee Contract For
21 Contingency Cases” signed by Plaintiff and her counsel is attached as **Exhibit D** to this
22 declaration.

23 7. The Settlement provides that Plaintiff may seek a Class Representative Service
24 Payment of \$15000.00. \$15,000.00. Approving a Class Representative Service Payment of
25 \$15,000.00 to Plaintiff amounts to 3.3 percent of the GSA to Plaintiff (\$15,000.00 / \$450,000.00
26 = 3.3%).

27 8. Plaintiff began the investigation of her claims and retention of counsel in
28 approximately July of 2022. Awarding Plaintiff 3.3 percent of the GSA is entirely reasonable



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1 given Plaintiff's efforts in this case undertaken on behalf of absent Class Members. In this case,
2 Plaintiff has devoted several hours of her time advancing the interests of the Class Members and
3 also expects to devote additional hours of her time with Class Counsel overseeing the
4 administration of the Settlement if the Court grants final approval of the Settlement. *See generally*
5 Declaration of Declaration of Nataliah Devol Green. She has done this by, among other things,
6 retaining experienced counsel, providing them with extensive information about her work history
7 with Defendants and Defendants' policies and practices with respect to the wage and hour claims
8 at issue, participating in a full day of mediation, foregoing pursuit of her individual claims in
9 favor of a fair class-wide resolution, and being actively involved in the settlement process to
10 ensure a fair result for the Class Members as a whole.

11 9. As Class Representative, Plaintiff agreed to (1) consider the interests of the class
12 just as she would consider her own interests and, in some cases, to put the interests of the class
13 before her own interests; (2) actively participate in the lawsuit, as necessary, by among other
14 things, answering interrogatories, producing documents to Defendants and giving deposition and
15 trial testimony if requested; (3) travel to give such testimony; (4) recognize and accept that any
16 resolution of the lawsuit by dismissal or settlement, is subject to court approval, and must be
17 designed in the best interest of the class as a whole; (5) follow the progress of the lawsuit and
18 provide all relevant facts to Class Counsel; (6) champion many other people with similar claims
19 and injuries because of the importance of the case and that necessity that all Class Members
20 benefit from the lawsuit; and (7) fight for a resolution in which the individual recovery to each
21 class member, including Plaintiff, may be relatively small. Plaintiff agreed to shoulder all of these
22 responsibilities in exchange for a proportionate share of funds made available for distribution to
23 the Class Members. *See generally* Declaration of Nataliah Devol Green. Plaintiff had no
24 guarantee of a Class Representative Service Payment. This justifies the Class Representative
25 Service Payment sought.

26 10. In taking the actions outlined above, Plaintiff has exposed herself to significant
27 risks, including the risk that she could have been ordered to pay Defendants' attorneys' fees and
28 costs if this Action had been unsuccessful (*see* Lab. Code §§ 218.5-218.6), as well as the risk that



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1 she could, in the future, face a potentially hostile work environment and worsened career
2 prospects for suing a prior employer for wage and hour violations and serving as the Plaintiff in
3 a class action lawsuit. Additionally, Plaintiff has exposed herself to the risk that she could end up
4 receiving less than Defendants would have paid her at the beginning of the Action via a C.C.P. §
5 998 offer or other individual settlement offer to drop her class allegations. On many occasions,
6 California courts have ordered wage and hour plaintiffs and would be class representatives to pay
7 outrageous fee and/or cost awards for unsuccessful claims. A few examples are:

- 8 a. *Zalewa v. Tempo Research Corp.*, No. B238142, 2013 WL 766535 (CA 2nd Dist.
9 March 1, 2013) (court awarded the employer \$2,210,360 in attorney's fees to be
10 paid by employee for employee's unsuccessful suit for unpaid bonuses). A true
11 and correct copy of the court's order is attached to this declaration as **Exhibit E**.
- 12 b. *Cun v. Café Tiramisu LLC*, No. A131241, 2011 WL 5979937 (CA 1st Dist. Nov.
13 30, 2011) (court ordered the employee to pay \$36,612.50 in attorney's fees and
14 costs to employer for unsuccessful suit for unpaid wages). A true and correct copy
15 of the court's order is attached to this declaration as **Exhibit F**.
- 16 c. *Csaszi v. Sharp Healthcare*, No. D038558, 2003 WL 352422 (CA 4th Dist. Feb.
17 18, 2003) (court ordered the employee to pay \$20,269 in attorney's fees and costs
18 to the employer for unsuccessful suit for unpaid wages and overtime). A true and
19 correct copy of the court's order is attached to this declaration as **Exhibit G**.
- 20 d. *Villalobos v. Guertin*, No. CIV. S-07-2778 LKK/GGH, 2009 WL 4718721
21 (U.S.D.C. Eastern Dist. Dec. 3, 2009) (court ordered Plaintiff's counsel to pay
22 \$21,180 in attorney's fees and \$1,525.80 in costs to defense counsel for unpaid
23 wages). A true and correct copy of the court's order is attached to this declaration
24 as **Exhibit H**.

25 Such costs awards are higher than the share of the Net Settlement Amount ("NSA") that Plaintiff
26 stands to receive as a participating Class Member. It is unfair in view of the substantial risk of an
27 adverse fee or cost award of several thousand dollars that Plaintiff receives less as a reward for
28 taking such a risk. Moreover, we cannot lose sight of the fact that Plaintiff is not a high wage



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1 earner. Even the lowest of the cost awards listed above would have devastating consequences for
2 Plaintiff in view of her modest earnings.

3 11. Plaintiff's individual share of the recovery can be less than that of some absent
4 participating Class Members. Under the Settlement, a participating Class Member will receive a
5 *pro rata* distribution of the Settlement proceeds proportionate to the number of workweeks he or
6 she worked for Defendants during the Class Period, compared to the total of the total number of
7 workweeks worked by all participating Class Members, as reflected by Defendants' records.
8 Defendants employed Plaintiff Nataliah Devol Green from approximately May 24, 2022 until
9 September 15, 2022. Some Class Members – those who worked more workweeks during the Class
10 Period - will receive more, and some less. Because Plaintiff may have been employed for a shorter
11 period during the Class Period, some Class Members will have worked more workweeks than
12 Plaintiff and, as a result, receive larger shares in the recovery – *even though they did not actively*
13 *participate in the lawsuit*. To encourage employees like Plaintiff to don the helm of class
14 champions (and thereby advance the important public policies behind class actions), the Court
15 should award something substantial to Plaintiff for her readiness to receive less than absent Class
16 Members while assuming all the risk and delay of payment.

17 12. The average putative class member in this case would be unlikely to pursue
18 individually the claims Plaintiff brought against Defendants because such claims would be too
19 small to justify the cost and the risk. A putative class member will be unlikely to find an attorney
20 who is willing to pursue an individual's claims because the claims are too small to justify the
21 hundreds of hours of legal work necessary to prove each claim. Only the class action vehicle,
22 which allows for the aggregation of hundreds of risky small dollar value claims, makes such
23 claims advantageous for an attorney to pursue on a contingency basis and there can be no class
24 action without a class member assuming the great fiduciary responsibilities of as class
25 representative. This court should allow the Class Representative Service Payment requested
26 because to do otherwise would discourage employees (and attorneys) from bringing class actions
27 in the first place.

28 13. If would-be class action plaintiffs are not adequately incentivized to advance the



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1 public policy behind class actions in court in light of the time and risk it will entail, it is unlikely
2 that they will bring class action lawsuits in the first place. Once employers realize that such
3 lawsuits are unlikely, they will have no incentive to comply with wage and hour laws.

4 14. Plaintiff faced the risk that she could face worsened career prospects for suing a
5 former employer for wage and hour violations and serving as the Plaintiff in a class action lawsuit.
6 *See generally* Declaration of Nataliah Devol Green. Because she filed a lawsuit in the California
7 Superior Court, a public record now exists that Plaintiff sued her employer for Labor Code
8 violations – a fact that won’t be lost on prospective employers considering her for a job. Common
9 sense dictates that an employer will think twice about hiring someone who sued her last employer.
10 Legal experts have recognized this fact. Attached to this declaration as **Exhibit I** is a true and
11 correct copy of the article “Employees: Better Think Twice Before Suing Your Employer (Four
12 Reasons Why).” Attached to this declaration as **Exhibit J** is a true and correct copy of the article
13 “What To Expect If You Sue Your Employer.” California even has laws to address this risk:
14 Labor Code § 1102.5 prohibits retaliation against employees who speak up about Labor Code
15 violations and Labor Code § 98.6 prohibits discrimination against employees who bring Labor
16 Code violations to the attention of the Labor Commissioner. Thus, the risk to Plaintiff’s future
17 employment shows that the Class Representative Service Payment sought is fair, adequate, and
18 reasonable, and warrants final approval of the Court.

19 15. Class Counsel depended on Plaintiff’s input to prosecute this lawsuit. Plaintiff
20 made this case possible for a number of reasons. First, Plaintiff challenged her employers on an
21 unlawful practice that led to Defendants paying a large percentage of the unpaid wages in question
22 plus interest to the remainder of its employees – in spite of Defendants’ financial limitations.
23 Plaintiff provided Class Counsel with detailed descriptions of how Defendants’ business operates,
24 the hours and scheduling of employees, and the nature of the work Class Members performed.
25 *See generally* Declaration of Nataliah Devol Green.

26 16. By agreeing to settle the case in the best interest of the Class Members, Plaintiff
27 has given up the right to pursue individual claims and recover substantially more in unpaid wages,
28 interest, waiting time penalties, pay stub penalties, and civil penalties that she will release as part



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1 of the Settlement. Plaintiff did not seek individual settlement for her claims at all, instead choosing
2 to prosecute the claims on behalf of the Class Members.

3 17. In view of the risks, Plaintiff achieved a result the Class can be proud of. There
4 were significant risks (outlined in the preliminary approval motion) to any award on behalf of the
5 Class Members and still Plaintiff achieved a settlement of \$450,000.00. This outstanding result
6 calls for significant awards to Plaintiff for making the result possible.

7 I declare under the penalty of perjury of the laws of the State of California that the
8 foregoing is true and correct to the best of my knowledge.

9
10 Executed on Friday, September 19, 2025 at New York, New York.

11 

12 DAVID SPIVAK,
13 Declarant
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EXHIBIT A

#5

FILED
Superior Court of California
County of Los Angeles
JUN 18 2025
David W. Smith, Executive Officer/Clerk of Court
By: T. Lewis, Deputy

LOS ANGELES SUPERIOR COURT, COMPLEX CIVIL DEPARTMENT

CHECKLIST FOR

PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Department: SSC- 11

RE: Green v. Morgan Cookie Group Culver, LLC, et al. (Case No. 23STCV11939)

In reviewing your motion for preliminary approval of class action settlement, the Court orders further briefing on the items checked below.

The additional briefing shall be due by Sept. 16, 2025. Note: if briefing is not filed by said date the hearing will be placed off calendar. Your hearing date set for 6/18/25 ~~1/12/26~~, is continued to the first available date of 1/12/26 at 9:30 AM Department 11.

This checklist provides direction on what information and argument the court requires to grant a motion for preliminary approval of a class action settlement. All parties are urged to carefully review the checklist and fully comply with each item that applies to the case in order that the motion may be promptly ruled upon. The content of the motion should follow the same order as this checklist, as that is how the judge and research attorney review the motion.

You should also consider using the form wage and hour settlement agreements now available on the court's website at <https://www.lacourt.org/forms/all> – “Civil Forms” section. With input and unanimous consensus from an Ad Hoc Wage and Hour Committee (chaired by Judge Hogue and Judge Cunningham and comprised of 8 plaintiff's attorneys and 8 defense attorneys), the court has posted: (1) a form class action settlement agreement, (2) a form class action/PAGA settlement agreement, (3) and a form PAGA settlement agreement. Using these forms should cut down on attorney negotiation time and reduce the lag time between a successful mediation and execution of a long form agreement. Filing a motion that is based on a form agreement and includes a redlined copy identifying modifications will also expedite the court's review process and help reduce the current backlog on hearings. These forms are encouraged but entirely optional.

I. MOVING PAPERS (Motion and Declarations)

All facts submitted for the court to consider must be provided in the form of a declaration or other admissible evidence. The court will not consider facts stated only in the motion.

A. Introductory Information

- ☐ Summary of the litigation, including identity of the parties, brief procedural history, claims asserted, and general factual basis for the claims.

B. Dunk/Kullar Analysis

- ☐ Summary of the case, including the legal and factual basis for each claim. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133 (*Kullar*); *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.)
- ☐ Summary of the investigation and discovery conducted, including the specific documents reviewed prior to agreeing to settle the case. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802, as modified Sept. 30, 1996 (*Dunk*).) If counsel's analysis was informed by a data sample, show that the sample is statistically reliable.
- ☐ Summary of settlement negotiations, including when the settlement was reached, and whether the parties were assisted by a mediator. (*Dunk, supra*, 48 Cal.App.4th at p. 1802.)
- ☐ A summary of the risks, expenses, complexity, and duration of further litigation if the settlement is not approved.
- ☐ A summary of the risks of achieving and maintaining class action status.
- ☐ Specific information sufficient for the court to make an independent determination that the consideration being received for the release of class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation. (*Kullar, supra*, 168 Cal.App.4th at 129.) This discussion should specify the maximum realistic recovery of each claim asserted in the operative complaint, defenses asserted by Defendant, and any other relevant factors justifying the amount offered in settlement. If the settlement is predicated on a payment plan or is predicated on defendant's financial situation, admissible evidence of Defendant's financial situation should be provided, including appropriate financial documents such as a balance sheet, statement of cash flows, profit and loss statement, and the like.
- ☐ If approval of the settlement of class claims is requested together with approval of non-class claims (such as claims under the Labor Code's Private Attorney General Act (PAGA)) discuss why the amount allocated to the non-class claims is fair to those affected. See *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77 (*Moniz*).

C. Class Certification

- ☐ Numerosity: Total number of members in the settlement class and number of members in each sub-class (if applicable).
- ☐ Ascertainability: The manner by which members of the class will be identified and when. (*Noel v. Thrifty Payless* (2019) 7 Cal.5th 955.)

☐ Community of Interest: Discuss specific facts showing that the proposed class representatives have claims or defenses typical of the class and can adequately represent the class. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

☐ Adequacy:

Class Counsel: A summary of Class Counsels' experience and a listing of all prior cases in which each named Class Counsel has been approved by a court to act as lead or co-counsel. (See *Dunk, supra*, 48 Cal.App.4th at p. 1802.)

☒ Adequacy: Class Representative(s): Provide evidence that each proposed class representative has agreed to act as same and understands his or her responsibilities. (See *Soderstedt v. CBIZ Southern California, LLC* (2011) 197 Cal.App.4th 133, 155-156; *Jones v. Farmers Ins. Exchange* (2013) 221 Cal.App.4th 986, 998-999).

D. Claim Requirement (if applicable)

☐ If class members are required to submit a claim to receive compensation, explain why a claim form is necessary and either 1) provide an estimate of the anticipated claims rate or 2) provide an explanation why a claims rate cannot be provided.

☐ Provide a detailed explanation why a "claims made" settlement is appropriate in this case.

☐ Indicate what actions class counsel will take to encourage claim submission.

☐ Explain why the claims process is not so burdensome that relief would be inaccessible to class members (if applicable).

E. Miscellaneous

☐ If appropriate, explain why the settlement includes terms that are outside the scope of the operative complaint. (*Trotsky v. Los Angeles Fed. Savings & Loan Assn.* (1975) 48 Cal.App.3d 134, 148.) If approval of settlement of a PAGA claim is requested provide a copy of Plaintiff's notice letter to the LWDA.

☒ If notice will be given in English only, explain why this is sufficient.

☐ A statement of any affirmative obligations to be undertaken by the class member or class counsel and the reason for such obligations.

☒ Provide information regarding any fee splitting agreement and whether the client has given written approval. (*Mark v. Spencer* (2008) 166 Cal.App.4th 219; Rules Prof. Conduct, rule 1.5.1; Cal. Rules of Court, rule 3.769.)

☐ Any agreement that has injunctive relief against a class representative generally is not appropriate in a class action case. Provide the authority and factual reasons why this case is an exception. See *Moniz, supra*, 72 Cal.App.5th at 84. (“[T]he preclusive effect of a prior judgment is determined by the court in which it is asserted, not the court that rendered it.” (*Fireside Bank Cases* (2010) 187 Cal.App.4th 1120, 1131 [115 Cal. Rptr. 3d 80].))

☒ **Explanation as to why any class representative enhancement is reasonable, including what the class representative did beyond the expected services of any class representative. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412; *Radcliffe v. Experian Information Solutions Inc.* (9th Cir. 2013) 715 F.3d 1157, 1165.) In PAGA settlements explanation should be provided as to why an incentive award is appropriate.**

- \$15,000 seems excessive for an incentive award.

SETTLEMENT AGREEMENT

The settlement agreement should address the following:

A. The Basics

☐ Class definition. If a PAGA representative action is settled with a proposed Class Settlement consider whether there should be separate definitions for Class Members and Aggrieved Employees.

☐ Class and Release Period: If the class and release periods extend beyond the preliminary approval explain why this is appropriate.

B. Release of Claims

☐ Scope: The scope of any release given by class members must be defined with precision and clarity. Any released claims not presented directly in the operative complaint should be based on the facts alleged in the operative complaint. (See *Amaro v. Anaheim Arena Mgmt.* (2021) 69 Cal. App. 5th 521, 537 and FN. 5; *Uribe v. Crown Building Maintenance Co.* 70 Cal. App. 5th 986, 1005.)

☐ Class cases which include a PAGA claim should have a separate release for the PAGA claim tied to the facts alleged in the notice given to the LWDA. *Id.*

☐ If PAGA and Class Settlement: The Release and Notice should provide an explanation that released claims include all PAGA claims that could have been premised on the facts alleged in the Plaintiff's LWDA Letter and aggrieved employees will release PAGA claims even if class members request exclusion from the class. See *Robinson v. Southern Counties Oil Co.* (2020) 53 Cal.App.5th 476.

☐ A Civil Code section 1542 waiver is generally not appropriate in a class action case as to the putative class members (if applicable). Provide the authority and factual reasons why this case is an exception. (*Israel-Curley v. California Fair Plan* (2005) 126 Cal.App.4th 123, 129; *Salehi v. Surfside III Condominium Owners' Assn.* (2011) 200 Cal.App.4th 1146, 1159–1161.)

☐ Release Effective Date: Indicate the point in time at which the release will be deemed effective as to the absent class members. If the release will be effective before settlement funds are paid, explain why this is in the best interest of the class.

☐ Class Data: If there are confidentiality provisions, explain why they are in the best interest of the Class and whether they will impede Class Counsel's ability to discharge fiduciary duties.

C. Monetary Terms of Settlement

☒ **Settlement Amount:** Indicate the amount of the gross settlement, how and when the settlement will be paid, and information regarding payment plan, if any. If a class claim is being settled with a PAGA claim the amounts allocated should be separated and paid only to the aggrieved employees.

- Defendants are to provide declarations evidencing the need for a payment plan.
- Revise ¶4.4 so that Counsel and Plaintiff are only paid after the Class and Aggrieved Employees have been fully paid.
- Paragraph 9 of the Settlement Agreement provides that "If the number of valid Requests for Exclusion exceeds 10% of the total of all Class Members, Defendants may elect to withdraw from the Settlement." (¶9) Do all of the Defendants have to agree to withdraw or can one Defendant withdraw and not the others? How will the settlement funding be effected in such an instance?
- Why is it proper that Defendant CRUMBL LLC is not obligated to fund any portion of the Gross Settlement Amount? (¶4.3)

☐ Deductions from the settlement fund: Indicate the amounts to be deducted from the gross settlement for attorneys' fees and costs, plaintiff incentive awards, administrative costs, PAGA payment and allocation of award to LWDA and the parties, and any other existing deductions.

☐ If there are subclasses, explain why the monetary distribution is fair to each subclass. Ensure there is a class representative who fits the definition of each subclass.

☐ Information about how attorney fees will be calculated. The percentage method, with or without a lodestar cross-check, may be used in common fund cases. (*Laffitte v. Robert Half Internat., Inc.* (2016) 1 Cal.5th 480, 503.) In other cases, counsel should fully brief how the fees are calculated.

- ☐ If wages are involved, explain how Defendant's share of taxes will be paid.
- ☐ Whether, and under what circumstances, amounts may revert to Defendant, and a justification for such reversion (if applicable). (*Cundiff v. Verizon California, Inc.* (2008) 167 Cal.App.4th 718, 728–729.)
- ☐ Payment Formula: Amount and manner of distribution of the compensation to each class member, including the estimated amount each class member will receive and the timeline on which payments will be issued.
- ☐ Tax allocation of settlement payments.
- ☐ Nature of injunctive relief (if any), and valuation of such relief.

D. Notice Administration

The following issues regarding notice administration should be addressed in the settlement agreement. A copy of the proposed notice must be attached to the settlement agreement as an exhibit.

- ☐ Indicate the administrator for the settlement and why the bid for administration is fair.
- ☐ Provide the qualifications and experience of the Administrator, including evidence that the settlement administrator has procedures in place to protect the security of class data and adequate insurance in the event of a data breach or defalcation of funds.
- ☐ Indicate how/when the administrator will receive the class list.
- ☐ Indicate whether the list will be updated by the administrator prior to the initial mailing by use of National Change of Address Registry.
- ☐ Provide the deadline for the initial issuance of notice to class members.
- ☐ Ensure the content of the notice complies with California Rules of Court, rule 3.766(d). In wage and hour cases the notice should indicate the specific amount the class member will receive and how that amount was calculated. A separate breakdown for PAGA payments should be provided. The terms of the release(s) should be reflected in the Notice.
- ☐ Ensure the notice accurately reflects the Court's current social distancing procedures for attendance at hearings and review of court files. (Counsel should check the Court website for most current information.)
- ☐ Indicate how and when payments will be processed.

- ☐ Indicate how notices returned to the administrator as undeliverable will be handled.
- ☐ Explain how re-mailed notices, if any, will be handled. Will class members who receive re-mailed notices be given an extended deadline to respond (i.e., opt-out, object, and dispute workweeks)?
- ☐ Explain how notice of any change of the date or location of the will hearing be given.
- ☐ Indicate whether there will be a settlement website. If so, provide the URL.
- ☐ If publication notice will be given indicate the timing, locations, and manner by which publication notice will be disseminated.
- ☐ Explain how notice of final judgment will be given to the class. (Cal. Rules of Court, rule 3.771(b)) (e.g. Posted on administrator's website.)

E. Responses to Notice

- ☐ Description of the procedures for submitting written objections, requests for exclusion, claim forms (if applicable) and disputes to estimated payments.
- ☐ Indicate the deadline to submit objections, requests for exclusion, claim forms (if applicable), and/or disputes to workweeks. Confirm the deadline is reasonable and that class members who receive re-mailed notices will be given an extension.
- ☐ The objection procedure should be the same as the opt-out procedure, with the only requirement being that objections be mailed to the settlement administrator and not filed with the court.
- ☐ Do not include language indicating that class members may only be heard at final approval if they have complied with all objection procedures or that they must use specific language to request exclusion, or, if a specific procedure is sought, explain why it is necessary. In general, the court will hear from any class member who attends the final approval hearing and asks to speak regarding his or her objection.

F. Cy Pres Distribution

- ☐ Indicate the length of time from issuance for which settlement checks will remain valid.
- ☐ Identify the fund to which uncashed checks will be directed and detail the steps that will be taken to ensure compliance with Code of Civil Procedure section 384. The Court's Omnibus Trailer Bill of 2018 replaced the language of the prior statutory distribution scheme under Code of Civil Procedure, section 384 with a requirement that the Court re-open judgments following the final distribution of funds to include the cy

pres in the judgment and to include the unclaimed amount, plus an unspecified amount of interest. Such information should be actively contemplated/provided for within the current terms of the settlement.

☐ Explain why the cy pres distribution fills the purposes of the lawsuit or is otherwise appropriate. (*State of California v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 472; *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 722; *Nachshin v. AOL, Inc.* (9th Cir. 2011) 663 F.3d 1034, 1038–1041; *Dennis v. Kellogg Co.* (9th Cir. 2012) 697 F.3d 858, 865; Code Civ. Proc., § 384.)

☐ Provide declarations by all parties and counsel disclosing any interest or involvement (or lack thereof) in the governance or work of the cy pres recipient.

G. MISCELLANEOUS

☐ Assure the Settlement Agreement and Notice are consistent and that the Settlement Agreement (including revised versions) has been signed by all parties and counsel. Carefully proofread both.

☐ The Settlement Agreement and paperwork derivative thereof should not suggest that the end result of court approval will be dismissal of the Action with prejudice or entry of a Final Judgment and Order dismissing with prejudice all claims. See California Rules of Court, rule 3.769(h).

III. EXHIBITS TO THE MOTION

☐ Provide proof of submission of the proposed settlement agreement to the LWDA. (Lab. Code, § 2699, subd. (1)(2).)

☐ Include a proposed Judgment, which should not include a dismissal or any findings not contained in the Final Approval Order. (Cal. Rules of Court, rule 3.769(h).)

☐ All exhibits should be bookmarked, as set forth in the Presiding Judge's First Amended General Order of May 3, 2019 re: Electronic Filing, available on the Court website.

If the Settlement Agreement is modified pursuant to this checklist, please submit both a red-lined copy showing changes made as well as a final version signed by all parties and counsel. Do not submit an addendum in lieu of a full amended settlement agreement including all operative settlement terms.

Modify notice to match any alterations to the Settlement Agreement.

Date: 6/18, 2025

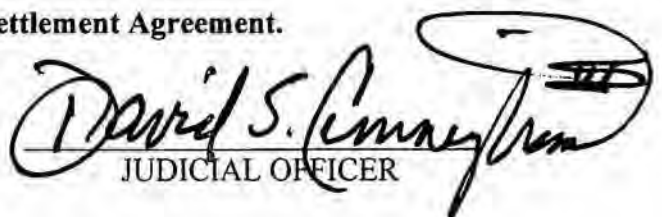

JUDICIAL OFFICER

EXHIBIT B

1 DAVID GLENN SPIVAK (SBN 179684)
david@spivaklaw.com
2 CAROLINE TAHMASSIAN (SBN 285680)
caroline@spivaklaw.com
3 THE SPIVAK LAW FIRM
4 8605 Santa Monica Bl
PMB 42554
5 West Hollywood, CA 90069
Telephone: (213) 725-9094
6 Facsimile: (213) 634-2485

7 Attorneys for Plaintiff(s),
8 NATALIAH DEVOL GREEN, and all others similarly situated
(Additional attorneys for parties on following page)

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**
12 **(UNLIMITED JURISDICTION)**

13 NATALIAH DEVOL GREEN, on behalf of
14 herself and all others similarly situated, and the
15 general public, and as an “aggrieved
employee” on behalf of other “aggrieved
16 employees” under the Labor Code Private
Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19 MORGAN COOKIE GROUP CULVER LLC,
20 a California limited liability company;
MORGAN COOKIE GROUP LLC, a
21 California limited liability company;
MORGAN COOKIE GROUP DOWNEY
22 LLC, a California limited liability company;
23 CRUMBL LLC, a Utah limited liability
company; POCKETS SMITTY LLC, a Utah
24 limited liability company; and DOES 1–50,
inclusive,

25 *Defendant(s).*
26

Case No. 23STCV11939

**FIRST AMENDED CLASS ACTION AND
PAGA SETTLEMENT AGREEMENT
AND CLASS NOTICE**

Action filed: May 25, 2023
Dept: Dept. 11, The Honorable
David S. Cunningham

1
2
3 **ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)**

4 BENJAMIN J. SMITH (SBN 266712)
5 Benjy@thesmithlawcorp.com
6 SMITH LAW
7 8605 Santa Monica Bl, PMB 97638
8 West Hollywood, CA 90069-4109
9 Telephone: (818) 839-9607
10 Facsimile: (818) 839-9700
11

12 **ATTORNEYS FOR DEFENDANT(S)**

13 PAUL HASTINGS LLP
14 CHRIS A. JALIAN (SBN 295564)
15 chrisjalian@paulhastings.com
16 515 South Flower Street
17 Twenty-Fifth Floor
18 Los Angeles, California 90071-2228
19 Telephone: (213) 683-6000
20 Facsimile: (213) 627-0705

21 Attorneys for Defendants
22 MORGAN COOKIE GROUP CULVER LLC,
23 MORGAN COOKIE GROUP LLC,
24 MORGAN COOKIE GROUP DOWNEY LLC,
25 and POCKETS SMITTY LLC
26

27 SARA ABARBANEL CA Bar No. 324045
28 sabarbanel@foley.com
29 FOLEY & LARDNER LLP
30 11988 EL CAMINO REAL, SUITE 400
31 SAN DIEGO, CA 92130-2594
32 TELEPHONE: 858.847.6700
33 FACSIMILE: 858.792.6773

34 Attorneys for Defendant CRUMBL LLC
35
36
37
38

1 This First Amended Class Action and PAGA Settlement Agreement (“Agreement”) is
2 made by and between Plaintiff NATALIAH DEVOL GREEN (“Plaintiff”) and Defendants
3 MORGAN COOKIE GROUP CULVER LLC, MORGAN COOKIE GROUP LLC, MORGAN
4 COOKIE GROUP DOWNEY LLC, CRUMBL LLC, and POCKETS SMITTY LLC (collectively
5 “Defendants”). The Agreement refers to Plaintiff and Defendants collectively as “Parties,” or
6 individually as “Party.”

7 **1. DEFINITIONS.**

8 1.1 “Action” means Plaintiff’s lawsuit alleging wage and hour violations against
9 Defendants captioned NATALIAH DEVOL GREEN, on behalf of herself and all others similarly
10 situated, and the general public, and as an “aggrieved employee” on behalf of other “aggrieved
11 employees” under the Labor Code Private Attorneys General Act of 2004 vs. MORGAN
12 COOKIE GROUP CULVER LLC, a California limited liability company; MORGAN COOKIE
13 GROUP LLC, a California limited liability company; MORGAN COOKIE GROUP DOWNEY
14 LLC, a California limited liability company; CRUMBL LLC, a Utah limited liability company;
15 POCKETS SMITTY LLC, a Utah limited liability company; and DOES 1–50, inclusive, Case
16 No. 23STCV11939, initiated on May 25, 2023, and pending in Superior Court of the State of
17 California, County of Los Angeles.

18 1.1. “Administrator” means Phoenix Class Action Administration Solutions, the
19 neutral entity the Parties have agreed to appoint to administer the Settlement.

20 1.2. “Administration Expenses Payment” means the amount the Administrator will be
21 paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in
22 accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection
23 with Preliminary Approval of the Settlement.

24 1.3. “Aggrieved Employee” means a person employed or otherwise contracted by (i)
25 Pockets Smitty Two, LLC; (ii) Pockets Smitty Riverside, LLC; (iii) Pockets Smitty Upland, LLC;
26 (iv) Pockets Smitty Menifee, LLC; (v) Morgan Cookie Group, LLC; (vi) Morgan Cookie Group
27 Culver, LLC; (vii) Pockets Smitty Fontana, LLC; (viii) Morgan Cookies Group Downey, LLC;
28 (ix) Pockets Smitty Corona, LLC and/or (x) Pockets Smitty Rosemead, LLC as non-exempt,
hourly employees during the PAGA Period.

1.4. “Class” means all persons employed or otherwise contracted by (i) Pockets Smitty

Two, LLC; (ii) Pockets Smitty Riverside, LLC; (iii) Pockets Smitty Upland, LLC; (iv) Pockets Smitty Menifee, LLC; (v) Morgan Cookie Group, LLC; (vi) Morgan Cookie Group Culver, LLC; (vii) Pockets Smitty Fontana, LLC; (viii) Morgan Cookies Group Downey, LLC; (ix) Pockets Smitty Corona, LLC and/or (x) Pockets Smitty Rosemead, LLC as non-exempt, hourly employees during the Class Period.

1.5. “Class Counsel” means David Glenn Spivak of The Spivak Law Firm and Benjamin J. Smith of Smith Law.

1.6. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

1.7. “Class Data” means Class Member identifying information in Defendants’ possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Class Workweeks and PAGA Pay Periods.

1.8. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

1.9. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.10. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement. Defendants represent that an English only Class Notice is sufficient.

1.11. “Class Period” means the period from May 25, 2019 to the date of preliminary approval of this Settlement.

1.12. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.

1.13. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.

1.14. "Court" means the Superior Court of California, County of Los Angeles.

1.15. "Defendants" means named Defendants means named Defendants MORGAN COOKIE GROUP CULVER LLC; MORGAN COOKIE GROUP LLC; MORGAN COOKIE GROUP DOWNEY LLC; CRUMBL LLC; and POCKETS SMITTY LLC.

1.16. "Defense Counsel" means Chris A. Jalian, Esq. of Paul Hastings LLP and Sara Abarbanel of Foley & Lardner LLP.

1.17. "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: the day after the deadline for filing a notice of appeal from the Judgment; or (b) if an appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

1.18. "Final Approval" means the Court's order granting final approval of the Settlement.

1.19. "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval of the Settlement.

1.20. "Final Judgment" means the Judgment Entered by the Court upon Granting Final Approval of the Settlement. A proposed Final Judgment form is attached as Exhibit F.

1.21. "Gross Settlement Amount" means \$450,000.00 which is the total amount Defendants agree to pay under the Settlement. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator's Expenses. Defendant CRUMBL LLC is not obligated to fund any portion of the Gross Settlement Amount.

1.22. "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Class Workweeks worked during the Class Period.

1.23. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period.

1.24. "Judgment" means the judgment entered by the Court based upon the Final Approval.

1 1.25. “LWDA” means the California Labor and Workforce Development Agency, the
2 agency entitled, under Labor Code section 2699, subd. (i).

3 1.26. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the
4 LWDA under Labor Code section 2699, subd. (i).

5 1.27. “Net Settlement Amount” means the Gross Settlement Amount, less the following
6 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
7 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
8 Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be
9 paid to Participating Class Members as Individual Class Payments.

10 1.28. “Non-Participating Class Member” means any Class Member who opts out of the
11 Settlement by sending the Administrator a valid and timely Request for Exclusion.

12 1.29. “Notice Packet” means the Class Notice (Exhibit A), the Election Not to
13 Participate in Settlement form (Exhibit B), the Class Workweek Dispute form (Exhibit C), and
14 the Objection form (Exhibit D) in English.

15 1.30. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee
16 worked for Defendants for at least one day during the PAGA Period.

17 1.31. “PAGA Period” means the period from April 4, 2022 to the date of preliminary
18 approval of this Settlement.

19 1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

20 1.33. “PAGA Notice” means Plaintiff’s April 4, 2023 letter to Defendants and the
21 LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

22 1.34. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from
23 the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$1,250.00) and the
24 75% to LWDA (\$3,750.00) in settlement of PAGA claims.

25 1.35. “Participating Class Member” means a Class Member who does not submit a valid
26 and timely Request for Exclusion from the Settlement.

27 1.36. “Plaintiff” means Nataliah Devol Green, the named plaintiff in the Action.

28 1.37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval
of the Settlement.

1.38. “Preliminary Approval Order” means the proposed Order Granting Preliminary
Approval and Approval of PAGA Settlement. A proposed Preliminary Approval Order form is

1 attached as Exhibit E.

2 1.39. “Released Class Claims” means the claims being released as described in
3 Paragraph 6.2 below.

4 1.40. “Released PAGA Claims” means the claims being released as described in
5 Paragraph 6.2 below.

6 1.41. “Released Parties” means: Defendants, and each of their respective former and
7 present directors, officers, shareholders, owners, parents, subsidiaries, brother-sister companies,
8 franchisors, affiliates, members, attorneys, insurers, employees, predecessors, successors, and
9 assigns, including, without limitation, (i) Pockets Smitty Two, LLC; (ii) Pockets Smitty
10 Riverside, LLC; (iii) Pockets Smitty Upland, LLC; (iv) Pockets Smitty Menifee, LLC; (v)
11 Morgan Cookie Group, LLC; (vi) Morgan Cookie Group Culver, LLC; (vii) Pockets Smitty
Fontana, LLC; (viii) Morgan Cookies Group Downey, LLC; (ix) Pockets Smitty Corona, LLC
and/or (x) Pockets Smitty Rosemead, LLC.

12 1.42. “Request for Exclusion” means a Class Member’s submission of a written request
13 to be excluded from the Class Settlement signed by the Class Member. An Election Not to
14 Participate in Settlement form is attached as Exhibit B.

15 1.43. “Response Deadline” means 60 days after the Administrator mails Notice to Class
16 Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a)
17 fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or
18 her Objection to the Settlement. Class Members to whom Notice Packets are resent after having
19 been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond
the Response Deadline has expired.

20 1.44. “Settlement” means the disposition of the Action effected by this Agreement and
21 the Judgment.

22 1.45. “Class Workweek” means any week during which a Class Member worked for
23 Defendants for at least one day, during the Class Period.

24 1.46. A Class Workweek Dispute form is attached as Exhibit C.

25 **2. RECITALS.**

26 2.1. On May 25, 2023, Plaintiff commenced this Action by filing a Complaint
27 alleging causes of action against Defendants for failure to pay wages, failure to authorize and

1 permit rest periods, failure to provide meal periods, failure to indemnify for business expenses,
2 failure to issue proper wage statements, failure to timely pay wages, failure to maintain required
3 payroll records, and related claims. On June 9, 2023, Plaintiff filed a First Amended Complaint
4 alleging causes of action against Defendants for failure to pay wages, failure to authorize and
5 permit rest periods, failure to provide meal periods, failure to indemnify for business expenses,
6 failure to issue proper wage statements, failure to timely pay wages, failure to maintain required
7 payroll records, and related allegations. The First Amended Complaint is the operative complaint
8 in the Action (the “Operative Complaint.”) Defendants deny the allegations in the Operative
9 Complaint, deny any failure to comply with the laws identified in in the Operative Complaint and
deny any and all liability for the causes of action alleged.

10 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave written notice to
11 Defendants and the LWDA by sending the PAGA Notice. For the purposes of this Settlement,
Defendants do not contest the timeliness of Plaintiff’s PAGA Notice.

12 2.3. On March 8, 2024, the Parties participated in an all-day mediation presided over
13 by mediator the Honorable Ann Jones (ret.). The Parties later engaged in direct settlement
14 negotiations, which led to this Agreement to settle the Action.

15 2.4. Prior to mediation, Plaintiff obtained, through informal discovery, time and
16 payroll records, policies, training documents, and related information. Plaintiff’s investigation
17 was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.*
18 (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
19 116, 129-130 (“*Dunk/Kullar*”). Following the mediation, Defendants produced thousands of
pages of financial records to demonstrate their financial condition.

20 2.5. The Court has not granted class certification.

21 2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware
22 of any other pending matter or action asserting claims that will be extinguished or affected by the
Settlement.

23 **3. MONETARY TERMS.**

24 3.1. Gross Settlement Amount. Defendants promise to pay \$450,000.00 and no more
25 as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed
26 on the Wage Portions of the Individual Class Payments. Defendants have agreed to deposit
27 \$175,000 of the Gross Settlement into an account controlled by the Administrator of the

1 Settlement within 15 days of the Court granting final approval. Thereafter, Defendants will make
2 24 monthly contributions to the account controlled by the Administrator until the balance of the
3 Gross Settlement Amount is reached based on the payment schedule described in section 4. The
4 first of the monthly installment payments will be paid 30 days after the initial \$175,000 payment.
5 Defendants will make each of the next 23 payments every 30 days thereafter. The 24 monthly
6 payments will be in equal amounts of \$11,458.33 though the last and the final payment will be in
7 the amount of \$11,458.41. The Administrator will make a total of three distributions. The first
8 distribution will occur 14 days after the Effective Date. The second distribution will occur 14
9 days after the 12th monthly installment payment and the third and last distribution will occur 14
10 days after the last and final monthly installment payment. The Administrator will disburse the
11 Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved
12 Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount
13 will revert to Defendants. Defendant CRUMBL LLC is not obligated to fund any portion of the
14 Gross Settlement Amount.

15 3.2. Payments from the Gross Settlement Amount. The Administrator will make and
16 deduct the following payments from the Gross Settlement Amount, in the amounts specified by
17 the Court in the Final Approval:

18 3.2.1. To Plaintiff: Class Representative Service Payment to the Class
19 Representative of not more than \$15,000.00 (in addition to any Individual Class Payment and any
20 Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class
21 Member). Defendants will not oppose Plaintiff's request for a Class Representative Service
22 Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment
23 and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class
24 Representative Service Payments no later than 16 court days prior to the Final Approval Hearing.
25 If the Court approves a Class Representative Service Payment less than the amount requested, the
26 Administrator will retain the remainder in the Net Settlement Amount. The Administrator will
27 pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full
28 responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 33 and
1/3%, which is currently estimated to be \$150,000.00 and a Class Counsel Litigation Expenses
Payment of not more than \$20,000.00. Defendants will not oppose requests for these payments

provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$25,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$25,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Class Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Class Workweeks.

3.2.4.1. Tax Allocation of Individual Class Payments. 30.00% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 70.00% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments

1 in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

2 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the
3 amount of \$5,000.00 to be paid from the Gross Settlement Amount, with 75% (\$3,750.00)
4 allocated to the LWDA PAGA Payment and 25% (\$1,250.00) allocated to the Individual PAGA
5 Payments.

6 3.2.5.1. The Administrator will calculate each Individual PAGA Payment
7 by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$1,250.00
8 by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA
9 Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods.
10 Aggrieved Employees assume full responsibility and liability for any taxes owed on their
11 Individual PAGA Payment.

12 3.2.5.2. If the Court approves PAGA Penalties of less than the amount
13 requested, the Administrator will allocate the remainder to the Net Settlement Amount. The
14 Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

14 **4. SETTLEMENT FUNDING AND PAYMENTS.**

15 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of
16 their records through mediation, Defendants estimates there are 873 Class Members who
17 collectively worked a total of 18,013 Class Workweeks and 683 of Aggrieved Employees who
18 worked a total 13,691 of PAGA Pay Periods.

19 4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval
20 of the Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in
21 the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the
22 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes
23 of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator
24 employees who need access to the Class Data to effect and perform under this Agreement.
25 Defendants have a continuing duty to immediately notify Class Counsel if they discover that the
26 Class Data omitted class member identifying information and to provide corrected or updated
27 Class Data as soon as reasonably feasible. Without any extension of the deadline by which
28 Defendants must send the Class Data to the Administrator, the Parties and their counsel will
expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related

1 to missing or omitted Class Data.

2 4.3. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross
3 Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll
4 taxes by transmitting the funds to the Administrator. Defendants have agreed to deposit \$175,000
5 of the Gross Settlement into an account controlled by the Administrator of the Settlement within
6 15 days of the Court granting final approval. Thereafter, Defendants will make 24 monthly
7 contributions to the account controlled by the Administrator until the balance of the Gross
8 Settlement Amount is reached based on the payment schedule described in section 4. The first of
9 the monthly installment payments will be paid 30 days after the initial \$175,000 payment.
10 Defendants will make each of the next 23 payments every 30 days thereafter. The 24 monthly
11 payments will be in equal amounts of \$11,458.33 though the last and the final payment will be in
12 the amount of \$11,458.41. Defendants will also fund the amounts necessary to fully pay
13 Defendants' share of payroll taxes by transmitting the funds to the Administrator for each
14 distribution. Defendant CRUMBL LLC is not obligated to fund any portion of the Gross
15 Settlement Amount.

16 4.4. Payments from the Gross Settlement Amount. The Administrator will make a
17 total of three distributions. The first distribution will occur 14 days after the Effective Date. The
18 second distribution will occur 14 days after the 12th monthly installment payment and the third
19 and last distribution will occur 14 days after the last and final monthly installment payment. The
20 Administrator will disburse the Gross Settlement Amount without asking or requiring
21 Participating Class Members or Aggrieved Employees to submit any claim as a condition of
22 payment. None of the Gross Settlement Amount will revert to Defendants. For each distribution,
23 the Administrator will mail checks for all *pro rata* Individual Class Payments, all Individual
24 PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class
25 Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class
26 Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class
27 Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not
28 precede disbursement of Individual Class Payments and Individual PAGA Payments. Class
Counsel and Plaintiff shall receive their *pro rata* shares of each distribution only after the
Participating Class Members have been fully paid their *pro rata* shares of each distribution.

4.4.1. The Administrator will issue checks for the Individual Class Payments

1 and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail,
2 postage prepaid. The face of each check shall prominently state the date (not less than 180 days
3 after the date of mailing) when the check will be voided. The Administrator will cancel all checks
4 not cashed by the void date. The Administrator will send checks for Individual Settlement
5 Payments to all Participating Class Members (including those for whom Notice Packet was
6 returned undelivered). The Administrator will send checks for Individual PAGA Payments to all
7 Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved
8 Employees (including those for whom Notice Packet was returned undelivered). The
9 Administrator may send Participating Class Members a single check combining the Individual
10 Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator
must update the recipients' mailing addresses using the National Change of Address Database.

11 4.4.2. The Administrator must conduct a Class Member Address Search for all
12 other Class Members whose checks are returned undelivered without USPS forwarding address.
13 Within seven (7) days of receiving a returned check the Administrator must re-mail checks to the
14 USPS forwarding address provided or to an address ascertained through the Class Member
15 Address Search. The Administrator need not take further steps to deliver checks to Class Members
16 whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a
17 replacement check to any Class Member whose original check was lost or misplaced, requested
18 by the Class Member prior to the void date.

19 4.4.3. For any Class Member whose Individual Class Payment check or
20 Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator
21 shall transmit the funds represented by such checks to the California Controller's Unclaimed
22 Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to
23 the requirements of California Code of Civil Procedure Section 384, subd. (b).

24 4.4.4. The payment of Individual Class Payments and Individual PAGA
25 Payments shall not obligate Defendants to confer any additional benefits or make any additional
26 payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in
27 this Agreement.

28 **5. [OMITTED]**

6. RELEASES OF CLAIMS. Effective on the date when Defendants fully fund the entire
Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the

1 Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims
2 against all Released Parties as follows:

3 6.1 Plaintiff's Release. Plaintiff and her respective former and present spouses,
4 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release
5 and discharge Released Parties from all claims, transactions, or occurrences that occurred during
6 the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have
7 been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims
8 that were, or reasonably could have been, alleged based on facts contained in the Operative
9 Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under 6.2,
10 below. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to
11 enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability
12 benefits, social security benefits, workers' compensation benefits that arose at any time, or based
13 on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts
14 or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be
15 true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects,
16 notwithstanding such different or additional facts or Plaintiff's discovery of them.

17 6.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For
18 purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights,
19 and benefits, if any, of section 1542 of the California Civil Code, which reads:

20 **A general release does not extend to claims that the creditor or releasing party does
21 not know or suspect to exist in his or her favor at the time of executing the release,
22 and that if known by him or her would have materially affected his or her settlement
23 with the debtor or Released Party.**

24 6.2 Release by Participating Class Members Who Are Not Aggrieved Employees:
25 All Participating Class Members, on behalf of themselves and their respective former and present
26 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released
27 Parties from all claims stated in the Operative Complaint and those based solely upon the facts
28 alleged in the Operative Complaint. Except as set forth in Section 6.3 of this Agreement,
Participating Class Members do not release any other claims, including claims for vested benefits,
wrongful termination, violation of the Fair Employment and Housing Act, unemployment

1 insurance, disability, social security, workers' compensation, or claims based on facts occurring
2 outside the Class Period.

3 6.3 Release of PAGA Claim. Plaintiff releases all claims for civil penalties that
4 could have been sought by the Labor Commissioner for the violations identified in Plaintiff's
5 pre-filing letter to the LWDA; Plaintiff does not release the claim for wages or damages of any
6 Aggrieved Employee unless such Aggrieved Employee is a Participating Class Member.

7 **7. MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and
8 file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with
9 the Court's current checklist for Preliminary Approvals. A Preliminary Approval Order form is
10 attached as Exhibit E.

11 7.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel
12 all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice,
13 and memorandum in support, of the Motion for Preliminary Approval that includes an analysis
14 of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under
15 Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval
16 and Approval of PAGA Settlement; (iii) a draft proposed Notice Packet; (iv) a signed declaration
17 from the Administrator attaching its "not to exceed" bid for administering the Settlement and
18 attesting to its willingness to serve; competency; operative procedures for protecting the security
19 of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other
20 misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members;
21 and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense
22 Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve
23 and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members,
24 and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its
25 competency to represent the Class Members; its timely transmission to the LWDA of all necessary
26 PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative
27 Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699,
28 subd. (l)(2)); (vi) a redlined version of the parties' Agreement showing all modifications made to
the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or
potential conflict of interest with Class Members and/or the Administrator. In their Declarations,

1 Plaintiff and Class Counsel shall aver that they are not aware of any other pending matter or action
2 asserting claims that will be extinguished or adversely affected by the Settlement.

3 7.2 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly
4 responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later
5 than 60 days after the full execution of this Agreement; obtaining a prompt hearing date for the
6 Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion
7 for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary
Approval to the Administrator.

8 7.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion
9 for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
10 Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person
11 or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant
12 Preliminary Approval or conditions Preliminary Approval on any material change to this
13 Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of
14 the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and
otherwise satisfy the Court's concerns.

15 **8. SETTLEMENT ADMINISTRATION.**

16 8.1 Selection of Administrator. The Parties have jointly selected Phoenix Class
17 Action Administration Solutions to serve as the Administrator and verified that, as a condition of
18 appointment, Phoenix Class Action Administration Solutions agrees to be bound by this
19 Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for
20 payment of Administration Expenses. The Parties and their Counsel represent that they have no
21 interest or relationship, financial or otherwise, with the Administrator other than a professional
22 relationship arising out of prior experiences administering settlements.

23 8.2 Employer Identification Number. The Administrator shall have and use its own
24 Employer Identification Number for purposes of calculating payroll tax withholdings and
providing reports state and federal tax authorities.

25 8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund
26 that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury
27 Regulation section 468B-1.

1 8.4 Notice to Class Members.

2 8.4.1 No later than three (3) business days after receipt of the Class Data, the
3 Administrator shall notify Class Counsel that the list has been received and state the number of
4 Class Members, PAGA Members, Class Workweeks, and PAGA Pay Periods in the Class Data.

5 8.4.2 Using best efforts to perform as soon as possible, and in no event later than
6 14 days after receiving the Class Data, the Administrator will send to all Class Members identified
7 in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Notice Packet,
8 if applicable substantially in the forms attached to this Agreement as **Exhibits A, B, C, and D.**
9 The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual
10 Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of
11 Class Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before
12 mailing Notice Packets, the Administrator shall update Class Member addresses using the National
13 Change of Address database.

14 8.4.3 Not later than three (3) business days after the Administrator’s receipt of
15 any Notice Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice
16 Packet using any forwarding address provided by the USPS. If the USPS does not provide a
17 forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail
18 the Notice Packet to the most current address obtained. The Administrator has no obligation to
19 make further attempts to locate or send Notice Packet to Class Members whose Notice Packet is
20 returned by the USPS a second time.

21 8.4.4 The deadlines for Class Members’ written objections, Challenges to Class
22 Workweeks and/or PAGA Pay Periods (disputes), and Requests for Exclusion will be extended
23 an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class
24 Members whose notice is re-mailed. The Administrator will inform the Class Member of the
25 extended deadline with the re-mailed Notice Packet.

26 8.4.5 If the Administrator, Defendants or Class Counsel is contacted by or
27 otherwise discovers any persons who believe they should have been included in the Class Data
28 and should have received Notice Packet, the Parties will expeditiously meet and confer in person
or by telephone, and in good faith, in an effort to agree on whether to include them as Class
Members. If the Parties agree, such persons will be Class Members entitled to the same rights as
other Class Members, and the Administrator will send, via email or overnight delivery, a Class

1 Notice requiring them to exercise options under this Agreement not later than 14 days after receipt
2 of Class Notice, or the deadline dates in the Class Notice, which ever are later.

3 8.5 Requests for Exclusion (Opt-Outs).

4 8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class
5 Settlement must send the Administrator, by fax, email, or mail, a signed written Request for
6 Exclusion not later than 60 days after the Administrator mails the Notice Packet (plus an
7 additional 14 days for Class Members whose Notice Packet is re-mailed). A Request for
8 Exclusion is a letter from a Class Member or his/her representative that reasonably communicates
9 the Class Member's election to be excluded from the Settlement and includes the Class Member's
10 name, address and email address or telephone number. To be valid, a Request for Exclusion must
11 be timely faxed, emailed, or postmarked by the Response Deadline. An Election Not to Participate
12 in Settlement form, attached as Exhibit B, may be used for this purpose but is not required.

13 8.5.2 The Administrator may not reject a Request for Exclusion as invalid
14 because it fails to contain all the information specified in the Class Notice. The Administrator
15 shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the
16 identity of the person as a Class Member and the Class Member's desire to be excluded. The
17 Administrator's determination shall be final and not appealable or otherwise susceptible to
18 challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion,
19 the Administrator may demand additional proof of the Class Member's identity. The
20 Administrator's determination of authenticity shall be final and not appealable or otherwise
21 susceptible to challenge.

22 8.5.3 Every Class Member who does not submit a timely and valid Request for
23 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all
24 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
25 Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless of whether the
26 Participating Class Member actually receives the Class Notice or objects to the Settlement.

27 8.5.4 Every Class Member who submits a valid and timely Request for
28 Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment
or have the right to object to the class action components of the Settlement. Aggrieved Employees
are eligible for an Individual PAGA Payment.

8.6 Challenges to Calculation of Class Workweeks. Each Class Member shall have

1 60 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class
2 Members whose Notice Packet is re-mailed) to challenge the number of Class Workweeks and
3 PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. This is also known
4 as a dispute. A Class Workweek/PAGA Pay Period Dispute form, attached as Exhibit C, may
5 be used for this purpose but is not required. The Class Member may challenge the allocation by
6 communicating with the Administrator via fax, email or mail. The Administrator must encourage
7 the challenging Class Member to submit supporting documentation. In the absence of any
8 contrary documentation, the Administrator is entitled to presume that the Class Workweeks
9 contained in the Class Notice are correct so long as they are consistent with the Class Data. The
10 Administrator's determination of each Class Member's allocation of Class Workweeks and/or
11 PAGA Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The
12 Administrator shall promptly provide copies of all challenges to calculation of Class Workweeks
and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's
determination the challenges.

13 8.7 Objections to Settlement.

14 8.7.1 Only Participating Class Members may object to the class action
15 components of the Settlement and/or this Agreement, including contesting the fairness of the
16 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel
Litigation Expenses Payment and/or Class Representative Service Payment.

17 8.7.2 Participating Class Members may send written objections to the
18 Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear
19 in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval
20 Hearing. A Participating Class Member who elects to send a written objection to the
21 Administrator must do so not later than 60 days after the Administrator's mailing of the Notice
22 Packet (plus an additional 14 days for Class Members whose Notice Packet was re-mailed). An
Objection form attached as Exhibit D may be used for this purpose but is not required.

23 8.7.3 Non-Participating Class Members have no right to object to any of the class
24 action components of the Settlement.

25 8.8 Administrator Duties. The Administrator has a duty to perform or observe all
26 tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

27 8.8.1 Website, Email Address and Toll-Free Number. The Administrator will

1 establish and maintain and use an internet website to post information of interest to Class
2 Members including the date, time and location for the Final Approval Hearing and copies of the
3 Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Notice
4 Packet, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class
5 Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final
6 Approval Order and the Judgment. The Administrator will also maintain and monitor an email
address and a toll-free telephone number to receive Class Member calls, faxes and emails.

7 8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator
8 will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not
9 later than five (5) days after the expiration of the deadline for submitting Requests for Exclusion,
10 the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the
11 names and other identifying information of Class Members who have timely submitted valid
12 Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of
13 Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for
Exclusion from Settlement submitted (whether valid or invalid).

14 8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide
15 written reports to Class Counsel and Defense Counsel that, among other things, tally the number
16 of: Notice Packets mailed or re-mailed, Notice Packets returned undelivered, Requests for
17 Exclusion (whether valid or invalid) received, objections received, challenges to Class
18 Workweeks and/or PAGA Pay Periods received and/or resolved, and checks mailed for Individual
19 Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must
20 include provide the Administrator’s assessment of the validity of Requests for Exclusion and
attach copies of all Requests for Exclusion and objections received.

21 8.8.4 Class Workweek and/or PAGA Pay Period Challenges. The Administrator
22 has the authority to address and make final decisions consistent with the terms of this Agreement
23 on all Class Member challenges over the calculation of Class Workweeks and/or PAGA Pay
24 Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible
to challenge.

25 8.8.5 Administrator’s Declaration. Not later than 14 days before the date by
26 which Plaintiff is required to file the Motion for Final Approval of the Settlement, the
27 Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable

1 for filing in Court attesting to its due diligence and compliance with all of its obligations under
2 this Agreement, including, but not limited to, its mailing of the Notice Packets, the Notice Packets
3 returned as undelivered, the re-mailing of Notice Packets, attempts to locate Class Members, the
4 total number of Requests for Exclusion from Settlement it received (both valid or invalid), the
5 number of written objections and attach the Exclusion List. The Administrator will supplement
6 its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible
7 for filing the Administrator's declaration(s) in Court.

8 8.8.6 Final Report by Administrator. Within 10 days after each distribution, the
9 Administrator will provide Class Counsel and Defense Counsel with a final report detailing its
10 disbursements by employee identification number only of all payments made under this
11 Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare,
12 and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court
13 attesting to its disbursement of all payments required under this Agreement. Class Counsel is
14 responsible for filing the Administrator's declaration in Court.

15 **9. DEFENDANTS' RIGHT TO WITHDRAW.** If the number of valid Requests for
16 Exclusion identified in the Exclusion List exceeds 10.00% of the total of all Class Members,
17 Defendants may, but are not obligated, elect to withdraw from the Settlement. All Defendants
18 should agree to the withdrawal for it to be valid. The Parties agree that, if Defendants withdraw,
19 the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party
20 will have any further obligation to perform under this Agreement; provided, however, Defendants
21 will remain responsible for paying all Settlement Administration Expenses incurred to that point.
22 Defendants must notify Class Counsel and the Court of their election to withdraw not later than
23 seven (7) days after the Administrator sends the final Exclusion List to Defense Counsel; late
24 elections will have no effect.

25 **10. MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared
26 Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement
27 that includes a request for approval of the PAGA settlement under Labor Code section 2699,
28 subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for
Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later
than 7 days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel
will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any

disagreements concerning the Motion for Final Approval.

10.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

10.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be

1 granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless
2 expeditiously work together in good faith to address the appellate court's concerns and to obtain
3 Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration
4 Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify
5 the Court's award of the Class Representative Service Payment or any payments to Class Counsel
6 shall not constitute a material modification of the Judgment within the meaning of this paragraph,
as long as the Gross Settlement Amount remains unchanged.

7
8 **11. AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil
9 Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed
10 amended judgment.

11 **12. ADDITIONAL PROVISIONS.**

12 12.1 No Admission of Liability, Class Certification or Representative Manageability
13 for Other Purposes. This Agreement represents a compromise and settlement of highly disputed
14 claims. Nothing in this Agreement is intended or should be construed as an admission by
15 Defendants that any of the allegations in the Operative Complaint have merit or that Defendants
16 have any liability for any claims asserted; nor should it be intended or construed as an admission
17 by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that class
18 certification and representative treatment is for purposes of this Settlement only. If, for any reason
19 the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendants
20 reserve the right to contest certification of any class for any reasons, and Defendants reserve all
21 available defenses to the claims in the Action, and Plaintiff reserves the right to move for class
22 certification on any grounds available and to contest Defendants' defenses. The Settlement, this
23 Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be
admissible in connection with, any litigation (except for proceedings to enforce or effectuate the
Settlement and this Agreement).

24 12.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel,
25 Defendants and Defense Counsel separately agree that, until the Motion for Preliminary Approval
26 of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or
27 cause or permit another person to disclose, disseminate or publicize, any of the terms of the

1 Agreement directly or indirectly, specifically or generally, to any person, corporation, association,
2 government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses,
3 all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter;
4 (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a
5 court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal
6 government agency.

7 Each Party agrees to immediately notify each other Party of any judicial or agency
8 order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendants and
9 Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other
10 communication, before the filing of the Motion for Preliminary Approval, any with third party
11 regarding this Agreement or the matters giving rise to this Agreement except to respond only that
12 "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's
13 communications with Class Members in accordance with Class Counsel's ethical obligations
14 owed to Class Members.

15 12.3 No Solicitation. The Parties separately agree that they and their respective
16 counsel and employees will not solicit any Class Member to opt out of or object to the Settlement,
17 or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class
18 Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical
19 obligations owed to Class Members.

20 12.4 Integrated Agreement. Upon execution by all Parties and their counsel, this
21 Agreement together with its attached exhibits shall constitute the entire agreement between the
22 Parties relating to the Settlement, superseding any and all oral representations, warranties,
23 covenants, or inducements made to or by any Party.

24 12.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant
25 and represent that they are authorized by Plaintiff and Defendants, respectively, to take all
26 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
27 to effectuate its terms, and to execute any other documents reasonably required to effectuate the
28 terms of this Agreement including any amendments to this Agreement.

12.6 Cooperation. The Parties and their counsel will cooperate with each other and
use their best efforts, in good faith, to implement the Settlement by, among other things,
modifying the Settlement Agreement, submitting supplemental evidence and supplementing

1 points and authorities as requested by the Court. In the event the Parties are unable to agree upon
2 the form or content of any document necessary to implement the Settlement, or on any
3 modification of the Agreement that may become necessary to implement the Settlement, the
4 Parties will seek the assistance of a mediator and/or the Court for resolution.

5 12.7 No Prior Assignments. The Parties separately represent and warrant that they
6 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,
7 or encumber to any person or entity and portion of any liability, claim, demand, action, cause of
8 action, or right released and discharged by the Party in this Settlement.

9 12.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendants nor Defense
10 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
11 Settlement be relied upon as such within the meaning of United States Treasury Department
12 Circular 230 (31 CFR Part 10, as amended) or otherwise.

13 12.9 Modification of Agreement. This Agreement, and all parts of it, may be
14 amended, modified, changed, or waived only by an express written instrument signed by all
15 Parties or their representatives, and approved by the Court.

16 12.10 Agreement Binding on Successors. This Agreement will be binding upon, and
17 inure to the benefit of, the successors of each of the Parties.

18 12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will
19 be governed by and interpreted according to the internal laws of the state of California, without
20 regard to conflict of law principles.

21 12.12 Cooperation in Drafting. The Parties have cooperated in the drafting and
22 preparation of this Agreement. This Agreement will not be construed against any Party on the
23 basis that the Party was the drafter or participated in the drafting.

24 12.13 Confidentiality. To the extent permitted by law, all agreements made, and orders
25 entered during Action and in this Agreement relating to the confidentiality of information shall
26 survive the execution of this Agreement.

27 12.14 Use and Return of Class Data. Information provided to Class Counsel pursuant
28 to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class
Counsel by Defendants in connection with the mediation, other settlement negotiations, or in
connection with the Settlement, may be used only with respect to this Settlement, and no other
purpose, and may not be used in any way that violates any existing contractual agreement, statute,

1 or rule of court. Not later than 90 days after the date when the Court discharges the
2 Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement
3 funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from
4 Defendants unless, prior to the Court's discharge of the Administrator's obligation, Defendants
5 make a written request to Class Counsel for the return, rather than the destructions, of Class Data.

6 12.15 Headings. The descriptive heading of any section or paragraph of this Agreement
7 is inserted for convenience of reference only and does not constitute a part of this Agreement.

8 12.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement
9 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
10 weekend or federal legal holiday, such date or deadline shall be on the first business day
11 thereafter.

12 12.17 Notice. All notices, demands or other communications between the Parties in
13 connection with this Agreement will be in writing and deemed to have been duly given as of the
14 third business day after mailing by United States mail, or the day sent by email or messenger,
15 addressed as follows:

16 To Plaintiff:
17 David Glenn Spivak, Esq.
18 The Spivak Law Firm
19 8605 Santa Monica Bl
20 PMB 42554
21 West Hollywood, CA 90069
22 david@spivaklaw.com

23 To Defendants:
24 Chris Jalian, Esq.
25 Paul Hastings LLP
26 515 South Flower Street
27 Twenty-Fifth Floor
28 Los Angeles, California 90071-2228
chrisjalian@paulhastings.com

Sara Abarbanel, Esq.
Foley & Lardner LLP
11988 EL CAMINO REAL, SUITE 400
SAN DIEGO, CA 92130-2594
sabarbanel@foley.com

12.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Dated: September¹⁸, 2025

By: Natalie
NATALIAH DEVOL GREEN

Dated: September ____, 2025

By: TIMMY SMITH
Owner
For Defendants MORGAN COOKIE
GROUP CULVER LLC; MORGAN
COOKIE GROUP LLC; MORGAN
COOKIE GROUP DOWNEY LLC;
POCKETS SMITTY LLC

Dated: September __, 2025

By: _____

For Defendant CRUMBL LLC

12.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Dated: September ____, 2025

By: _____
NATALIAH DEVOL GREEN

Dated: September 18, 2025

By: Timothy Smith
TIMMY SMITH
Owner
For Defendants MORGAN COOKIE
GROUP CULVER LLC; MORGAN
COOKIE GROUP LLC; MORGAN
COOKIE GROUP DOWNEY LLC;
POCKETS SMITTY LLC

Dated: September 18, 2025

By: DocuSigned by:
Jason McGowan

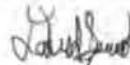
For Defendant CRUMBL LLC

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THE SPIVAK LAW FIRM

Dated: September 18, 2025

By:


DAVID GLENN SPIVAK, Attorneys
for Plaintiff, NATALIAH DEVOL
GREEN, and all others similarly
situated

SMITH LAW

Dated: September __, 2025

By:

BENJAMIN J. SMITH, Attorneys for
Plaintiff, NATALIAH DEVOL
GREEN, and all others similarly
situated

PAUL HASTINGS LLP

Dated: September __, 2025

By:

CHRIS A. JALIAN
Attorneys for Defendants
MORGAN COOKIE GROUP
CULVER LLC, MORGAN COOKIE
GROUP LLC, MORGAN COOKIE
GROUP DOWNEY LLC, and
POCKETS SMITTY LLC

FOLEY & LARDNER LLP

Dated: September __, 2025

By:


SARA ABARBANEL, Attorneys for
Defendant CRUMBL LLC

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*Green v. Morgan Cookie Group Culver LLC, et
al.*

First Amended Class Action and PAGA
Settlement Agreement

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THE SPIVAK LAW FIRM

Dated: September ____, 2025

By: _____
DAVID GLENN SPIVAK, Attorneys
for Plaintiff, NATALIAH DEVOL
GREEN, and all others similarly
situated

SMITH LAW

Dated: September 18, 2025

By:  _____
BENJAMIN J. SMITH, Attorneys for
Plaintiff, NATALIAH DEVOL
GREEN, and all others similarly
situated

PAUL HASTINGS LLP

Dated: September ____, 2025

By: _____
CHRIS A. JALIAN
Attorneys for Defendants
MORGAN COOKIE GROUP
CULVER LLC, MORGAN COOKIE
GROUP LLC, MORGAN COOKIE
GROUP DOWNEY LLC, and
POCKETS SMITTY LLC

FOLEY & LARDNER LLP

Dated: September ____, 2025

By:  _____
SARA ABARBANEL, Attorneys for
Defendant CRUMBL LLC

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Green v. Morgan Cookie Group Culver LLC, et al. First Amended Class Action and PAGA Settlement Agreement

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THE SPIVAK LAW FIRM

Dated: September ____, 2025

By: _____
DAVID GLENN SPIVAK, Attorneys
for Plaintiff, NATALIAH DEVOL
GREEN, and all others similarly
situated

SMITH LAW

Dated: September ____, 2025

By: _____
BENJAMIN J. SMITH, Attorneys for
Plaintiff, NATALIAH DEVOL
GREEN, and all others similarly
situated

PAUL HASTINGS LLP

Dated: September 18, 2025

By:  _____
CHRIS A. JALIAN
Attorneys for Defendants
MORGAN COOKIE GROUP
CULVER LLC, MORGAN COOKIE
GROUP LLC, MORGAN COOKIE
GROUP DOWNEY LLC, and
POCKETS SMITTY LLC

FOLEY & LARDNER LLP

Dated: September ____, 2025

By:  _____
SARA ABARBANEL, Attorneys for
Defendant CRUMBL LLC

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EXHIBIT A

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING
DATE FOR FINAL COURT APPROVAL**

(case name: *Nataliah Devol Green v. Morgan Cookie Group Culver LLC* and number
23STCV11939)

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from an employee class action lawsuit (“Action”) against MORGAN COOKIE GROUP CULVER LLC; MORGAN COOKIE GROUP LLC; MORGAN COOKIE GROUP DOWNEY LLC; CRUMBL LLC; POCKETS SMITTY LLC (collectively hereafter referred to as “Defendants”) for alleged violations of California’s labor laws. The Action was filed by one of Defendants’ employees Nataliah Devol Green (“Plaintiff”) and seeks payment of (1) wages and other relief for all persons employed or otherwise contracted by (i) Pockets Smitty Two, LLC; (ii) Pockets Smitty Riverside, LLC; (iii) Pockets Smitty Upland, LLC; (iv) Pockets Smitty Menifee, LLC; (v) Morgan Cookie Group, LLC; (vi) Morgan Cookie Group Culver, LLC; (vii) Pockets Smitty Fontana, LLC; (viii) Morgan Cookies Group Downey, LLC; (ix) Pockets Smitty Corona, LLC and/or (x) Pockets Smitty Rosemead, LLC as non-exempt, hourly employees for a class of (“Class Members”) Defendants during the Class Period (May 25, 2019 to <<preliminary approval date>>); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all persons employed or otherwise contracted by (i) Pockets Smitty Two, LLC; (ii) Pockets Smitty Riverside, LLC; (iii) Pockets Smitty Upland, LLC; (iv) Pockets Smitty Menifee, LLC; (v) Morgan Cookie Group, LLC; (vi) Morgan Cookie Group Culver, LLC; (vii) Pockets Smitty Fontana, LLC; (viii) Morgan Cookies Group Downey, LLC; (ix) Pockets Smitty Corona, LLC and/or (x) Pockets Smitty Rosemead, LLC as non-exempt, hourly employees during the PAGA Period (April 4, 2022 to <<preliminary approval date>>) (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendants to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendants to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Defendants’ records, **your Individual Class Payment is estimated to be \$<<IndividualClassPaymentAmount>> (less withholding) and your Individual PAGA Payment is estimated to be \$<<IndividualPAGAPaymentAmount>>.** The estimated dollar value of a Work Week is <<\$increment type value>> and a PAGA Pay Period is <<@PayPeriodValue>>. The actual amount you may receive likely will be different and will depend on a number of factors. If no amount is stated for your Individual PAGA Payment, then according to Defendants’ records you are not eligible for an Individual PAGA Payment under the Settlement because you did not work during the PAGA Period. The individual payment amounts will vary. However, the average Individual Class Payment to a Class Member is estimated to be <<\$Average Individual Class Payment Amount>>. The average Individual PAGA Payment to an Aggrieved Employee is estimated to be <<\$Average Individual PAGA Payment Amount>>. The highest Individual Class Payment to a Class Member is estimated to

1 be <<\$Highest Individual Class Payment Amount>> and the lowest is estimated to be <<\$Lowest
2 Individual Class Payment Amount>>. The highest Individual PAGA Payment to an Aggrieved
3 Employee is estimated to be <<\$Highest Individual PAGA Payment Amount>> and the lowest
4 is estimated to be <<\$Lowest Individual PAGA Payment Amount>>.

5 The above estimates are based on Defendants' records showing that **you worked**
6 **<< >> Class Workweeks** during the Class Period and **you worked << >> PAGA Pay**
7 **Periods** during the PAGA Period. If you believe that you worked more Class Workweeks or
8 PAGA Pay Periods during either period, you can submit a challenge by **<<RESPONSE**
9 **DEADLINE>>**. See Section 4 of this Notice.

10 The Court has already preliminarily approved the proposed Settlement and approved this
11 Notice. The Court has not yet decided whether to grant final approval. The Court has
12 determined only that there is sufficient evidence to suggest that the proposed settlement
13 might be fair, adequate, and reasonable, and that any final determination of those issues
14 will be made at the Final Approval Hearing. Your legal rights are affected whether you act or
15 not act. Read this Notice carefully. You will be deemed to have carefully read and understood it.
16 At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement
17 and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class
18 Counsel"). The Court will also decide whether to enter a judgment that requires Defendants to
19 make payments under the Settlement and requires Class Members and Aggrieved Employees to
20 give up their rights to assert certain claims against Defendants.

21 If you worked for Defendants during the Class Period and/or the PAGA Period, you have
22 two basic options under the Settlement:

23 (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement
24 and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a
25 Participating Class Member, though, you will give up your right to assert Class Period wage
26 claims and PAGA Period penalty claims against Defendants.

27 (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class
28 Settlement (opt-out) by submitting a written Request for Exclusion or otherwise notifying the
Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual
Class Payment. You will, however, preserve your right to personally pursue Class Period claims
for California labor law violations against Defendants, and, if you are an Aggrieved Employee,
you remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion
of the proposed Settlement.

**Defendants will not retaliate against you for any actions you take with respect to the
proposed Settlement.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the claims against Defendants that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is <<RESPONSE DEADLINE>>	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. You can use the enclosed Election Not To Participate In Settlement form for this purpose. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendants must pay Individual PAGA Payments to all Aggrieved Employees and Plaintiff releases Defendants from civil penalties it may owe to the Aggrieved Employees.
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by <<RESPONSE DEADLINE>>	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. You can use the enclosed Objection form for this purpose. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the <<FinalApprovalHearingDate>> Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on <<FinalApprovalHearingDate>>. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing whether or not they submitted a written objection. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Class Workweek / Pay Periods Written Challenges Must be Submitted by <<RESPONSE DEADLINE>>	The amounts of your Individual Class Payment and PAGA Payment (if any) depend on how many Class Workweeks you worked at least one day during the Class Period and how many PAGA Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Workweeks and number of PAGA Pay Periods you worked according to Defendants' records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by <<RESPONSE DEADLINE>>. See Section 4 of this Notice. You can use the enclosed Class Workweeks Dispute

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	form for this purpose.
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1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of Defendants. The Action accuses Defendants of violating California labor laws by failure to pay wages, failure to authorize and permit rest periods, failure to provide meal periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, and related violations of the Labor Code. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the PAGA (Labor Code section 2698 and sections that follow) (“PAGA”). Plaintiff is represented by attorneys in the Action: David Glenn Spivak of The Spivak Law Firm and Benjamin J. Smith of Smith Law (“Class Counsel.”)

Defendants strongly deny violating any laws or failing to pay any wages and contends they complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendants or Plaintiff is correct on the merits. In the meantime, Plaintiff and Defendants hired a retired judge in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendants have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendants do not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendants have agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

A. Gross Settlement Amount. Defendants Will Pay \$450,000.00 as the Gross

1 Settlement Amount (Gross Settlement). Defendants have agreed to deposit the Gross Settlement
2 into an account controlled by the Administrator of the Settlement. The Administrator will use the
3 Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class
4 Representative Service Payment, Class Counsel's attorney's fees and expenses, the
5 Administrator's expenses, and penalties to be paid to the California Labor and Workforce
6 Development Agency ("LWDA"). Assuming the Court grants Final Approval, Defendants shall
7 fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay
8 Defendants' share of payroll taxes by transmitting the funds to the Administrator. Defendants
9 have agreed to deposit \$175,000 of the Gross Settlement into an account controlled by the
10 Administrator of the Settlement within 15 days of the Court granting final approval. Thereafter,
11 Defendants will make 24 monthly contributions to the account controlled by the Administrator
12 until the balance of the Gross Settlement Amount is reached based on the payment schedule
13 described in section 4. The first of the monthly installment payments will be paid 30 days after
14 the initial \$175,000 payment. Defendants will make each of the next 23 payments every 30 days
15 thereafter. The 24 monthly payments will be in equal amounts of \$11,458.33 though the last and
16 the final payment will be in the amount of \$11,458.41. Defendants will also fund the amounts
17 necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the
18 Administrator for each distribution. Defendant CRUMBL LLC is not obligated to fund any
19 portion of the Gross Settlement Amount.

20 B. Payments from the Gross Settlement Amount. The Administrator will
21 make a total of three distributions. The first distribution will occur 14 days after the Effective
22 Date. The second distribution will occur 14 days after the 12th monthly installment payment and
23 the third and last distribution will occur 14 days after the last and final monthly installment
24 payment. The Administrator will disburse the Gross Settlement Amount without asking or
25 requiring Participating Class Members or Aggrieved Employees to submit any claim as a
26 condition of payment. None of the Gross Settlement Amount will revert to Defendants. For each
27 distribution, the Administrator will mail checks for all *pro rata* Individual Class Payments, all
28 Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment,
the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class
Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class
Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not
precede disbursement of Individual Class Payments and Individual PAGA Payments. Class
Counsel and Plaintiff shall receive their *pro rata* shares of each distribution only after the
Participating Class Members have been fully paid their *pro rata* shares of each distribution

21 C. Court Approved Deductions from Gross Settlement. At the Final Approval
22 Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions
23 from the Gross Settlement, the amounts of which will be decided by the Court at the Final
24 Approval Hearing:

25 1. Attorney Fees and Costs. Up to \$150,000.00 (33 and 1/3% of the Gross
26 Settlement to Class Counsel for attorneys' fees and up to \$20,000.00 for their litigation expenses.
27 To date, Class Counsel have worked and incurred expenses on the Action without payment.

28 2. Class Representative Service Award. Up to \$15,000.00 as a Class
Representative Service Award for filing the Action, working with Class Counsel and representing

1 the Class. A Class Representative Service Award will be the only monies Plaintiff will receive
2 other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.

3 3. Administration Expenses. Up to \$25,000.00 to the Administrator for
4 services administering the Settlement.

5 4. PAGA Penalties. Up to \$5,000.00 for PAGA Penalties, allocated 75% to
6 the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees
7 based on their PAGA Period Pay Periods.

8 Participating Class Members have the right to object to any of these deductions. The Court
9 will consider all objections.

10 Based on their records, Defendants estimated that, as of the date of the Settlement, (1)
11 there are 873 Class Members and 18,013.00 total Class Workweeks during the Class period and
12 (2) there were 683 Aggrieved Employees who worked 13,691 Pay Periods during the PAGA
13 Period.

14 D. Net Settlement Distributed to Class Members. After making the above deductions
15 in amounts approved by the Court, the Administrator will distribute the rest of the Gross
16 Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class
17 Members based on their Class Workweeks.

18 E. Taxes Owed on Payments to Class Members. Plaintiff and Defendants are asking
19 the Court to approve an allocation of 30.00% of each Individual Class Payment to taxable wages
20 ("Wage Portion") and 70.00% to interest and penalties ("Non-Wage Portion."). The Wage Portion
21 is subject to withholdings and will be reported on IRS W-2 Forms. Defendants will separately
22 pay employer payroll taxes they owe on the Wage Portion. The Individual PAGA Payments are
23 counted as penalties rather than wages for tax purposes. The Administrator will report the
24 Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS
25 1099 Forms.

26 Although Plaintiff and Defendants have agreed to these allocations, neither side is giving
27 you any advice on whether your Payments are taxable or how much you might owe in taxes. You
28 are responsible for paying all taxes (including penalties and interest on back taxes) on any
Payments received from the proposed Settlement. You should consult a tax advisor if you have
any questions about the tax consequences of the proposed Settlement.

29 F. Need to Promptly Cash Payment Checks. The front of every check issued for
Individual Class Payments and Individual PAGA Payments will show the date when the check
expires (the void date). If you don't cash it by the void date, your check will be automatically
cancelled, and the monies will be deposited with the California Controller's Unclaimed Property
Fund (https://www.sco.ca.gov/search_upd.html) in your name. If the monies represented by your
check is sent to the Controller's Unclaimed Property Fund, you should consult the rules of the
Fund for instructions on how to retrieve your money. You can contact the Unclaimed Property
Fund at (800) 992-4647.

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2 G. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated
3 as a Participating Class Member, participating fully in the Class Settlement, unless you notify the
4 Administrator in writing, not later than <<RESPONSE DEADLINE>>, that you wish to opt-out.
5 The easiest way to notify the Administrator is to email, fax, or mail a written and signed Request
6 for Exclusion by the <<RESPONSE DEADLINE>> Response Deadline. The Request for
7 Exclusion should be a letter from a Class Member or his/her representative setting forth a Class
8 Member's name, present address, telephone number, and a simple statement electing to be
9 excluded from the Settlement. You may use the enclosed Election Not To Participate In
10 Settlement form for this purpose. Excluded Class Members (i.e., Non-Participating Class
11 Members) will not receive Individual Class Payments, but will preserve their rights to personally
12 pursue claims against Defendants for violations of California's labor laws.

13
14 You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude
15 themselves from the Class Settlement (Non-Participating Class Members) remain eligible for
16 Individual PAGA Payments and Plaintiff releases Defendants from civil penalties they may owe
17 to the Aggrieved Employees.

18
19 H. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is
20 possible the Court will decline to grant Final Approval of the Settlement or decline enter a
21 Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff
22 and Defendants have agreed that, in either case, the Settlement will be void: Defendants will not
23 pay any money and Class Members will not release any claims against Defendants.

24
25 I. Administrator. The Court has appointed a neutral company, Phoenix Class Action
26 Administration Solutions (the "Administrator") to send this Notice, calculate and make payments,
27 and process Class Members' Requests for Exclusion. The Administrator will also decide Class
28 Member Challenges over Class Workweeks, mail and re-mail settlement checks and tax forms,
and perform other tasks necessary to administer the Settlement. The Administrator's contact
information is contained in Section 9 of this Notice.

J. Participating Class Members' Release. After the Judgment is final and Defendants
has fully funded the Gross Settlement (and separately paid all employer payroll taxes),
Participating Class Members will be legally barred from asserting any of the claims released under
the Settlement. This means that unless you opted out by validly excluding yourself from the Class
Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or
their officers, directors, employees, and agents for wages based on the Class Period facts and
PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this
Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective
former and present representatives, agents, attorneys, heirs, administrators,
successors, and assigns, release Released Parties from all claims stated in the
Operative Complaint and those based solely upon the facts alleged in the Operative

1 Complaint. Except as set forth in Section 6.3 of the Settlement Agreement,
2 Participating Class Members do not release any other claims, including claims for
3 vested benefits, wrongful termination, violation of the Fair Employment and
4 Housing Act, unemployment insurance, disability, social security, workers'
5 compensation, or claims based on facts occurring outside the Class Period.

6 K. The PAGA Release. After the Court's judgment is final, and Defendants have
7 fully paid the Gross Settlement Amount (and separately paid the employer-side payroll taxes),
8 Plaintiff releases all claims for civil penalties that could have been sought by the Labor
9 Commissioner for the violations identified in Plaintiff's pre-filing letter to the LWDA; Plaintiff
10 does not release the claim for wages or damages of any Aggrieved Employee unless such
11 Aggrieved Employee is a Participating Class Member.

12 **4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?**

13 A. Individual Class Payments. The Administrator will calculate Individual Class
14 Payments by (a) dividing the Net Settlement Amount by the total number of Class Workweek
15 worked by all Participating Class Members, and (b) multiplying the result by the number of Class
16 Workweek worked by each individual Participating Class Member.

17 B. Individual PAGA Payments. The Administrator will calculate Individual PAGA
18 Payments by (a) dividing \$1,250.00 by the total number of PAGA Pay Periods worked by all
19 Aggrieved Employees and (b) multiplying the result by the number of PAGA Pay Periods worked
20 by each individual Aggrieved Employee.

21 C. Class Workweek/PAGA Pay Period Challenges. The number of Class Workweeks
22 you worked during the Class Period and the number of PAGA Pay Periods you worked during
23 the PAGA Period, as recorded in Defendants' records, are stated in the first page of this Notice.
24 You have until <<RESPONSE DEADLINE>> to challenge the number of Class Workweeks
25 and/or PAGA Pay Periods credited to you. You can submit your challenge by signing and sending
26 a letter to the Administrator by email, fax or regular U.S. mail. You can use the enclosed Dispute
27 form for this purpose. Section 9 of this Notice has the Administrator's contact information.

28 You need to support your challenge by submitting copies of pay stubs or other records.
The Administrator will accept Defendants' calculation of Class Workweeks and/or PAGA Pay
Periods based on Defendants' records as accurate unless you send copies of records containing
contrary information. You should send copies rather than originals because the documents will
not be returned to you. The Administrator will resolve Class Workweek and/or Pay Period
challenges based on your submission and on input from Class Counsel (who will advocate on
behalf of Participating Class Members) and Defendants' Counsel. The Administrator's decision
is final. You can't appeal or otherwise challenge its final decision.

29 **5. HOW WILL I GET PAID?**

30 A. Participating Class Members. The Administrator will send, by U.S. mail, a single
31 check to every Participating Class Member (i.e., every Class Member who doesn't opt-out)

including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

B. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Email, fax, or mail a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. You may use the enclosed Election Not To Participate In Settlement form for this purpose. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Nataliah Devol Green vs. Morgan Cookie Group Culver LLC*, Case No. 23STCV11939, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. You should send your Request for Exclusion to the Administrator by email, fax, or send by regular U.S. mail. **The Administrator must be sent your request to be excluded by <<RESPONSE DEADLINE>>, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information. If you are an Aggrieved Employee, you will still receive an Individual PAGA Payment.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendants are asking the Court to approve. At least 16 days before the Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them and the Settlement Agreement on the Administrator's Website <<ADMINISTRATOR WEBSITE>> or the Court's website <<COURT WEBSITE>>.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is <<RESPONSE DEADLINE>>.** Be sure to tell the Administrator what you

1 object to, why you object, and any facts that support your objection. Make sure you identify the
2 Action, *Nataliah Devol Green vs. Morgan Cookie Group Culver LLC*, case no. 23STCV11939,
3 and include your name, current address, telephone number, and approximate dates of employment
4 for Defendants and sign the objection. Section 9 of this Notice has the Administrator's contact
information. You may use the enclosed Objection form for this purpose. You should send your
objection to the Administrator by email, fax, or send by regular U.S. mail.

5 Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at
6 your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready
7 to tell the Court what you object to, why you object, and any facts that support your objection.
See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval
Hearing.

8 **8. CAN I ATTEND THE FINAL APPROVAL HEARING?**

9 You can, but don't have to, attend the Final Approval Hearing on <<FINAL APPROVAL
10 HEARING DATE>> at <<FINAL APPROVAL HEARING TIME>> in Department Dept. 11 of the
11 Los Angeles Superior Court, located at Spring Street Courthouse, 312 N. Spring Street, Los
12 Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the
13 Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and
the Administrator. The Court will invite comment from objectors, Class Counsel and Defense
14 Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally
or virtually by <<CourtConnect/CourtCall/MicrosoftTeams>>
(https://www.<<CourtVirtualAppearanceLink>>). Check the Court's website for the most current
15 information.

16 It's possible the Court will reschedule the Final Approval Hearing. You should check the
Administrator's website <<ADMINISTRATOR WEBSITE>> beforehand or contact Class Counsel
17 to verify the date and time of the Final Approval Hearing.

18 **9. HOW CAN I GET MORE INFORMATION?**

19 The Agreement sets forth everything Defendants and Plaintiff have promised to do under the
20 proposed Settlement. The easiest way to read the Agreement, the Judgment or any other
21 Settlement documents is to go to the Administrator's website at <<CLERK OF COURT'S PHONE
NUMBER>>. You can also telephone or send an email to Class Counsel or the Administrator
22 using the contact information listed below, or consult the Superior Court website by going to
(<http://www.<<COURT'S WEBSITE>>.aspx>) and entering the Case Number for the Action, Case
23 No. 23STCV11939. You can also make an appointment to personally review court documents in
the Clerk's Office at the Spring Street Courthouse by calling <<CLERK OF COURT'S PHONE
24 NUMBER>>.

25 **DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION** 26 **ABOUT THE SETTLEMENT.**

27 Class Counsel:

Name of Attorney: David Glenn Spivak
Email Address: david@spivaklaw.com
Name of Firm: The Spivak Law Firm
Mailing Address: 8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
Telephone: (213) 725-9094

Administrator:

Name of Company: Phoenix Class Action Administration Solutions
Email Address: _____
Mailing Address: _____
Telephone: _____
Fax Number: _____

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void, you should consult the Unclaimed Property Fund (https://www.sco.ca.gov/search_upd.html) for instructions on how to retrieve the funds. You can contact the Unclaimedx Property Fund at (800) 992-4647.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

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EXHIBIT B

Green v. Morgan Cookie Group Culver LLC
Superior Court of the State of California, County of Los Angeles
Case No. 23STCV11939

ELECTION NOT TO PARTICIPATE IN SETTLEMENT FORM

**IF YOU WANT TO BE INCLUDED IN THIS CLASS ACTION SETTLEMENT AND BE ELIGIBLE FOR
A SHARE OF THE SETTLEMENT PROCEEDS,
DO NOT FILL OUT THIS FORM.**

**IF YOU DO NOT WANT TO BE INCLUDED IN THE SETTLEMENT, YOU MUST COMPLETE AND
SIGN THIS DOCUMENT AND MAIL IT TO THE ADDRESS BELOW, EMAILED, FAXED, OR
POSTMARKED NOT LATER THAN **<<RESPONSE DEADLINE>>**:**

Green v. Morgan Cookie Group Culver LLC Class Action Administrator
c/o _____

I declare as follows: I have received notice of the proposed settlement in this action and I wish to be excluded from the class and **not** to participate in the proposed settlement. I understand this means that I will not be bound by the Settlement and also will not share in the settlement proceeds. I understand that exclusion from the Class Settlement will not result in exclusion from the PAGA portion of the Settlement. If I am an Aggrieved Employee under the Settlement, I will still receive an Individual PAGA Payment.

(Typed or Printed Name)

(Address)

(City, State, Zip Code)

(Telephone Number, Including Area Code)

(Identification Number)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and was executed on ____.

Dated: ____.
(Signature)

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EXHIBIT C

1 **CLASS WORKWEEK/PAGA PAY PERIOD DISPUTE FORM**

2 Superior Court of The State of California
3 For The County of Los Angeles
4 *Nataliah Devol Green v. Morgan Cookie Group Culver LLC*, Case No. 23STCV11939

5 Indicate Name/Address Changes, if any:

6 <<Name>>

7 <<Address>>

8 <<City>>, <<State>> <<Zip Code>>

9 XX - XX -

10 The amount of your estimated Individual Class Payment is based upon the number of eligible
11 Class Workweeks you worked between May 25, 2019 and _____[the date preliminary
12 approval of the settlement is entered by the court]. The amount of your estimated Individual
13 PAGA Payment is based upon the number of PAGA Pay Periods you worked between April 4,
14 2022 and _____[the date preliminary approval of the settlement is entered by the court].
15 "PAGA Pay Period" means any Pay Period during which you worked for Defendants at least one
16 (1) day as a non-exempt, hourly employee. The number of Class Workweeks and PAGA Pay
17 Periods applicable to your claim are set forth below.

18 **YOUR ELIGIBLE CLASS WORKWEEKS**

19 Defendants' records indicate that you worked <<number of Class Workweeks>> Class
20 Workweeks between May 25, 2019 and _____[the date preliminary approval of the settlement
21 is entered by the court] and <<number of PAGA Pay Periods>> PAGA Pay Periods between
22 April 4, 2022 through _____[the date preliminary approval of the settlement is entered by the
23 court].

24 **YOUR ESTIMATED SETTLEMENT AWARD AND DISPUTE PROCEDURE**

25 Under the terms of the Class Action Settlement, you are entitled to receive an Individual Class
26 Payment in the approximate estimated amount of <<\$Class Settlement Share Amount>>, minus
27 all applicable payroll and tax deductions, after the Court approves the Settlement and it goes into
28 effect. This process may take six months or more. You will receive a Form W-2 reflecting the
payment to you. Your settlement share reflected on this Notice is only an estimate. The exact
amount of the payment could vary, up or down. You are also entitled to receive an Individual
PAGA Payment in the approximate estimated amount of <<\$PAGA Settlement Share
Amount>>.

If you wish to dispute the number of Class Workweeks and/or PAGA Pay Periods credited to
you, or anything else about your employment status, you can complete and return this form by
indicating what you believe is incorrect on the blank lines below and return it on or before
<<RESPONSE DEADLINE>> to the Administrator by email, fax, or regular U.S. Mail with
proof of the submission date (such as a postmark or delivery service date stamp). You may use
this Class Workweeks/PAGA Pay Periods Dispute Form for this purpose. You must also send

1 any documents or other information that you contend supports your belief that the information
2 set forth above is incorrect. The Administrator will resolve any dispute based upon Defendants'
3 records and any information you provide. Please be advised that the information on this Class
4 Workweeks Dispute Form is presumed to be correct unless the documents you submit are
5 company records from Defendants.

6
7 **UNLESS YOU ARE FILING A DISPUTE REGARDING THE NUMBER OF CLASS**
8 **WORKWEEKS/PAGA PAY PERIODS, RECEIPT OF A SETTLEMENT PAYMENT,**
9 **OR YOUR EMPLOYMENT STATUS, YOU DO NOT NEED TO TAKE ANY ACTION**
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EXHIBIT D

1 **OBJECTION FORM**

2 ***Nataliah Devol Green v. Morgan Cookie Group Culver LLC***
3 **Superior Court of the State California, County of Los Angeles**
4 **Case No. 23STCV11939**

5 Please verify and/or complete any missing identifying information:

6 CPT ID: <<CPT ID>>

7 <<Name>>

8 <<Address1>>

9 <<Address2>>

10 <<City>>, <<State>> <<Zip>>

CORRECT NAME AND ADDRESS HERE:

Telephone Number: (_____) _____ - _____

11 **THIS FORM IS TO BE USED ONLY IF YOU WANT TO PARTICIPATE IN THE**
12 **SETTLEMENT, BUT YOU OBJECT TO THE TERMS OF THE SETTLEMENT. IF**
13 **YOU OBJECT TO THE SETTLEMENT, YOU SHOULD SIGN AND COMPLETE THIS**
14 **FORM ACCURATELY AND IN ITS ENTIRETY (OR ONE LIKE IT), AND YOU**
15 **SHOULD EMAIL IT TO << _____@_____.COM>>, FAX IT TO <<XXX-XXX-**
16 **XXXX>>, OR MAIL IT BY FIRST CLASS U.S. MAIL TO THE ADMINISTRATOR SO**
17 **THAT IT IS POSTMARKED ON OR BEFORE <<RESPONSE DEADLINE>>. THE**
18 **ADDRESS FOR THE ADMINISTRATOR IS NOTED ON PAGE TWO OF THIS FORM.**

19 **IF YOU DO NOT OBJECT TO THE SETTLEMENT, DO NOT SUBMIT THIS FORM.**
20 **THE ADMINISTRATOR WILL SEND THIS OBJECTION AND ANY SUPPORTING**
21 **DOCUMENTS TO THE ATTORNEYS FOR THE PARTIES. THE ATTORNEYS FOR**
22 **THE PARTIES WILL FILE THE OBJECTION WITH THE COURT.**

23 The Court will consider your objection at the Final Approval Hearing if you timely submit it.
24 Include any and all evidence and supporting papers (including, without limitation, all briefs,
25 written evidence, and declarations) that you would like the Court to consider. However, you may
26 speak to the Court at the final approval hearing whether or not you submit a timely objection.

27 [] I OBJECT to the *Nataliah Devol Green v. Morgan Cookie Group Culver LLC*
28 Settlement on the following grounds (if additional space necessary, please include additional
sheets of paper):

[] I am or will be represented by an attorney (provide name and address of attorney on lines below if applicable):

Executed on _____, 2024

(Signature)

<<Name>>

(Printed Name)

EMAIL TO THE ADMINISTRATOR: <<____@____.COM>>

FAX TO THE ADMINITRATOR: <<(XXX) XXX-XXXX>>

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL
POSTMARKED NOT LATER THAN <<RESPONSE DEADLINE>>:

Nataliah Devol Green v. Morgan Cookie Group Culver LLC Administrator
[ADDRESS]

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
(UNLIMITED JURISDICTION)

NATALIAH DEVOL GREEN, on behalf of herself and all others similarly situated, and as an “aggrieved employee” on behalf of other “aggrieved employees” under the Labor Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

MORGAN COOKIE GROUP CULVER LLC, a California limited liability company; MORGAN COOKIE GROUP LLC, a California limited liability company; CRUMBL LLC, a Utah limited liability company; POCKETS SMITTY CORONA LLC, a Utah limited liability company; and DOES 1–50, inclusive,

Defendant(s).

Case No. 23STCV11939

[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT

Action filed: May 25, 2023
Dept: Dept. 11, The Honorable
David S. Cunningham

1 The Motion of Plaintiff Nataliah Devol Green (hereafter referred to as “Plaintiff”) for
2 Preliminary Approval of a Class Action Settlement (the “Motion”) was considered by the Court,
3 The Honorable David S. Cunningham presiding. The Court having considered the Motion, the
4 First Amended Class Action and PAGA Settlement Agreement and Class Notice (“Settlement”
5 or “Settlement Agreement”), and supporting papers, HEREBY ORDERS THE FOLLOWING:

6
7 1. The Court grants preliminary approval of the Settlement and the Settlement Class
8 based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary
9 Approval. All terms herein shall have the same meaning as defined in the Settlement. The Court
10 has determined only that there is sufficient evidence to suggest that the proposed settlement
11 might be fair, adequate, and reasonable, and that any final determination of those issues will be
12 made at the final hearing. The Court will make a determination at the hearing on the motion for
13 final approval of class action settlement (the “Final Approval Hearing”) as to whether the
14 Settlement is fair, adequate and reasonable to the Settlement Class.
15

16 2. For purposes of this Preliminary Approval Order, the “Settlement Class” means
17 (collectively “Class Members”), all persons employed or otherwise contracted by (i) Pockets
18 Smitty Two, LLC; (ii) Pockets Smitty Riverside, LLC; (iii) Pockets Smitty Upland, LLC; (iv)
19 Pockets Smitty Menifee, LLC; (v) Morgan Cookie Group, LLC; (vi) Morgan Cookie Group
20 Culver, LLC; (vii) Pockets Smitty Fontana, LLC; (viii) Morgan Cookies Group Downey, LLC;
21 (ix) Pockets Smitty Corona, LLC and/or (x) Pockets Smitty Rosemead, LLC as non-exempt,
22 hourly employees during the Class Period. The “Class Period” shall mean the period of time from
23 May 25, 2019, through the date of preliminary approval of this Settlement.
24

25 3. Based on their records, Defendants estimate that, as of the date of the Settlement
26 Agreement, (1) there are 873 Class Members and 18,013.00 Total Class Workweeks during the
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1 Class period and (2) there were 683 Aggrieved Employees who worked 13,691 Pay Periods
2 during the PAGA Period.

3 4. “Effective Date” means the date by when both of the following have occurred: (a)
4 the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the
5 Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no
6 Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if
7 one or more Participating Class Members objects to the Settlement, the day after the deadline for
8 filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the
9 day after the appellate court affirms the Judgment and issues a remittitur.
10

11 5. This action is provisionally certified pursuant to section 382 of the California Code
12 of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action for
13 purposes of settlement only with respect to the proposed Settlement Class.
14

15 6. Not later than 15 days after the Court grants Preliminary Approval of the
16 Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in the
17 form of a Microsoft Excel spreadsheet. To protect Class Members’ privacy rights, the
18 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes
19 of the Settlement and for no other purpose, and restrict access to the Class Data to Administrator
20 employees who need access to the Class Data to effect and perform under the Settlement
21 Agreement. Defendants have a continuing duty to immediately notify Class Counsel if they
22 discover that the Class Data omitted class member identifying information and to provide
23 corrected or updated Class Data as soon as reasonably feasible. Without any extension of the
24 deadline by which Defendants must send the Class Data to the Administrator, the Parties and their
25 counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any
26

1 issues related to missing or omitted Class Data.

2 7. No later than three (3) business days after receipt of the Class Data, the
3 Administrator shall notify Class Counsel that the list has been received and state the number of
4 Class Members, PAGA Members, Class Workweeks, and PAGA Pay Periods in the Class Data.

5 8. Using best efforts to perform as soon as possible, and in no event later than 14
6 days after receiving the Class Data, the Administrator will send to all Class Members identified
7 in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Notice Packet,
8 substantially in the forms attached to the Settlement as Exhibits A, B, C, and D. The first page of
9 the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment
10 and/or Individual PAGA Payment payable to the Class Member, and the number of Class
11 Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing
12 Notice Packets, the Administrator shall update Class Member addresses using the National Change
13 of Address database.
14

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16 9. Not later than three (3) business days after the Administrator’s receipt of any
17 Notice Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice
18 Packet using any forwarding address provided by the USPS. If the USPS does not provide a
19 forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail
20 the Notice Packet to the most current address obtained. The Administrator has no obligation to
21 make further attempts to locate or send Notice Packet to Class Members whose Notice Packet is
22 returned by the USPS a second time.
23

24 10. Class Counsel’s contact information is David Glenn Spivak, Esq., The Spivak Law
25 Firm, 8605 Santa Monica Bl, PMB 42554, West Hollywood, CA 90069 and Benjamin Smith,
26 Esq., Smith Law, 8605 Santa Monica Bl, PMB 97638, West Hollywood, CA 90069. Defense
27

Counsel's contact information is Chris Jalian of Paul Hastings LLP, 515 South Flower Street Twenty-Fifth, Floor, Los Angeles, California 90071-2228 and Sara Abarbanel of Foley & Lardner LLP, 11988 EL CAMINO REAL, SUITE 400, SAN DIEGO, CA 92130-2594

11. The deadlines for Class Members' written objections, Challenges to Class Workweeks and/or PAGA Pay Periods (disputes), and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Notice Packet.

12. If the Administrator, Defendants or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Notice Packet, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Notice Packet requiring them to exercise options under the Settlement Agreement not later than 14 days after receipt of Notice Packet, or the deadline dates in the Notice Packet, which ever are later.

13. Requests for Exclusion. Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class Members whose Notice Packet is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must

1 be timely faxed, emailed, or postmarked by the Response Deadline. An Election Not to Participate
2 in Settlement form, attached to the Settlement as Exhibit B, may be used for this purpose but is
3 not required.

4 14. The Administrator may not reject a Request for Exclusion as invalid because it
5 fails to contain all the information specified in the Class Notice. The Administrator shall accept
6 any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of
7 the person as a Class Member and the Class Member's desire to be excluded. The Administrator's
8 determination shall be final and not appealable or otherwise susceptible to challenge. If the
9 Administrator has reason to question the authenticity of a Request for Exclusion, the
10 Administrator may demand additional proof of the Class Member's identity. The Administrator's
11 determination of authenticity shall be final and not appealable or otherwise susceptible to
12 challenge.
13

14 15. Every Class Member who does not submit a timely and valid Request for Exclusion
15 is deemed to be a Participating Class Member under the Settlement Agreement, entitled to all
16 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
17 Members' Releases under Paragraphs 6.2 and 6.3 of the Settlement, regardless whether the
18 Participating Class Member actually receives the Class Notice or objects to the Settlement.
19

20 16. Every Class Member who submits a valid and timely Request for Exclusion is a
21 Non-Participating Class Member and shall not receive an Individual Class Payment or have the
22 right to object to the class action components of the Settlement. Plaintiff releases all claims for
23 civil penalties that could have been sought by the Labor Commissioner for the violations
24 identified in Plaintiff's pre-filing letter to the LWDA; Plaintiff does not release the claim for
25 wages or damages of any Aggrieved Employee unless such Aggrieved Employee is a
26

Participating Class Member.

17. Challenges to Calculation of Class Workweeks/PAGA Pay Periods. Each Class Member shall have 60 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class Members whose Notice Packet is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. This is also known as a dispute. A Class Workweek/PAGA Pay Period Dispute form, attached as Exhibit C to the Settlement, may be used for this purpose but is not required. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Class Workweeks/ PAGA Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Class Workweeks and/or PAGA Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Class Workweeks and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

18. Objections to Settlement. Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

19. Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A

1 Participating Class Member who elects to send a written objection to the Administrator must do
2 so not later than 60 days after the Administrator's mailing of the Notice Packet (plus an additional
3 14 days for Class Members whose Notice Packet was re-mailed). An The Objection form attached
4 as Exhibit D to the Settlement may be used for this purpose but is not required.

5 20. Non-Participating Class Members have no right to object to any of the class action
6 components of the Settlement.

7
8 21. Not later than 14 days before the date by which Plaintiff is required to file the
9 Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and
10 Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and
11 compliance with all of its obligations under the Settlement Agreement, including, but not limited
12 to, its mailing of the Notice Packets, the Notice Packets returned as undelivered, the re-mailing
13 of Notice Packets, attempts to locate Class Members, the total number of Requests for Exclusion
14 from Settlement it received (both valid or invalid), the number of written objections and attach
15 the Exclusion List. The Administrator will supplement its declaration as needed or requested by
16 the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's
17 declaration(s) in Court.

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19 22. The Court approves, as to form and content, the Class Notice in substantially the
20 form attached as Exhibit A to the Settlement, the Election Not to Participate in Settlement form
21 in substantially the form attached as Exhibit B to the Settlement, the Class Workweeks Dispute
22 form in substantially the form attached as Exhibit C to the Settlement, and the Objection form in
23 substantially the form attached as Exhibit D to the Settlement.

24
25 23. The Court approves, for settlement purposes only, David Glenn Spivak of The
26 Spivak Law Firm and Benjamin J. Smith of Smith Law as Class Counsel.

1 24. The Court approves, for settlement purposes only, Nataliah Devol Green as the
2 Class Representative.

3 25. The Court approves Phoenix Class Action Administration Solutions as the
4 Administrator.

5 26. The Court preliminarily approves Class Counsel's request for attorneys' fees and
6 costs subject to final review by the Court.

7 27. The Court preliminarily approves the estimated Administrator costs payable to the
8 Administrator subject to final review by the Court.

9 28. The Court preliminarily approves Plaintiff's Class Representative Service
10 Payment subject to final review by the Court.

11 29. The Court preliminarily approves the installment payments and distribution
12 schedules incorporated in the Settlement.

13 30. A Final Approval Hearing shall be held on ____ at ____.m. in Department Dept. 11
14 of the Superior Court for the State of California, County of Los Angeles, located at the Spring
15 Street Courthouse, 312 N. Spring Street, Los Angeles, CA 90012 to consider the fairness,
16 adequacy and reasonableness of the proposed Settlement preliminarily approved by this
17 Preliminary Approval Order, and to consider the application of Class Counsel for attorneys' fees
18 and costs and the Class Representative Service Payment to the Class Representative. The notice
19 of motion and all briefs and materials in support of the motion for final approval of class action
20 settlement and motion for attorneys' fees and litigation costs shall be served and filed with this
21 Court on or before _____. Plaintiff's counsel must give notice to any objecting party of any
22 continuance of the hearing of the motion for final approval.

23 31. If for any reason the Court does not execute and file a Final Approval Order and
24

1 judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason, the
2 proposed Settlement that is the subject of this order, and all evidence and proceedings had in
3 connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the
4 litigation, as more specifically set forth in the Settlement.

5 32. The Court expressly reserves the right to adjourn or continue the Final Approval
6 Hearing from time to time without further notice to members of the Class. The Plaintiff shall give
7 prompt notice of any continuance to Settlement Class Members who object to the Settlement.
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9 **IT IS SO ORDERED.**

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12 **DATE**

12 **THE HONORABLE DAVID S.**
13 **CUNNINGHAM**
14 **SUPERIOR COURT JUDGE**

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EXHIBIT F

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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF LOS ANGELES**
9 **(UNLIMITED JURISDICTION)**

10 NATALIAH DEVOL GREEN, on behalf of
11 herself and all others similarly situated, and as an
12 “aggrieved employee” on behalf of other
13 “aggrieved employees” under the Labor Code
14 Private Attorneys General Act of 2004,

15 *Plaintiff(s),*

16 vs.

17 MORGAN COOKIE GROUP CULVER LLC, a
18 California limited liability company; MORGAN
19 COOKIE GROUP LLC, a California limited
20 liability company; CRUMBL LLC, a Utah
21 limited liability company; POCKETS SMITTY
22 CORONA LLC, a Utah limited liability
23 company; and DOES 1–50, inclusive,

24 *Defendant(s).*

Case No. 23STCV11939

**[PROPOSED] FINAL ORDER AND
JUDGMENT APPROVING CLASS
ACTION SETTLEMENT**

Action filed: May 25, 2023
Dept: Dept. 11, The Honorable
David S. Cunningham

25 This matter came on for hearing on ____ at ____m. in Department Dept. 11 of the above-
26 captioned court on Plaintiff’s Motion for Final Approval of a Class Action Settlement pursuant
27 to California Rules of Court, Rule 3.769, as set forth in the First Amended Class Action and PAGA
28 Settlement Agreement (the “Settlement”) filed herewith which provides for a Gross Settlement
Amount (“GSA”) of up to \$450,000.00 in compromise of all disputed claims on behalf of all

1 persons employed or otherwise contracted by (i) Pockets Smitty Two, LLC; (ii) Pockets Smitty
2 Riverside, LLC; (iii) Pockets Smitty Upland, LLC; (iv) Pockets Smitty Menifee, LLC; (v)
3 Morgan Cookie Group, LLC; (vi) Morgan Cookie Group Culver, LLC; (vii) Pockets Smitty
4 Fontana, LLC; (viii) Morgan Cookies Group Downey, LLC; (ix) Pockets Smitty Corona, LLC
5 and/or (x) Pockets Smitty Rosemead, LLC as non-exempt, hourly employees during the period
6 of May 25, 2019 to the date of preliminary approval of this Settlement (“Settlement Class
7 Period”). All capitalized terms used herein shall have the same meaning as defined in the
8 Settlement.
9

10 In accordance with the Court’s prior Order Granting Preliminary Approval of Class
11 Action Settlement, Class Members have been given notice of the terms of the Settlement and the
12 opportunity to submit a claim, request exclusion, comment upon or object to it or to any of its
13 terms. Having received and considered the Settlement, the supporting papers filed by the Parties,
14 and the evidence and argument received by the Court in conjunction with the motions for
15 preliminary and final approval of the Settlement, the Court grants final approval of the Settlement
16 and HEREBY ORDERS, ADJUDGES, DECREES AND MAKES THE FOLLOWING
17 DETERMINATIONS¹:
18

19 1. The Court has jurisdiction over the subject matter of the Action and over all Parties
20 to the Action, including all Class Members. Pursuant to this Court’s Order Granting Preliminary
21 Approval of Class Action Settlement of ___, the Notice Packet was sent to each Class Member
22 by First Class U.S. mail. The Notice Packet informed Class Members of the terms of the
23 Settlement, their right to receive their proportional share of the Settlement, their right to request
24
25

26
27 ¹ A true and correct copy of the Court’s order on the Motion for Preliminary Approval of Class
28 Action Settlement entered on [REDACTED] is attached hereto as Exhibit A and incorporated by reference.
Green v. Morgan Cookie Group Culver LLC, et al.

1 exclusion, their right to comment upon or object to the Settlement, and their right to appear in
2 person or by counsel at the final approval hearing and be heard regarding final approval of the
3 Settlement. Adequate periods of time were provided by each of these procedures. No member of
4 the Settlement Class presented written objections to the proposed Settlement as part of this notice
5 process, stated an intention to appear, or actually appeared at the final approval hearing.

6
7 2. For purposes of this Final Order and Judgment, the Class Members are all persons
8 employed or otherwise contracted by (i) Pockets Smitty Two, LLC; (ii) Pockets Smitty Riverside,
9 LLC; (iii) Pockets Smitty Upland, LLC; (iv) Pockets Smitty Menifee, LLC; (v) Morgan Cookie
10 Group, LLC; (vi) Morgan Cookie Group Culver, LLC; (vii) Pockets Smitty Fontana, LLC; (viii)
11 Morgan Cookies Group Downey, LLC; (ix) Pockets Smitty Corona, LLC and/or (x) Pockets
12 Smitty Rosemead, LLC as non-exempt, hourly employees at any time during the period of May
13 25, 2019 to the date of preliminary approval of this Settlement (“Settlement Class Period”).

14
15 3. The Court finds and determines that the notice procedure afforded adequate
16 protections to Class Members and provides the basis for the Court to make an informed decision
17 regarding final approval of the Settlement based on the responses of Class Members. The Court
18 finds and determines that the notice provided in this case was the best notice practicable, which
19 satisfied the requirements of law and due process as to all persons entitled to such notice.

20
21 4. **Release by Plaintiff and Class Members.** The Parties agree that it is their intent
22 that the resolution set forth in this Settlement will release and discharge the Released Claims by
23 way of any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or
24 other action of any kind by each and all of the Settlement Class Members (including participation
25 to any extent in any representative or collective action) against the Released Parties. This release
26 will not take effect until Defendants have paid the Gross Settlement Amount in full per this

1 Settlement Agreement.

2 5. **PAGA Release**. Plaintiff releases all claims for civil penalties that could have
3 been sought by the Labor Commissioner for the violations identified in Plaintiffs pre-filing
4 letter to the LWDA; Plaintiff does not release the claim for wages or damages of any Aggrieved
5 Employee unless such Aggrieved Employee is a Participating Class Member.

6
7 6. **“Released Claims”** shall mean all claims stated in the Operative Complaint and
8 based solely on the facts alleged in the Operative Complaint. **“Released Parties”** shall mean
9 Defendants, and each of their respective former and present directors, officers, shareholders,
10 owners, parents, subsidiaries, brother-sister companies, franchisors, affiliates, members,
11 attorneys, insurers, employees, predecessors, successors, and assigns, including, without
12 limitation, (i) Pockets Smitty Two, LLC; (ii) Pockets Smitty Riverside, LLC; (iii) Pockets Smitty
13 Upland, LLC; (iv) Pockets Smitty Menifee, LLC; (v) Morgan Cookie Group, LLC; (vi) Morgan
14 Cookie Group Culver, LLC; (vii) Pockets Smitty Fontana, LLC; (viii) Morgan Cookies Group
15 Downey, LLC; (ix) Pockets Smitty Corona, LLC and/or (x) Pockets Smitty Rosemead, LLC.

16
17 7. The Court further finds and determines that the terms of the Settlement are fair,
18 reasonable and adequate, that the Settlement is ordered finally approved, and that all terms and
19 provisions of the Settlement, including the release of claims contained therein, should be and
20 hereby are ordered to be consummated, and directs the Parties to effectuate the Settlement
21 according to its terms. As of the Effective Date of Settlement, and for the duration of the
22 Settlement Class Period, all Class Members are hereby deemed to have waived and released all
23 Released Claims and are forever barred and enjoined from prosecuting the Released Claims
24 against the Released Parties as fully set forth in the Settlement. No objections were received by
25 the Parties or the Court through the date of this Final Order and Judgment. The Court finds ____

1 Class Member(s) - ____ - submitted a request for exclusion from the Settlement as determined by
2 the Administrator and therefore is/are not in the Settlement Class.

3 8. The Court finds and determines that (a) the Settlement Shares to be paid to
4 Participating Class Members and (b) the LWDA payment as civil penalties under the California
5 Labor Code Private Attorneys General Act of 2004, as amended, California Labor Code sections
6 2699 *et seq.*, as provided for by the Settlement are fair and reasonable. The Court hereby grants
7 final approval to, and orders the payment of, those amounts be made to the Participating Class
8 Members and to the California Labor & Workforce Development Agency (“LWDA”), in
9 accordance with the terms of the Settlement.
10

11 9. The Court further grants final approval to and orders that the following payments
12 be made in accordance with the terms of the Settlement:

13 a. Class Counsel fees & costs of \$150,000.00 in attorneys’ fees and
14 \$20,000.00 in litigation costs to Class Counsel;
15

16 b. \$15,000.00 as a Class Representative Service Payment award payable to
17 Plaintiff Nataliah Devol Green for her service as a Class Representative;

18 c. \$25,000.00 in costs of the Administrator payable to Phoenix Class Action
19 Administration Solutions for its services as the Administrator; and
20

21 d. Payment of \$3,750.00 (75% of the (\$5,000.00 PAGA penalty) to the
22 LWDA.

23 10. The settlement shall proceed as directed in the Settlement. Without affecting the
24 finality of this Final Order and Judgment in any way, the Court retains jurisdiction of all matters
25 relating to the interpretation, administration, implementation, effectuation and enforcement of this
26 Final Order and Judgment and the Settlement pursuant to California Rule of Court 3.769(h).

11. Within 14 calendar days of this Order, Defendants shall deposit \$175,000 of the Gross Settlement into an account controlled by the Administrator of the Settlement within 15 days of the Court granting final approval. Thereafter, Defendants shall make 24 monthly contributions to the account controlled by the Administrator until the balance of the Gross Settlement Amount is reached based on the payment schedule described in section 4. The first of the monthly installment payments shall be paid 30 days after the initial \$175,000 payment. Defendants will make each of the next 23 payments every 30 days thereafter. The 23 monthly payments shall be in equal amounts of \$11,458.33 though the last and the final payment will be in the amount of \$11,458.41. The Administrator shall make a total of three distributions. The first distribution will occur 14 days after the Effective Date. The second distribution shall occur 14 days after the 12th monthly installment payment and the third and last distribution will occur 14 days after the last and final monthly installment payment. The Administrator shall disburse the Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants. Defendant CRUMBL LLC is not obligated to fund any portion of the Gross Settlement Amount.

12. Other than their employer side payroll taxes, Defendants' payment of such sums shall be the sole financial obligation of Defendants under the Settlement, and shall be in full satisfaction of all claims released herein, including, without limitation, all claims for wages, penalties, interest, attorneys' fees, costs and expenses.

13. Pursuant to CCP 384 and the Settlement, Participating Class Members shall have one hundred and eighty (180) days from the date of the check's issuance to cash their Settlement Share check. After the expiration of the 180-day period, on Defendants' behalf, the Administrator

1 shall remit any amounts from voided settlement checks and otherwise unclaimed, plus interest on
2 the Residue at the legal rate of interest from the date of entry of the initial judgement to the
3 California Unclaimed Property Fund.

4 14. The Parties shall file a final accounting report by _____. A non-appearance case
5 review re submission of a final report is scheduled for ____ at _____.m. in Department Dept. 11.
6

7 15. Nothing in this Final Order and Judgment shall preclude any action to enforce the
8 Parties' obligations under the Settlement or hereunder, including the requirement that Defendants
9 deposit funds for distribution by the Administrator to Participating Class Members in accordance
10 with the Settlement.

11 16. The Court hereby enters final judgment in this case in accordance with the terms
12 of the Settlement, Order Granting Preliminary Approval of Class Action Settlement, and this Final
13 Order and Judgment.
14

15 17. The Parties are hereby ordered to comply with the terms of the Settlement.

16 18. The Parties shall bear their own costs and attorneys' fees except as otherwise
17 provided by the Settlement and this Final Order and Judgment.

18 19. The Settlement is not an admission by Defendants nor is this Final Order and
19 Judgment a finding of the validity of any claims in the Action or of any wrongdoing by
20 Defendants. Furthermore, the Settlement is not a concession by Defendants and shall not be used
21 as an admission of any fault, omission, or wrongdoing by Defendants. Neither this Final Order
22 and Judgment, the Settlement, any document referred to herein, any exhibit to any document
23 referred to herein, any action taken to carry out the Settlement, nor any negotiations or
24 proceedings related to the Settlement are to be construed as, or deemed to be evidence of, or an
25 admission or concession with regard to, the denials or defenses of Defendants, and shall not be
26

1 offered in evidence in any proceeding against the Parties hereto in any Court, administrative
2 agency, or other tribunal for any purpose whatsoever other than to enforce the provisions of this
3 Final Order and Judgment. This Final Order and Judgment, the Settlement and exhibits thereto,
4 and any other papers and records on file in the Action may be filed in this Court or in any other
5 litigation as evidence of the settlement by Defendants to support a defense of res judicata,
6 collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to
7 the Released Claims.
8

9 20. This document shall constitute a Judgment for purposes of California Rule of
10 Court 3.769(h).

11 **IT IS SO ORDERED, ADJUDGED AND DECREED.**
12
13

14 _____
15 **DATE**

14 _____
15 **THE HONORABLE DAVID S.**
16 **CUNNINGHAM**
17 **SUPERIOR COURT JUDGE**

EXHIBIT C

1 DAVID GLENN SPIVAK (SBN 179684)
david@spivaklaw.com
2 CAROLINE TAHMASSIAN (SBN 285680)
caroline@spivaklaw.com
3 THE SPIVAK LAW FIRM
4 8605 Santa Monica Bl
PMB 42554
5 West Hollywood, CA 90069
Telephone: (213) 725-9094
6 Facsimile: (213) 634-2485

7 Attorneys for Plaintiff(s),
8 NATALIAH DEVOL GREEN, and all others similarly situated
(Additional attorneys for parties on following page)

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**
12 **(UNLIMITED JURISDICTION)**

13 NATALIAH DEVOL GREEN, on behalf of
14 herself and all others similarly situated, and the
15 general public, and as an “aggrieved
16 employee” on behalf of other “aggrieved
Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19 MORGAN COOKIE GROUP CULVER LLC,
20 a California limited liability company;
21 MORGAN COOKIE GROUP LLC, a
California limited liability company;
22 MORGAN COOKIE GROUP DOWNEY
23 LLC, a California limited liability company;
24 CRUMBL LLC, a Utah limited liability
company; POCKETS SMITTY LLC, a Utah
limited liability company; and DOES 1–50,
inclusive,

25 *Defendant(s).*
26

Case No. 23STCV11939

**FIRST AMENDED CLASS ACTION AND
PAGA SETTLEMENT AGREEMENT
AND CLASS NOTICE**

Action filed: May 25, 2023
Dept: Dept. 11, The Honorable
David S. Cunningham

1
2 **ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)**

3 BENJAMIN J. SMITH (SBN 266712)
4 Benjy@thesmithlawcorp.com
5 SMITH LAW
6 8605 Santa Monica Bl, PMB 97638
7 West Hollywood, CA 90069-4109
8 Telephone: (818) 839-9607
9 Facsimile: (818) 839-9700

10
11 **ATTORNEYS FOR DEFENDANT(S)**

12 PAUL HASTINGS LLP
13 CHRIS A. JALIAN (SBN 295564)
14 chrisjalian@paulhastings.com
15 515 South Flower Street
16 Twenty-Fifth Floor
17 Los Angeles, California 90071-2228
18 Telephone: (213) 683-6000
19 Facsimile: (213) 627-0705

20 Attorneys for Defendants
21 MORGAN COOKIE GROUP CULVER LLC,
22 MORGAN COOKIE GROUP LLC,
23 MORGAN COOKIE GROUP DOWNEY LLC,
24 and POCKETS SMITTY LLC

25 ~~KEVIN JACKSON, SARA ABARBANEL~~ CA Bar No. ~~278169324045~~
26 ~~kjacksonsabarbanel~~@foley.com
27 FOLEY & LARDNER LLP
28 11988 EL CAMINO REAL, SUITE 400
SAN DIEGO, CA 92130-2594
TELEPHONE: 858.847.6700
FACSIMILE: 858.792.6773

Attorneys for Defendant CRUMBL LLC

1 This First Amended Class Action and PAGA Settlement Agreement (“Agreement”) is
2 made by and between Plaintiff NATALIAH DEVOL GREEN (“Plaintiff”) and Defendants
3 MORGAN COOKIE GROUP CULVER LLC, MORGAN COOKIE GROUP LLC, MORGAN
4 COOKIE GROUP DOWNEY LLC, CRUMBL LLC, and POCKETS SMITTY LLC (collectively
5 “Defendants”). The Agreement refers to Plaintiff and Defendants collectively as “Parties,” or
6 individually as “Party.”

7 **1. DEFINITIONS.**

8 1.1 “Action” means Plaintiff’s lawsuit alleging wage and hour violations against
9 Defendants captioned NATALIAH DEVOL GREEN, on behalf of herself and all others similarly
10 situated, and the general public, and as an “aggrieved employee” on behalf of other “aggrieved
11 employees” under the Labor Code Private Attorneys General Act of 2004 vs. MORGAN
12 COOKIE GROUP CULVER LLC, a California limited liability company; MORGAN COOKIE
13 GROUP LLC, a California limited liability company; MORGAN COOKIE GROUP DOWNEY
14 LLC, a California limited liability company; CRUMBL LLC, a Utah limited liability company;
15 POCKETS SMITTY LLC, a Utah limited liability company; and DOES 1–50, inclusive, Case
16 No. 23STCV11939, initiated on May 25, 2023, and pending in Superior Court of the State of
17 California, County of Los Angeles.

18 1.1. “Administrator” means Phoenix Class Action Administration Solutions, the
19 neutral entity the Parties have agreed to appoint to administer the Settlement.

20 1.2. “Administration Expenses Payment” means the amount the Administrator will be
21 paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in
22 accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection
23 with Preliminary Approval of the Settlement.

24 1.3. “Aggrieved Employee” means a person employed or otherwise contracted by (i)
25 Pockets Smitty Two, LLC; (ii) Pockets Smitty Riverside, LLC; (iii) Pockets Smitty Upland, LLC;
26 (iv) Pockets Smitty Menifee, LLC; (v) Morgan Cookie Group, LLC; (vi) Morgan Cookie Group
27 Culver, LLC; (vii) Pockets Smitty Fontana, LLC; (viii) Morgan Cookies Group Downey, LLC;
28 (ix) Pockets Smitty Corona, LLC and/or (x) Pockets Smitty Rosemead, LLC as non-exempt,
hourly employees during the PAGA Period.

1.4. “Class” means all persons employed or otherwise contracted by (i) Pockets Smitty

Two, LLC; (ii) Pockets Smitty Riverside, LLC; (iii) Pockets Smitty Upland, LLC; (iv) Pockets Smitty Menifee, LLC; (v) Morgan Cookie Group, LLC; (vi) Morgan Cookie Group Culver, LLC; (vii) Pockets Smitty Fontana, LLC; (viii) Morgan Cookies Group Downey, LLC; (ix) Pockets Smitty Corona, LLC and/or (x) Pockets Smitty Rosemead, LLC as non-exempt, hourly employees during the Class Period.

1.5. “Class Counsel” means David Glenn Spivak of The Spivak Law Firm and Benjamin J. Smith of Smith Law.

1.6. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

1.7. “Class Data” means Class Member identifying information in Defendants’ possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Class Workweeks and PAGA Pay Periods.

1.8. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

1.9. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.10. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement. Defendants represent that an English only Class Notice is sufficient.

1.11. “Class Period” means the period from May 25, 2019 to the date of preliminary approval of this Settlement.

1.12. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.

1.13. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.

1.14. "Court" means the Superior Court of California, County of Los Angeles.

1.15. "Defendants" means named Defendants means named Defendants MORGAN COOKIE GROUP CULVER LLC; MORGAN COOKIE GROUP LLC; MORGAN COOKIE GROUP DOWNEY LLC; CRUMBL LLC; and POCKETS SMITTY LLC.

1.16. "Defense Counsel" means Chris A. Jalian, Esq. of Paul Hastings LLP and ~~Kevin Jackson~~Sara Abarbanel of Foley & Lardner LLP.

1.17. "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: the day after the deadline for filing a notice of appeal from the Judgment; or (b) if an appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

1.18. "Final Approval" means the Court's order granting final approval of the Settlement.

1.19. "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval of the Settlement.

1.20. "Final Judgment" means the Judgment Entered by the Court upon Granting Final Approval of the Settlement. A proposed Final Judgment form is attached as Exhibit F.

1.21. "Gross Settlement Amount" means \$450,000.00 which is the total amount Defendants agree to pay under the Settlement. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator's Expenses. Defendant CRUMBL LLC is not obligated to fund any portion of the Gross Settlement Amount.

1.22. "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Class Workweeks worked during the Class Period.

1.23. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period.

1.24. "Judgment" means the judgment entered by the Court based upon the Final Approval.

1 1.25. “LWDA” means the California Labor and Workforce Development Agency, the
2 agency entitled, under Labor Code section 2699, subd. (i).

3 1.26. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the
4 LWDA under Labor Code section 2699, subd. (i).

5 1.27. “Net Settlement Amount” means the Gross Settlement Amount, less the following
6 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
7 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
8 Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be
9 paid to Participating Class Members as Individual Class Payments.

10 1.28. “Non-Participating Class Member” means any Class Member who opts out of the
11 Settlement by sending the Administrator a valid and timely Request for Exclusion.

12 1.29. “Notice Packet” means the Class Notice (Exhibit A), the Election Not to
13 Participate in Settlement form (Exhibit B), the Class Workweek Dispute form (Exhibit C), and
14 the Objection form (Exhibit D) in English.

15 1.30. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee
16 worked for Defendants for at least one day during the PAGA Period.

17 1.31. “PAGA Period” means the period from April 4, 2022 to the date of preliminary
18 approval of this Settlement.

19 1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

20 1.33. “PAGA Notice” means Plaintiff’s April 4, 2023 letter to Defendants and the
21 LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

22 1.34. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from
23 the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$1,250.00) and the
24 75% to LWDA (\$3,750.00) in settlement of PAGA claims.

25 1.35. “Participating Class Member” means a Class Member who does not submit a valid
26 and timely Request for Exclusion from the Settlement.

27 1.36. “Plaintiff” means Nataliah Devol Green, the named plaintiff in the Action.

28 1.37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval
of the Settlement.

1.38. “Preliminary Approval Order” means the proposed Order Granting Preliminary
Approval and Approval of PAGA Settlement. A proposed Preliminary Approval Order form is

1 attached as Exhibit E.

2 1.39. “Released Class Claims” means the claims being released as described in
3 Paragraph 6.2 below.

4 1.40. “Released PAGA Claims” means the claims being released as described in
5 Paragraph 6.2 below.

6 1.41. “Released Parties” means: Defendants, and each of their respective former and
7 present directors, officers, shareholders, owners, parents, subsidiaries, brother-sister companies,
8 franchisors, affiliates, members, attorneys, insurers, employees, predecessors, successors, and
9 assigns, including, without limitation, (i) Pockets Smitty Two, LLC; (ii) Pockets Smitty
10 Riverside, LLC; (iii) Pockets Smitty Upland, LLC; (iv) Pockets Smitty Menifee, LLC; (v)
11 Morgan Cookie Group, LLC; (vi) Morgan Cookie Group Culver, LLC; (vii) Pockets Smitty
12 Fontana, LLC; (viii) Morgan Cookies Group Downey, LLC; (ix) Pockets Smitty Corona, LLC
13 and/or (x) Pockets Smitty Rosemead, LLC.

14 1.42. “Request for Exclusion” means a Class Member’s submission of a written request
15 to be excluded from the Class Settlement signed by the Class Member. An Election Not to
16 Participate in Settlement form is attached as Exhibit B.

17 1.43. “Response Deadline” means 60 days after the Administrator mails Notice to Class
18 Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a)
19 fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or
20 her Objection to the Settlement. Class Members to whom Notice Packets are resent after having
21 been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond
22 the Response Deadline has expired.

23 1.44. “Settlement” means the disposition of the Action effected by this Agreement and
24 the Judgment.

25 1.45. “Class Workweek” means any week during which a Class Member worked for
26 Defendants for at least one day, during the Class Period.

27 1.46. A Class Workweek Dispute form is attached as Exhibit C.

28 **2. RECITALS.**

29 2.1. On May 25, 2023, Plaintiff commenced this Action by filing a Complaint
30 alleging causes of action against Defendants for failure to pay wages, failure to authorize and

1 permit rest periods, failure to provide meal periods, failure to indemnify for business expenses,
2 failure to issue proper wage statements, failure to timely pay wages, failure to maintain required
3 payroll records, and related claims. On June 9, 2023, Plaintiff filed a First Amended Complaint
4 alleging causes of action against Defendants for failure to pay wages, failure to authorize and
5 permit rest periods, failure to provide meal periods, failure to indemnify for business expenses,
6 failure to issue proper wage statements, failure to timely pay wages, failure to maintain required
7 payroll records, and related allegations. The First Amended Complaint is the operative complaint
8 in the Action (the “Operative Complaint.”) Defendants deny the allegations in the Operative
9 Complaint, deny any failure to comply with the laws identified in in the Operative Complaint and
deny any and all liability for the causes of action alleged.

10 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave written notice to
11 Defendants and the LWDA by sending the PAGA Notice. For the purposes of this Settlement,
Defendants do not contest the timeliness of Plaintiff’s PAGA Notice.

12 2.3. On March 8, 2024, the Parties participated in an all-day mediation presided over
13 by mediator the Honorable Ann Jones (ret.). The Parties later engaged in direct settlement
14 negotiations, which led to this Agreement to settle the Action.

15 2.4. Prior to mediation, Plaintiff obtained, through informal discovery, time and
16 payroll records, policies, training documents, and related information. Plaintiff’s investigation
17 was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.*
18 (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
19 116, 129-130 (“*Dunk/Kullar*”). Following the mediation, Defendants produced thousands of
pages of financial records to demonstrate their financial condition.

20 2.5. The Court has not granted class certification.

21 2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware
22 of any other pending matter or action asserting claims that will be extinguished or affected by the
Settlement.

23 **3. MONETARY TERMS.**

24 3.1. Gross Settlement Amount. Defendants promise to pay \$450,000.00 and no more
25 as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed
26 on the Wage Portions of the Individual Class Payments. Defendants have agreed to deposit
27 \$175,000 of the Gross Settlement into an account controlled by the Administrator of the

1 Settlement within 15 days of the Court granting final approval. Thereafter, Defendants will make
2 24 monthly contributions to the account controlled by the Administrator until the balance of the
3 Gross Settlement Amount is reached based on the payment schedule described in section 4. The
4 first of the monthly installment payments will be paid 30 days after the initial \$175,000 payment.
5 Defendants will make each of the next 23 payments every 30 days thereafter. The 24 monthly
6 payments will be in equal amounts of \$11,458.33 though the last and the final payment will be in
7 the amount of \$11,458.41. The Administrator will make a total of three distributions. The first
8 distribution will occur 14 days after the Effective Date. The second distribution will occur 14
9 days after the 12th monthly installment payment and the third and last distribution will occur 14
10 days after the last and final monthly installment payment. The Administrator will disburse the
11 Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved
12 Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount
13 will revert to Defendants. Defendant CRUMBL LLC is not obligated to fund any portion of the
14 Gross Settlement Amount.

15 3.2. Payments from the Gross Settlement Amount. The Administrator will make and
16 deduct the following payments from the Gross Settlement Amount, in the amounts specified by
17 the Court in the Final Approval:

18 3.2.1. To Plaintiff: Class Representative Service Payment to the Class
19 Representative of not more than \$15,000.00 (in addition to any Individual Class Payment and any
20 Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class
21 Member). Defendants will not oppose Plaintiff's request for a Class Representative Service
22 Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment
23 and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class
24 Representative Service Payments no later than 16 court days prior to the Final Approval Hearing.
25 If the Court approves a Class Representative Service Payment less than the amount requested, the
26 Administrator will retain the remainder in the Net Settlement Amount. The Administrator will
27 pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full
28 responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 33 and
1/3%, which is currently estimated to be \$150,000.00 and a Class Counsel Litigation Expenses
Payment of not more than \$20,000.00. Defendants will not oppose requests for these payments

1 provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for
2 Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days
3 prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or
4 a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator
5 will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability
6 to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class
7 Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator
8 will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more
9 IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the
10 Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds
11 Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any
12 division or sharing of any of these Payments.

13 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
14 \$25,000.00 except for a showing of good cause and as approved by the Court. To the extent the
15 Administration Expenses are less or the Court approves payment less than \$25,000.00, the
16 Administrator will retain the remainder in the Net Settlement Amount.

17 3.2.4. To Each Participating Class Member: An Individual Class Payment
18 calculated by (a) dividing the Net Settlement Amount by the total number of Class Workweeks
19 worked by all Participating Class Members during the Class Period and (b) multiplying the result
20 by each Participating Class Member's Class Workweeks.

21 3.2.4.1. Tax Allocation of Individual Class Payments. 30.00% of
22 each Participating Class Member's Individual Class Payment will be allocated to settlement of
23 wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be
24 reported on an IRS W-2 Form. The 70.00% of each Participating Class Member's Individual
25 Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage
26 Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on
27 IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any
28 employee taxes owed on their Individual Class Payment.

3.2.4.2. Effect of Non-Participating Class Members on Calculation
of Individual Class Payments. Non-Participating Class Members will not receive any Individual
Class Payments. The Administrator will retain amounts equal to their Individual Class Payments

1 in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

2 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the
3 amount of \$5,000.00 to be paid from the Gross Settlement Amount, with 75% (\$3,750.00)
4 allocated to the LWDA PAGA Payment and 25% (\$1,250.00) allocated to the Individual PAGA
5 Payments.

6 3.2.5.1. The Administrator will calculate each Individual PAGA Payment
7 by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$1,250.00
8 by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA
9 Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods.
10 Aggrieved Employees assume full responsibility and liability for any taxes owed on their
11 Individual PAGA Payment.

12 3.2.5.2. If the Court approves PAGA Penalties of less than the amount
13 requested, the Administrator will allocate the remainder to the Net Settlement Amount. The
14 Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

14 **4. SETTLEMENT FUNDING AND PAYMENTS.**

15 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of
16 their records through mediation, Defendants estimates there are 873 Class Members who
17 collectively worked a total of 18,013 Class Workweeks and 683 of Aggrieved Employees who
18 worked a total 13,691 of PAGA Pay Periods.

19 4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval
20 of the Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in
21 the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the
22 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes
23 of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator
24 employees who need access to the Class Data to effect and perform under this Agreement.
25 Defendants have a continuing duty to immediately notify Class Counsel if they discover that the
26 Class Data omitted class member identifying information and to provide corrected or updated
27 Class Data as soon as reasonably feasible. Without any extension of the deadline by which
28 Defendants must send the Class Data to the Administrator, the Parties and their counsel will
expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related

1 to missing or omitted Class Data.

2 4.3. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross
3 Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll
4 taxes by transmitting the funds to the Administrator. Defendants have agreed to deposit \$175,000
5 of the Gross Settlement into an account controlled by the Administrator of the Settlement within
6 15 days of the Court granting final approval. Thereafter, Defendants will make 24 monthly
7 contributions to the account controlled by the Administrator until the balance of the Gross
8 Settlement Amount is reached based on the payment schedule described in section 4. The first of
9 the monthly installment payments will be paid 30 days after the initial \$175,000 payment.
10 Defendants will make each of the next 23 payments every 30 days thereafter. The 24 monthly
11 payments will be in equal amounts of \$11,458.33 though the last and the final payment will be in
12 the amount of \$11,458.41. Defendants will also fund the amounts necessary to fully pay
13 Defendants' share of payroll taxes by transmitting the funds to the Administrator for each
14 distribution. Defendant CRUMBL LLC is not obligated to fund any portion of the Gross
15 Settlement Amount.

16 4.4. Payments from the Gross Settlement Amount. The Administrator will make a
17 total of three distributions. The first distribution will occur 14 days after the Effective Date. The
18 second distribution will occur 14 days after the 12th monthly installment payment and the third
19 and last distribution will occur 14 days after the last and final monthly installment payment. The
20 Administrator will disburse the Gross Settlement Amount without asking or requiring
21 Participating Class Members or Aggrieved Employees to submit any claim as a condition of
22 payment. None of the Gross Settlement Amount will revert to Defendants. For each distribution,
23 the Administrator will mail checks for all *pro rata* Individual Class Payments, all Individual
24 PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class
25 Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class
26 Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class
27 Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not
28 precede disbursement of Individual Class Payments and Individual PAGA Payments. Class
Counsel and Plaintiff shall receive their *pro rata* shares of each distribution only after the
Participating Class Members have been fully paid their *pro rata* shares of each distribution.

4.4.1. The Administrator will issue checks for the Individual Class Payments

1 and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail,
2 postage prepaid. The face of each check shall prominently state the date (not less than 180 days
3 after the date of mailing) when the check will be voided. The Administrator will cancel all checks
4 not cashed by the void date. The Administrator will send checks for Individual Settlement
5 Payments to all Participating Class Members (including those for whom Notice Packet was
6 returned undelivered). The Administrator will send checks for Individual PAGA Payments to all
7 Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved
8 Employees (including those for whom Notice Packet was returned undelivered). The
9 Administrator may send Participating Class Members a single check combining the Individual
10 Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator
must update the recipients' mailing addresses using the National Change of Address Database.

11 4.4.2. The Administrator must conduct a Class Member Address Search for all
12 other Class Members whose checks are returned undelivered without USPS forwarding address.
13 Within seven (7) days of receiving a returned check the Administrator must re-mail checks to the
14 USPS forwarding address provided or to an address ascertained through the Class Member
15 Address Search. The Administrator need not take further steps to deliver checks to Class Members
16 whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a
17 replacement check to any Class Member whose original check was lost or misplaced, requested
18 by the Class Member prior to the void date.

19 4.4.3. For any Class Member whose Individual Class Payment check or
20 Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator
21 shall transmit the funds represented by such checks to the California Controller's Unclaimed
22 Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to
23 the requirements of California Code of Civil Procedure Section 384, subd. (b).

24 4.4.4. The payment of Individual Class Payments and Individual PAGA
25 Payments shall not obligate Defendants to confer any additional benefits or make any additional
26 payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in
27 this Agreement.

28 **5. [OMITTED]**

6. RELEASES OF CLAIMS. Effective on the date when Defendants fully fund the entire
Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the

1 Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims
2 against all Released Parties as follows:

3 6.1 Plaintiff's Release. Plaintiff and her respective former and present spouses,
4 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release
5 and discharge Released Parties from all claims, transactions, or occurrences that occurred during
6 the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have
7 been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims
8 that were, or reasonably could have been, alleged based on facts contained in the Operative
9 Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under 6.2,
10 below. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to
11 enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability
12 benefits, social security benefits, workers' compensation benefits that arose at any time, or based
13 on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts
14 or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be
15 true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects,
16 notwithstanding such different or additional facts or Plaintiff's discovery of them.

17 6.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For
18 purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights,
19 and benefits, if any, of section 1542 of the California Civil Code, which reads:

20 **A general release does not extend to claims that the creditor or releasing party does
21 not know or suspect to exist in his or her favor at the time of executing the release,
22 and that if known by him or her would have materially affected his or her settlement
23 with the debtor or Released Party.**

24 6.2 Release by Participating Class Members Who Are Not Aggrieved Employees:
25 All Participating Class Members, on behalf of themselves and their respective former and present
26 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released
27 Parties from all claims stated in the Operative Complaint and those based solely upon the facts
28 alleged in the Operative Complaint. Except as set forth in Section 6.3 of this Agreement,
Participating Class Members do not release any other claims, including claims for vested benefits,
wrongful termination, violation of the Fair Employment and Housing Act, unemployment

1 insurance, disability, social security, workers' compensation, or claims based on facts occurring
2 outside the Class Period.

3 6.3 Release of PAGA Claim. Plaintiff releases all claims for civil penalties that
4 could have been sought by the Labor Commissioner for the violations identified in Plaintiff's
5 pre-filing letter to the LWDA; Plaintiff does not release the claim for wages or damages of any
6 Aggrieved Employee unless such Aggrieved Employee is a Participating Class Member.

7 **7. MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and
8 file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with
9 the Court's current checklist for Preliminary Approvals. A Preliminary Approval Order form is
10 attached as Exhibit E.

11 7.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel
12 all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice,
13 and memorandum in support, of the Motion for Preliminary Approval that includes an analysis
14 of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under
15 Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval
16 and Approval of PAGA Settlement; (iii) a draft proposed Notice Packet; (iv) a signed declaration
17 from the Administrator attaching its "not to exceed" bid for administering the Settlement and
18 attesting to its willingness to serve; competency; operative procedures for protecting the security
19 of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other
20 misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members;
21 and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense
22 Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve
23 and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members,
24 and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its
25 competency to represent the Class Members; its timely transmission to the LWDA of all necessary
26 PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative
27 Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699,
28 subd. (l)(2)); (vi) a redlined version of the parties' Agreement showing all modifications made to
the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or
potential conflict of interest with Class Members and/or the Administrator. In their Declarations,

1 Plaintiff and Class Counsel shall aver that they are not aware of any other pending matter or action
2 asserting claims that will be extinguished or adversely affected by the Settlement.

3 7.2 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly
4 responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later
5 than 60 days after the full execution of this Agreement; obtaining a prompt hearing date for the
6 Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion
7 for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary
Approval to the Administrator.

8 7.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion
9 for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
10 Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person
11 or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant
12 Preliminary Approval or conditions Preliminary Approval on any material change to this
13 Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of
14 the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and
otherwise satisfy the Court's concerns.

15 **8. SETTLEMENT ADMINISTRATION.**

16 8.1 Selection of Administrator. The Parties have jointly selected Phoenix Class
17 Action Administration Solutions to serve as the Administrator and verified that, as a condition of
18 appointment, Phoenix Class Action Administration Solutions agrees to be bound by this
19 Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for
20 payment of Administration Expenses. The Parties and their Counsel represent that they have no
21 interest or relationship, financial or otherwise, with the Administrator other than a professional
22 relationship arising out of prior experiences administering settlements.

23 8.2 Employer Identification Number. The Administrator shall have and use its own
24 Employer Identification Number for purposes of calculating payroll tax withholdings and
providing reports state and federal tax authorities.

25 8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund
26 that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury
27 Regulation section 468B-1.

1 8.4 Notice to Class Members.

2 8.4.1 No later than three (3) business days after receipt of the Class Data, the
3 Administrator shall notify Class Counsel that the list has been received and state the number of
4 Class Members, PAGA Members, Class Workweeks, and PAGA Pay Periods in the Class Data.

5 8.4.2 Using best efforts to perform as soon as possible, and in no event later than
6 14 days after receiving the Class Data, the Administrator will send to all Class Members identified
7 in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Notice Packet,
8 if applicable substantially in the forms attached to this Agreement as **Exhibits A, B, C, and D.**
9 The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual
10 Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of
11 Class Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before
12 mailing Notice Packets, the Administrator shall update Class Member addresses using the National
13 Change of Address database.

14 8.4.3 Not later than three (3) business days after the Administrator’s receipt of
15 any Notice Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice
16 Packet using any forwarding address provided by the USPS. If the USPS does not provide a
17 forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail
18 the Notice Packet to the most current address obtained. The Administrator has no obligation to
19 make further attempts to locate or send Notice Packet to Class Members whose Notice Packet is
20 returned by the USPS a second time.

21 8.4.4 The deadlines for Class Members’ written objections, Challenges to Class
22 Workweeks and/or PAGA Pay Periods (disputes), and Requests for Exclusion will be extended
23 an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class
24 Members whose notice is re-mailed. The Administrator will inform the Class Member of the
25 extended deadline with the re-mailed Notice Packet.

26 8.4.5 If the Administrator, Defendants or Class Counsel is contacted by or
27 otherwise discovers any persons who believe they should have been included in the Class Data
28 and should have received Notice Packet, the Parties will expeditiously meet and confer in person
or by telephone, and in good faith, in an effort to agree on whether to include them as Class
Members. If the Parties agree, such persons will be Class Members entitled to the same rights as
other Class Members, and the Administrator will send, via email or overnight delivery, a Class

1 Notice requiring them to exercise options under this Agreement not later than 14 days after receipt
2 of Class Notice, or the deadline dates in the Class Notice, which ever are later.

3 8.5 Requests for Exclusion (Opt-Outs).

4 8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class
5 Settlement must send the Administrator, by fax, email, or mail, a signed written Request for
6 Exclusion not later than 60 days after the Administrator mails the Notice Packet (plus an
7 additional 14 days for Class Members whose Notice Packet is re-mailed). A Request for
8 Exclusion is a letter from a Class Member or his/her representative that reasonably communicates
9 the Class Member's election to be excluded from the Settlement and includes the Class Member's
10 name, address and email address or telephone number. To be valid, a Request for Exclusion must
11 be timely faxed, emailed, or postmarked by the Response Deadline. An Election Not to Participate
12 in Settlement form, attached as Exhibit B, may be used for this purpose but is not required.

13 8.5.2 The Administrator may not reject a Request for Exclusion as invalid
14 because it fails to contain all the information specified in the Class Notice. The Administrator
15 shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the
16 identity of the person as a Class Member and the Class Member's desire to be excluded. The
17 Administrator's determination shall be final and not appealable or otherwise susceptible to
18 challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion,
19 the Administrator may demand additional proof of the Class Member's identity. The
20 Administrator's determination of authenticity shall be final and not appealable or otherwise
21 susceptible to challenge.

22 8.5.3 Every Class Member who does not submit a timely and valid Request for
23 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all
24 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
25 Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless of whether the
26 Participating Class Member actually receives the Class Notice or objects to the Settlement.

27 8.5.4 Every Class Member who submits a valid and timely Request for
28 Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment
or have the right to object to the class action components of the Settlement. Aggrieved Employees
are eligible for an Individual PAGA Payment.

8.6 Challenges to Calculation of Class Workweeks. Each Class Member shall have

1 60 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class
2 Members whose Notice Packet is re-mailed) to challenge the number of Class Workweeks and
3 PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. This is also known
4 as a dispute. A Class Workweek/PAGA Pay Period Dispute form, attached as Exhibit C, may
5 be used for this purpose but is not required. The Class Member may challenge the allocation by
6 communicating with the Administrator via fax, email or mail. The Administrator must encourage
7 the challenging Class Member to submit supporting documentation. In the absence of any
8 contrary documentation, the Administrator is entitled to presume that the Class Workweeks
9 contained in the Class Notice are correct so long as they are consistent with the Class Data. The
10 Administrator's determination of each Class Member's allocation of Class Workweeks and/or
11 PAGA Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The
12 Administrator shall promptly provide copies of all challenges to calculation of Class Workweeks
and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's
determination the challenges.

13 8.7 Objections to Settlement.

14 8.7.1 Only Participating Class Members may object to the class action
15 components of the Settlement and/or this Agreement, including contesting the fairness of the
16 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel
Litigation Expenses Payment and/or Class Representative Service Payment.

17 8.7.2 Participating Class Members may send written objections to the
18 Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear
19 in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval
20 Hearing. A Participating Class Member who elects to send a written objection to the
21 Administrator must do so not later than 60 days after the Administrator's mailing of the Notice
22 Packet (plus an additional 14 days for Class Members whose Notice Packet was re-mailed). An
Objection form attached as Exhibit D may be used for this purpose but is not required.

23 8.7.3 Non-Participating Class Members have no right to object to any of the class
24 action components of the Settlement.

25 8.8 Administrator Duties. The Administrator has a duty to perform or observe all
26 tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

27 8.8.1 Website, Email Address and Toll-Free Number. The Administrator will

1 establish and maintain and use an internet website to post information of interest to Class
2 Members including the date, time and location for the Final Approval Hearing and copies of the
3 Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Notice
4 Packet, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class
5 Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final
6 Approval Order and the Judgment. The Administrator will also maintain and monitor an email
address and a toll-free telephone number to receive Class Member calls, faxes and emails.

7 8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator
8 will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not
9 later than five (5) days after the expiration of the deadline for submitting Requests for Exclusion,
10 the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the
11 names and other identifying information of Class Members who have timely submitted valid
12 Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of
13 Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for
Exclusion from Settlement submitted (whether valid or invalid).

14 8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide
15 written reports to Class Counsel and Defense Counsel that, among other things, tally the number
16 of: Notice Packets mailed or re-mailed, Notice Packets returned undelivered, Requests for
17 Exclusion (whether valid or invalid) received, objections received, challenges to Class
18 Workweeks and/or PAGA Pay Periods received and/or resolved, and checks mailed for Individual
19 Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must
20 include provide the Administrator’s assessment of the validity of Requests for Exclusion and
attach copies of all Requests for Exclusion and objections received.

21 8.8.4 Class Workweek and/or PAGA Pay Period Challenges. The Administrator
22 has the authority to address and make final decisions consistent with the terms of this Agreement
23 on all Class Member challenges over the calculation of Class Workweeks and/or PAGA Pay
24 Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible
to challenge.

25 8.8.5 Administrator’s Declaration. Not later than 14 days before the date by
26 which Plaintiff is required to file the Motion for Final Approval of the Settlement, the
27 Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable

1 for filing in Court attesting to its due diligence and compliance with all of its obligations under
2 this Agreement, including, but not limited to, its mailing of the Notice Packets, the Notice Packets
3 returned as undelivered, the re-mailing of Notice Packets, attempts to locate Class Members, the
4 total number of Requests for Exclusion from Settlement it received (both valid or invalid), the
5 number of written objections and attach the Exclusion List. The Administrator will supplement
6 its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible
7 for filing the Administrator's declaration(s) in Court.

8 8.8.6 Final Report by Administrator. Within 10 days after each distribution, the
9 Administrator will provide Class Counsel and Defense Counsel with a final report detailing its
10 disbursements by employee identification number only of all payments made under this
11 Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare,
12 and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court
13 attesting to its disbursement of all payments required under this Agreement. Class Counsel is
14 responsible for filing the Administrator's declaration in Court.

15 **9. DEFENDANTS' RIGHT TO WITHDRAW.** If the number of valid Requests for
16 Exclusion identified in the Exclusion List exceeds 10.00% of the total of all Class Members,
17 Defendants may, but are not obligated, elect to withdraw from the Settlement. All Defendants
18 should agree to the withdrawal for it to be valid. The Parties agree that, if Defendants withdraw,
19 the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party
20 will have any further obligation to perform under this Agreement; provided, however, Defendants
21 will remain responsible for paying all Settlement Administration Expenses incurred to that point.
22 Defendants must notify Class Counsel and the Court of their election to withdraw not later than
23 seven (7) days after the Administrator sends the final Exclusion List to Defense Counsel; late
24 elections will have no effect.

25 **10. MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared
26 Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement
27 that includes a request for approval of the PAGA settlement under Labor Code section 2699,
28 subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for
Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later
than 7 days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel
will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any

disagreements concerning the Motion for Final Approval.

10.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

10.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be

1 granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless
2 expeditiously work together in good faith to address the appellate court's concerns and to obtain
3 Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration
4 Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify
5 the Court's award of the Class Representative Service Payment or any payments to Class Counsel
6 shall not constitute a material modification of the Judgment within the meaning of this paragraph,
7 as long as the Gross Settlement Amount remains unchanged.

8 **11. AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil
9 Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed
10 amended judgment.

11 **12. ADDITIONAL PROVISIONS.**

12 12.1 No Admission of Liability, Class Certification or Representative Manageability
13 for Other Purposes. This Agreement represents a compromise and settlement of highly disputed
14 claims. Nothing in this Agreement is intended or should be construed as an admission by
15 Defendants that any of the allegations in the Operative Complaint have merit or that Defendants
16 have any liability for any claims asserted; nor should it be intended or construed as an admission
17 by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that class
18 certification and representative treatment is for purposes of this Settlement only. If, for any reason
19 the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendants
20 reserve the right to contest certification of any class for any reasons, and Defendants reserve all
21 available defenses to the claims in the Action, and Plaintiff reserves the right to move for class
22 certification on any grounds available and to contest Defendants' defenses. The Settlement, this
23 Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be
24 admissible in connection with, any litigation (except for proceedings to enforce or effectuate the
25 Settlement and this Agreement).

26 12.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel,
27 Defendants and Defense Counsel separately agree that, until the Motion for Preliminary Approval
28 of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or
cause or permit another person to disclose, disseminate or publicize, any of the terms of the

1 Agreement directly or indirectly, specifically or generally, to any person, corporation, association,
2 government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses,
3 all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter;
4 (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a
5 court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal
6 government agency.

7 Each Party agrees to immediately notify each other Party of any judicial or agency
8 order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendants and
9 Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other
10 communication, before the filing of the Motion for Preliminary Approval, any with third party
11 regarding this Agreement or the matters giving rise to this Agreement except to respond only that
12 "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's
13 communications with Class Members in accordance with Class Counsel's ethical obligations
14 owed to Class Members.

15 12.3 No Solicitation. The Parties separately agree that they and their respective
16 counsel and employees will not solicit any Class Member to opt out of or object to the Settlement,
17 or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class
18 Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical
19 obligations owed to Class Members.

20 12.4 Integrated Agreement. Upon execution by all Parties and their counsel, this
21 Agreement together with its attached exhibits shall constitute the entire agreement between the
22 Parties relating to the Settlement, superseding any and all oral representations, warranties,
23 covenants, or inducements made to or by any Party.

24 12.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant
25 and represent that they are authorized by Plaintiff and Defendants, respectively, to take all
26 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
27 to effectuate its terms, and to execute any other documents reasonably required to effectuate the
28 terms of this Agreement including any amendments to this Agreement.

12.6 Cooperation. The Parties and their counsel will cooperate with each other and
use their best efforts, in good faith, to implement the Settlement by, among other things,
modifying the Settlement Agreement, submitting supplemental evidence and supplementing

1 points and authorities as requested by the Court. In the event the Parties are unable to agree upon
2 the form or content of any document necessary to implement the Settlement, or on any
3 modification of the Agreement that may become necessary to implement the Settlement, the
4 Parties will seek the assistance of a mediator and/or the Court for resolution.

5 12.7 No Prior Assignments. The Parties separately represent and warrant that they
6 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,
7 or encumber to any person or entity and portion of any liability, claim, demand, action, cause of
8 action, or right released and discharged by the Party in this Settlement.

9 12.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendants nor Defense
10 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
11 Settlement be relied upon as such within the meaning of United States Treasury Department
12 Circular 230 (31 CFR Part 10, as amended) or otherwise.

13 12.9 Modification of Agreement. This Agreement, and all parts of it, may be
14 amended, modified, changed, or waived only by an express written instrument signed by all
15 Parties or their representatives, and approved by the Court.

16 12.10 Agreement Binding on Successors. This Agreement will be binding upon, and
17 inure to the benefit of, the successors of each of the Parties.

18 12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will
19 be governed by and interpreted according to the internal laws of the state of California, without
20 regard to conflict of law principles.

21 12.12 Cooperation in Drafting. The Parties have cooperated in the drafting and
22 preparation of this Agreement. This Agreement will not be construed against any Party on the
23 basis that the Party was the drafter or participated in the drafting.

24 12.13 Confidentiality. To the extent permitted by law, all agreements made, and orders
25 entered during Action and in this Agreement relating to the confidentiality of information shall
26 survive the execution of this Agreement.

27 12.14 Use and Return of Class Data. Information provided to Class Counsel pursuant
28 to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class
Counsel by Defendants in connection with the mediation, other settlement negotiations, or in
connection with the Settlement, may be used only with respect to this Settlement, and no other
purpose, and may not be used in any way that violates any existing contractual agreement, statute,

1 or rule of court. Not later than 90 days after the date when the Court discharges the
2 Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement
3 funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from
4 Defendants unless, prior to the Court's discharge of the Administrator's obligation, Defendants
5 make a written request to Class Counsel for the return, rather than the destructions, of Class Data.

6 12.15 Headings. The descriptive heading of any section or paragraph of this Agreement
7 is inserted for convenience of reference only and does not constitute a part of this Agreement.

8 12.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement
9 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
10 weekend or federal legal holiday, such date or deadline shall be on the first business day
11 thereafter.

12 12.17 Notice. All notices, demands or other communications between the Parties in
13 connection with this Agreement will be in writing and deemed to have been duly given as of the
14 third business day after mailing by United States mail, or the day sent by email or messenger,
15 addressed as follows:

16 To Plaintiff:
17 David Glenn Spivak, Esq.
18 The Spivak Law Firm
19 8605 Santa Monica Bl
20 PMB 42554
21 West Hollywood, CA 90069
22 david@spivaklaw.com

23 To Defendants:
24 Chris Jalian, Esq.
25 Paul Hastings LLP
26 515 South Flower Street
27 Twenty-Fifth Floor
28 Los Angeles, California 90071-2228
chrisjalian@paulhastings.com

~~Kevin Jackson~~ Sara Abarbanel, Esq.
Foley & Lardner LLP
11988 EL CAMINO REAL, SUITE 400
SAN DIEGO, CA 92130-2594
~~kjacksons~~ sabarbanel@foley.com

12.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Dated: ~~December~~ ____, 2024September By: _____
____, 2025 NATALIAH DEVOL GREEN

Dated: December____, 2024

September____, 2025

By: _____

TIMMY SMITH

Owner

For Defendants MORGAN COOKIE GROUP CULVER LLC; MORGAN COOKIE GROUP LLC; MORGAN COOKIE GROUP DOWNEY LLC; POCKETS SMITTY LLC

Dated: ~~December~~ September _____, 2024
_____, 2025 By: _____

For Defendant CRUMBL LLC

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THE SPIVAK LAW FIRM

Dated: ~~December~~ __, 2024 September __, By: _____
2025 DAVID GLENN SPIVAK, Attorneys
for Plaintiff, NATALIAH DEVOL
GREEN, and all others similarly
situated

SMITH LAW

Dated: ~~December~~ __, 2024 September __, By: _____
2025 BENJAMIN J. SMITH, Attorneys for
Plaintiff, NATALIAH DEVOL
GREEN, and all others similarly
situated

PAUL HASTINGS LLP

Dated: ~~December~~ __, 2024 September __, By: _____
2025 CHRIS A. JALIAN
Attorneys for Defendants
MORGAN COOKIE GROUP
CULVER LLC, MORGAN COOKIE
GROUP LLC, MORGAN COOKIE
GROUP DOWNEY LLC, and
POCKETS SMITTY LLC

FOLEY & LARDNER LLP

Dated: ~~December~~ __, 2024 September __, By: _____
2025 ~~KEVIN JACKSON~~ SARA
ABARBANEL, Attorneys for

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Defendant CRUMBL LLC

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EXHIBIT A

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING
DATE FOR FINAL COURT APPROVAL**

(case name: *Nataliah Devol Green v. Morgan Cookie Group Culver LLC* and number
23STCV11939)

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from an employee class action lawsuit (“Action”) against MORGAN COOKIE GROUP CULVER LLC; MORGAN COOKIE GROUP LLC; MORGAN COOKIE GROUP DOWNEY LLC; CRUMBL LLC; POCKETS SMITTY LLC (collectively hereafter referred to as “Defendants”) for alleged violations of California’s labor laws. The Action was filed by one of Defendants’ employees Nataliah Devol Green (“Plaintiff”) and seeks payment of (1) wages and other relief for all persons employed or otherwise contracted by (i) Pockets Smitty Two, LLC; (ii) Pockets Smitty Riverside, LLC; (iii) Pockets Smitty Upland, LLC; (iv) Pockets Smitty Menifee, LLC; (v) Morgan Cookie Group, LLC; (vi) Morgan Cookie Group Culver, LLC; (vii) Pockets Smitty Fontana, LLC; (viii) Morgan Cookies Group Downey, LLC; (ix) Pockets Smitty Corona, LLC and/or (x) Pockets Smitty Rosemead, LLC as non-exempt, hourly employees for a class of (“Class Members”) Defendants during the Class Period (May 25, 2019 to <<preliminary approval date>>); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all persons employed or otherwise contracted by (i) Pockets Smitty Two, LLC; (ii) Pockets Smitty Riverside, LLC; (iii) Pockets Smitty Upland, LLC; (iv) Pockets Smitty Menifee, LLC; (v) Morgan Cookie Group, LLC; (vi) Morgan Cookie Group Culver, LLC; (vii) Pockets Smitty Fontana, LLC; (viii) Morgan Cookies Group Downey, LLC; (ix) Pockets Smitty Corona, LLC and/or (x) Pockets Smitty Rosemead, LLC as non-exempt, hourly employees during the PAGA Period (April 4, 2022 to <<preliminary approval date>>) (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendants to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendants to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Defendants’ records, **your Individual Class Payment is estimated to be \$<<IndividualClassPaymentAmount>> (less withholding) and your Individual PAGA Payment is estimated to be \$<<IndividualPAGAPaymentAmount>>.** The estimated dollar value of a Work Week is <<\$increment type value>> and a PAGA Pay Period is <<@PayPeriodValue>>. The actual amount you may receive likely will be different and will depend on a number of factors. If no amount is stated for your Individual PAGA Payment, then according to Defendants’ records you are not eligible for an Individual PAGA Payment under the Settlement because you did not work during the PAGA Period. The individual payment amounts will vary. However, the average Individual Class Payment to a Class Member is estimated to be <<\$Average Individual Class Payment Amount>>. The average Individual PAGA Payment to an Aggrieved Employee is estimated to be <<\$Average Individual PAGA Payment Amount>>. The highest Individual Class Payment to a Class Member is estimated to

1 be <<\$Highest Individual Class Payment Amount>> and the lowest is estimated to be <<\$Lowest
2 Individual Class Payment Amount>>. The highest Individual PAGA Payment to an Aggrieved
3 Employee is estimated to be <<\$Highest Individual PAGA Payment Amount>> and the lowest
4 is estimated to be <<\$Lowest Individual PAGA Payment Amount>>.

5 The above estimates are based on Defendants' records showing that **you worked**
6 **<< >> Class Workweeks** during the Class Period and **you worked << >> PAGA Pay**
7 **Periods** during the PAGA Period. If you believe that you worked more Class Workweeks or
8 PAGA Pay Periods during either period, you can submit a challenge by **<<RESPONSE**
9 **DEADLINE>>**. See Section 4 of this Notice.

10 The Court has already preliminarily approved the proposed Settlement and approved this
11 Notice. The Court has not yet decided whether to grant final approval. The Court has
12 determined only that there is sufficient evidence to suggest that the proposed settlement
13 might be fair, adequate, and reasonable, and that any final determination of those issues
14 will be made at the Final Approval Hearing. Your legal rights are affected whether you act or
15 not act. Read this Notice carefully. You will be deemed to have carefully read and understood it.
16 At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement
17 and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class
18 Counsel"). The Court will also decide whether to enter a judgment that requires Defendants to
19 make payments under the Settlement and requires Class Members and Aggrieved Employees to
20 give up their rights to assert certain claims against Defendants.

21 If you worked for Defendants during the Class Period and/or the PAGA Period, you have
22 two basic options under the Settlement:

23 (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement
24 and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a
25 Participating Class Member, though, you will give up your right to assert Class Period wage
26 claims and PAGA Period penalty claims against Defendants.

27 (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class
28 Settlement (opt-out) by submitting a written Request for Exclusion or otherwise notifying the
Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual
Class Payment. You will, however, preserve your right to personally pursue Class Period claims
for California labor law violations against Defendants, and, if you are an Aggrieved Employee,
you remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion
of the proposed Settlement.

**Defendants will not retaliate against you for any actions you take with respect to the
proposed Settlement.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the claims against Defendants that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is <<RESPONSE DEADLINE>>	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. You can use the enclosed Election Not To Participate In Settlement form for this purpose. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendants must pay Individual PAGA Payments to all Aggrieved Employees and Plaintiff releases Defendants from civil penalties it may owe to the Aggrieved Employees.
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by <<RESPONSE DEADLINE>>	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. You can use the enclosed Objection form for this purpose. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the <<FinalApprovalHearingDate>> Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on <<FinalApprovalHearingDate>>. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing whether or not they submitted a written objection. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Class Workweek / Pay Periods Written Challenges Must be Submitted by <<RESPONSE DEADLINE>>	The amounts of your Individual Class Payment and PAGA Payment (if any) depend on how many Class Workweeks you worked at least one day during the Class Period and how many PAGA Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Workweeks and number of PAGA Pay Periods you worked according to Defendants' records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by <<RESPONSE DEADLINE>>. See Section 4 of this Notice. You can use the enclosed Class Workweeks Dispute

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	form for this purpose.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of Defendants. The Action accuses Defendants of violating California labor laws by failure to pay wages, failure to authorize and permit rest periods, failure to provide meal periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, and related violations of the Labor Code. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the PAGA (Labor Code section 2698 and sections that follow) (“PAGA”). Plaintiff is represented by attorneys in the Action: David Glenn Spivak of The Spivak Law Firm and Benjamin J. Smith of Smith Law (“Class Counsel.”)

Defendants strongly deny violating any laws or failing to pay any wages and contends they complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendants or Plaintiff is correct on the merits. In the meantime, Plaintiff and Defendants hired a retired judge in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendants have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendants do not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendants have agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

A. Gross Settlement Amount. Defendants Will Pay \$450,000.00 as the Gross

1 Settlement Amount (Gross Settlement). Defendants have agreed to deposit the Gross Settlement
2 into an account controlled by the Administrator of the Settlement. The Administrator will use the
3 Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class
4 Representative Service Payment, Class Counsel's attorney's fees and expenses, the
5 Administrator's expenses, and penalties to be paid to the California Labor and Workforce
6 Development Agency ("LWDA"). Assuming the Court grants Final Approval, Defendants shall
7 fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay
8 Defendants' share of payroll taxes by transmitting the funds to the Administrator. Defendants
9 have agreed to deposit \$175,000 of the Gross Settlement into an account controlled by the
10 Administrator of the Settlement within 15 days of the Court granting final approval. Thereafter,
11 Defendants will make 24 monthly contributions to the account controlled by the Administrator
12 until the balance of the Gross Settlement Amount is reached based on the payment schedule
13 described in section 4. The first of the monthly installment payments will be paid 30 days after
14 the initial \$175,000 payment. Defendants will make each of the next 23 payments every 30 days
15 thereafter. The 24 monthly payments will be in equal amounts of \$11,458.33 though the last and
16 the final payment will be in the amount of \$11,458.41. Defendants will also fund the amounts
17 necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the
18 Administrator for each distribution. Defendant CRUMBL LLC is not obligated to fund any
19 portion of the Gross Settlement Amount.

20 B. Payments from the Gross Settlement Amount. The Administrator will
21 make a total of three distributions. The first distribution will occur 14 days after the Effective
22 Date. The second distribution will occur 14 days after the 12th monthly installment payment and
23 the third and last distribution will occur 14 days after the last and final monthly installment
24 payment. The Administrator will disburse the Gross Settlement Amount without asking or
25 requiring Participating Class Members or Aggrieved Employees to submit any claim as a
26 condition of payment. None of the Gross Settlement Amount will revert to Defendants. For each
27 distribution, the Administrator will mail checks for all *pro rata* Individual Class Payments, all
28 Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment,
the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class
Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class
Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not
precede disbursement of Individual Class Payments and Individual PAGA Payments. Class
Counsel and Plaintiff shall receive their *pro rata* shares of each distribution only after the
Participating Class Members have been fully paid their *pro rata* shares of each distribution

21 C. Court Approved Deductions from Gross Settlement. At the Final Approval
22 Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions
23 from the Gross Settlement, the amounts of which will be decided by the Court at the Final
24 Approval Hearing:

25 1. Attorney Fees and Costs. Up to \$150,000.00 (33 and 1/3% of the Gross
26 Settlement to Class Counsel for attorneys' fees and up to \$20,000.00 for their litigation expenses.
27 To date, Class Counsel have worked and incurred expenses on the Action without payment.

28 2. Class Representative Service Award. Up to \$15,000.00 as a Class
Representative Service Award for filing the Action, working with Class Counsel and representing

1 the Class. A Class Representative Service Award will be the only monies Plaintiff will receive
2 other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.

3 3. Administration Expenses. Up to \$25,000.00 to the Administrator for
4 services administering the Settlement.

5 4. PAGA Penalties. Up to \$5,000.00 for PAGA Penalties, allocated 75% to
6 the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees
7 based on their PAGA Period Pay Periods.

8 Participating Class Members have the right to object to any of these deductions. The Court
9 will consider all objections.

10 Based on their records, Defendants estimated that, as of the date of the Settlement, (1)
11 there are 873 Class Members and 18,013.00 total Class Workweeks during the Class period and
12 (2) there were 683 Aggrieved Employees who worked 13,691 Pay Periods during the PAGA
13 Period.

14 D. Net Settlement Distributed to Class Members. After making the above deductions
15 in amounts approved by the Court, the Administrator will distribute the rest of the Gross
16 Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class
17 Members based on their Class Workweeks.

18 E. Taxes Owed on Payments to Class Members. Plaintiff and Defendants are asking
19 the Court to approve an allocation of 30.00% of each Individual Class Payment to taxable wages
20 ("Wage Portion") and 70.00% to interest and penalties ("Non-Wage Portion."). The Wage Portion
21 is subject to withholdings and will be reported on IRS W-2 Forms. Defendants will separately
22 pay employer payroll taxes they owe on the Wage Portion. The Individual PAGA Payments are
23 counted as penalties rather than wages for tax purposes. The Administrator will report the
24 Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS
25 1099 Forms.

26 Although Plaintiff and Defendants have agreed to these allocations, neither side is giving
27 you any advice on whether your Payments are taxable or how much you might owe in taxes. You
28 are responsible for paying all taxes (including penalties and interest on back taxes) on any
Payments received from the proposed Settlement. You should consult a tax advisor if you have
any questions about the tax consequences of the proposed Settlement.

29 F. Need to Promptly Cash Payment Checks. The front of every check issued for
Individual Class Payments and Individual PAGA Payments will show the date when the check
expires (the void date). If you don't cash it by the void date, your check will be automatically
cancelled, and the monies will be deposited with the California Controller's Unclaimed Property
Fund (https://www.sco.ca.gov/search_upd.html) in your name. If the monies represented by your
check is sent to the Controller's Unclaimed Property Fund, you should consult the rules of the
Fund for instructions on how to retrieve your money. You can contact the Unclaimed Property
Fund at (800) 992-4647.

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2 G. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated
3 as a Participating Class Member, participating fully in the Class Settlement, unless you notify the
4 Administrator in writing, not later than <<RESPONSE DEADLINE>>, that you wish to opt-out.
5 The easiest way to notify the Administrator is to email, fax, or mail a written and signed Request
6 for Exclusion by the <<RESPONSE DEADLINE>> Response Deadline. The Request for
7 Exclusion should be a letter from a Class Member or his/her representative setting forth a Class
8 Member's name, present address, telephone number, and a simple statement electing to be
9 excluded from the Settlement. You may use the enclosed Election Not To Participate In
10 Settlement form for this purpose. Excluded Class Members (i.e., Non-Participating Class
11 Members) will not receive Individual Class Payments, but will preserve their rights to personally
12 pursue claims against Defendants for violations of California's labor laws.

13
14 You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude
15 themselves from the Class Settlement (Non-Participating Class Members) remain eligible for
16 Individual PAGA Payments and Plaintiff releases Defendants from civil penalties they may owe
17 to the Aggrieved Employees.

18
19 H. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is
20 possible the Court will decline to grant Final Approval of the Settlement or decline enter a
21 Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff
22 and Defendants have agreed that, in either case, the Settlement will be void: Defendants will not
23 pay any money and Class Members will not release any claims against Defendants.

24
25 I. Administrator. The Court has appointed a neutral company, Phoenix Class Action
26 Administration Solutions (the "Administrator") to send this Notice, calculate and make payments,
27 and process Class Members' Requests for Exclusion. The Administrator will also decide Class
28 Member Challenges over Class Workweeks, mail and re-mail settlement checks and tax forms,
and perform other tasks necessary to administer the Settlement. The Administrator's contact
information is contained in Section 9 of this Notice.

J. Participating Class Members' Release. After the Judgment is final and Defendants
has fully funded the Gross Settlement (and separately paid all employer payroll taxes),
Participating Class Members will be legally barred from asserting any of the claims released under
the Settlement. This means that unless you opted out by validly excluding yourself from the Class
Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or
their officers, directors, employees, and agents for wages based on the Class Period facts and
PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this
Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective
former and present representatives, agents, attorneys, heirs, administrators,
successors, and assigns, release Released Parties from all claims stated in the
Operative Complaint and those based solely upon the facts alleged in the Operative

1 Complaint. Except as set forth in Section 6.3 of the Settlement Agreement,
2 Participating Class Members do not release any other claims, including claims for
3 vested benefits, wrongful termination, violation of the Fair Employment and
4 Housing Act, unemployment insurance, disability, social security, workers'
5 compensation, or claims based on facts occurring outside the Class Period.

6 K. The PAGA Release. After the Court's judgment is final, and Defendants have
7 fully paid the Gross Settlement Amount (and separately paid the employer-side payroll taxes),
8 Plaintiff releases all claims for civil penalties that could have been sought by the Labor
9 Commissioner for the violations identified in Plaintiff's pre-filing letter to the LWDA; Plaintiff
10 does not release the claim for wages or damages of any Aggrieved Employee unless such
11 Aggrieved Employee is a Participating Class Member.

12 **4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?**

13 A. Individual Class Payments. The Administrator will calculate Individual Class
14 Payments by (a) dividing the Net Settlement Amount by the total number of Class Workweek
15 worked by all Participating Class Members, and (b) multiplying the result by the number of Class
16 Workweek worked by each individual Participating Class Member.

17 B. Individual PAGA Payments. The Administrator will calculate Individual PAGA
18 Payments by (a) dividing \$1,250.00 by the total number of PAGA Pay Periods worked by all
19 Aggrieved Employees and (b) multiplying the result by the number of PAGA Pay Periods worked
20 by each individual Aggrieved Employee.

21 C. Class Workweek/PAGA Pay Period Challenges. The number of Class Workweeks
22 you worked during the Class Period and the number of PAGA Pay Periods you worked during
23 the PAGA Period, as recorded in Defendants' records, are stated in the first page of this Notice.
24 You have until <<RESPONSE DEADLINE>> to challenge the number of Class Workweeks
25 and/or PAGA Pay Periods credited to you. You can submit your challenge by signing and sending
26 a letter to the Administrator by email, fax or regular U.S. mail. You can use the enclosed Dispute
27 form for this purpose. Section 9 of this Notice has the Administrator's contact information.

28 You need to support your challenge by submitting copies of pay stubs or other records.
The Administrator will accept Defendants' calculation of Class Workweeks and/or PAGA Pay
Periods based on Defendants' records as accurate unless you send copies of records containing
contrary information. You should send copies rather than originals because the documents will
not be returned to you. The Administrator will resolve Class Workweek and/or Pay Period
challenges based on your submission and on input from Class Counsel (who will advocate on
behalf of Participating Class Members) and Defendants' Counsel. The Administrator's decision
is final. You can't appeal or otherwise challenge its final decision.

29 **5. HOW WILL I GET PAID?**

30 A. Participating Class Members. The Administrator will send, by U.S. mail, a single
31 check to every Participating Class Member (i.e., every Class Member who doesn't opt-out)

1 including those who also qualify as Aggrieved Employees. The single check will combine the
2 Individual Class Payment and the Individual PAGA Payment.

3 B. Non-Participating Class Members. The Administrator will send, by U.S. mail, a
4 single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class
Settlement (i.e., every Non-Participating Class Member).

5 **Your check will be sent to the same address as this Notice. If you change your**
6 **address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has**
7 **the Administrator's contact information.**

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

8 Email, fax, or mail a written and signed letter with your name, present address, telephone
9 number, and a simple statement that you do not want to participate in the Settlement. You may
10 use the enclosed Election Not To Participate In Settlement form for this purpose. The
11 Administrator will exclude you based on any writing communicating your request be excluded.
12 Be sure to personally sign your request, identify the Action as *Nataliah Devol Green vs. Morgan*
13 *Cookie Group Culver LLC*, Case No. 23STCV11939, and include your identifying information
14 (full name, address, telephone number, approximate dates of employment, and social security
15 number for verification purposes). You must make the request yourself. If someone else makes
16 the request for you, it will not be valid. You should send your Request for Exclusion to the
17 Administrator by email, fax, or send by regular U.S. mail. **The Administrator must be sent**
18 **your request to be excluded by <<RESPONSE DEADLINE>>, or it will be invalid.** Section
19 9 of the Notice has the Administrator's contact information. If you are an Aggrieved Employee,
20 you will still receive an Individual PAGA Payment.

7. HOW DO I OBJECT TO THE SETTLEMENT?

21 Only Participating Class Members have the right to object to the Settlement. Before deciding
22 whether to object, you may wish to see what Plaintiff and Defendants are asking the Court to
23 approve. At least 16 days before the Final Approval Hearing, Class Counsel and/or Plaintiff will
24 file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why
25 the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award
26 stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and
27 (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable
28 request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you
copies of these documents at no cost to you. You can also view them and the Settlement
Agreement on the Administrator's Website <<ADMINISTRATOR WEBSITE>> or the Court's
website <<COURT WEBSITE>>.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for
Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to
object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class
Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the**
Administrator is <<RESPONSE DEADLINE>>. Be sure to tell the Administrator what you

1 object to, why you object, and any facts that support your objection. Make sure you identify the
2 Action, *Nataliah Devol Green vs. Morgan Cookie Group Culver LLC*, case no. 23STCV11939,
3 and include your name, current address, telephone number, and approximate dates of employment
4 for Defendants and sign the objection. Section 9 of this Notice has the Administrator's contact
information. You may use the enclosed Objection form for this purpose. You should send your
objection to the Administrator by email, fax, or send by regular U.S. mail.

5 Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at
6 your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready
7 to tell the Court what you object to, why you object, and any facts that support your objection.
See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval
Hearing.

8 **8. CAN I ATTEND THE FINAL APPROVAL HEARING?**

9 You can, but don't have to, attend the Final Approval Hearing on <<FINAL APPROVAL
10 HEARING DATE>> at <<FINAL APPROVAL HEARING TIME>> in Department Dept. 11 of the
11 Los Angeles Superior Court, located at Spring Street Courthouse, 312 N. Spring Street, Los
12 Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the
13 Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and
the Administrator. The Court will invite comment from objectors, Class Counsel and Defense
14 Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally
or virtually by <<CourtConnect/CourtCall/MicrosoftTeams>>
(https://www.<<CourtVirtualAppearanceLink>>). Check the Court's website for the most current
15 information.

16 It's possible the Court will reschedule the Final Approval Hearing. You should check the
17 Administrator's website <<ADMINISTRATOR WEBSITE>> beforehand or contact Class Counsel
to verify the date and time of the Final Approval Hearing.

18 **9. HOW CAN I GET MORE INFORMATION?**

19 The Agreement sets forth everything Defendants and Plaintiff have promised to do under the
20 proposed Settlement. The easiest way to read the Agreement, the Judgment or any other
21 Settlement documents is to go to the Administrator's website at <<CLERK OF COURT'S PHONE
22 NUMBER>>. You can also telephone or send an email to Class Counsel or the Administrator
23 using the contact information listed below, or consult the Superior Court website by going to
(<http://www.<<COURT'S WEBSITE>>.aspx>) and entering the Case Number for the Action, Case
24 No. 23STCV11939. You can also make an appointment to personally review court documents in
the Clerk's Office at the Spring Street Courthouse by calling <<CLERK OF COURT'S PHONE
NUMBER>>.

25 **DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION** 26 **ABOUT THE SETTLEMENT.**

27 Class Counsel:

Name of Attorney: David Glenn Spivak
Email Address: david@spivaklaw.com
Name of Firm: The Spivak Law Firm
Mailing Address: 8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
Telephone: (213) 725-9094

Administrator:

Name of Company: Phoenix Class Action Administration Solutions
Email Address: _____
Mailing Address: _____
Telephone: _____
Fax Number: _____

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void, you should consult the Unclaimed Property Fund (https://www.sco.ca.gov/search_upd.html) for instructions on how to retrieve the funds. You can contact the Unclaimedx Property Fund at (800) 992-4647.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

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EXHIBIT B

1 *Green v. Morgan Cookie Group Culver LLC*
2 **Superior Court of the State of California, County of Los Angeles**
3 Case No. 23STCV11939

4 **ELECTION NOT TO PARTICIPATE IN SETTLEMENT FORM**

5 **IF YOU WANT TO BE INCLUDED IN THIS CLASS ACTION SETTLEMENT AND BE ELIGIBLE FOR**
6 **A SHARE OF THE SETTLEMENT PROCEEDS,**
7 **DO NOT FILL OUT THIS FORM.**

8 **IF YOU DO NOT WANT TO BE INCLUDED IN THE SETTLEMENT, YOU MUST COMPLETE AND**
9 **SIGN THIS DOCUMENT AND MAIL IT TO THE ADDRESS BELOW, EMAILED, FAXED, OR**
10 **POSTMARKED NOT LATER THAN <<RESPONSE DEADLINE>>:**

11 *Green v. Morgan Cookie Group Culver LLC* Class Action Administrator
12 c/o ____
13 ____
14 ____

15 I declare as follows: I have received notice of the proposed settlement in this action and I wish to be
16 excluded from the class and **not** to participate in the proposed settlement. I understand this means that I will not be
17 bound by the Settlement and also will not share in the settlement proceeds. I understand that exclusion from the
18 Class Settlement will not result in exclusion from the PAGA portion of the Settlement. If I am an Aggrieved
19 Employee under the Settlement, I will still receive an Individual PAGA Payment.

20 (Typed or Printed Name)

21 (Address)

22 (City, State, Zip Code)

23 (Telephone Number, Including Area Code)

24 (Identification Number)

25 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and
26 correct and was executed on ____.

27 Dated: ____.
28 (Signature)

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EXHIBIT C

1 **CLASS WORKWEEK/PAGA PAY PERIOD DISPUTE FORM**

2 Superior Court of The State of California
3 For The County of Los Angeles
4 *Nataliah Devol Green v. Morgan Cookie Group Culver LLC*, Case No. 23STCV11939

5 Indicate Name/Address Changes, if any:

6 <<Name>>

7 <<Address>>

8 <<City>>, <<State>> <<Zip Code>>

9 XX – XX -

10 The amount of your estimated Individual Class Payment is based upon the number of eligible
11 Class Workweeks you worked between May 25, 2019 and _____[the date preliminary
12 approval of the settlement is entered by the court]. The amount of your estimated Individual
13 PAGA Payment is based upon the number of PAGA Pay Periods you worked between April 4,
14 2022 and _____[the date preliminary approval of the settlement is entered by the court].
15 “PAGA Pay Period” means any Pay Period during which you worked for Defendants at least one
16 (1) day as a non-exempt, hourly employee. The number of Class Workweeks and PAGA Pay
17 Periods applicable to your claim are set forth below.

18 **YOUR ELIGIBLE CLASS WORKWEEKS**

19 Defendants’ records indicate that you worked <<number of Class Workweeks>> Class
20 Workweeks between May 25, 2019 and _____[the date preliminary approval of the settlement
21 is entered by the court] and <<number of PAGA Pay Periods>> PAGA Pay Periods between
22 April 4, 2022 through _____ [the date preliminary approval of the settlement is entered by the
23 court].

24 **YOUR ESTIMATED SETTLEMENT AWARD AND DISPUTE PROCEDURE**

25 Under the terms of the Class Action Settlement, you are entitled to receive an Individual Class
26 Payment in the approximate estimated amount of <<\$Class Settlement Share Amount>>, minus
27 all applicable payroll and tax deductions, after the Court approves the Settlement and it goes into
28 effect. This process may take six months or more. You will receive a Form W-2 reflecting the
payment to you. Your settlement share reflected on this Notice is only an estimate. The exact
amount of the payment could vary, up or down. You are also entitled to receive an Individual
PAGA Payment in the approximate estimated amount of <<\$PAGA Settlement Share
Amount>>.

If you wish to dispute the number of Class Workweeks and/or PAGA Pay Periods credited to
you, or anything else about your employment status, you can complete and return this form by
indicating what you believe is incorrect on the blank lines below and return it on or before
<<RESPONSE DEADLINE>> to the Administrator by email, fax, or regular U.S. Mail with
proof of the submission date (such as a postmark or delivery service date stamp). You may use
this Class Workweeks/PAGA Pay Periods Dispute Form for this purpose. You must also send

1 any documents or other information that you contend supports your belief that the information
2 set forth above is incorrect. The Administrator will resolve any dispute based upon Defendants'
3 records and any information you provide. Please be advised that the information on this Class
4 Workweeks Dispute Form is presumed to be correct unless the documents you submit are
5 company records from Defendants.

6
7 **UNLESS YOU ARE FILING A DISPUTE REGARDING THE NUMBER OF CLASS**
8 **WORKWEEKS/PAGA PAY PERIODS, RECEIPT OF A SETTLEMENT PAYMENT,**
9 **OR YOUR EMPLOYMENT STATUS, YOU DO NOT NEED TO TAKE ANY ACTION**
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EXHIBIT D

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OBJECTION FORM

Nataliah Devol Green v. Morgan Cookie Group Culver LLC
Superior Court of the State California, County of Los Angeles
Case No. 23STCV11939

Please verify and/or complete any missing identifying information:

CPT ID: <<CPT ID>>

<<Name>>

<<Address1>>

<<Address2>>

<<City>>, <<State>> <<Zip>>

CORRECT NAME AND ADDRESS HERE:

Telephone Number: (____) ____ - ____

THIS FORM IS TO BE USED ONLY IF YOU WANT TO PARTICIPATE IN THE SETTLEMENT, BUT YOU OBJECT TO THE TERMS OF THE SETTLEMENT. IF YOU OBJECT TO THE SETTLEMENT, YOU SHOULD SIGN AND COMPLETE THIS FORM ACCURATELY AND IN ITS ENTIRETY (OR ONE LIKE IT), AND YOU SHOULD EMAIL IT TO << @ .COM>>, FAX IT TO <<XXX-XXX-XXXX>>, OR MAIL IT BY FIRST CLASS U.S. MAIL TO THE ADMINISTRATOR SO THAT IT IS POSTMARKED ON OR BEFORE <<RESPONSE DEADLINE>>. THE ADDRESS FOR THE ADMINISTRATOR IS NOTED ON PAGE TWO OF THIS FORM.

IF YOU DO NOT OBJECT TO THE SETTLEMENT, DO NOT SUBMIT THIS FORM. THE ADMINISTRATOR WILL SEND THIS OBJECTION AND ANY SUPPORTING DOCUMENTS TO THE ATTORNEYS FOR THE PARTIES. THE ATTORNEYS FOR THE PARTIES WILL FILE THE OBJECTION WITH THE COURT.

The Court will consider your objection at the Final Approval Hearing if you timely submit it. Include any and all evidence and supporting papers (including, without limitation, all briefs, written evidence, and declarations) that you would like the Court to consider. However, you may speak to the Court at the final approval hearing whether or not you submit a timely objection.

[] I OBJECT to the *Nataliah Devol Green v. Morgan Cookie Group Culver LLC* Settlement on the following grounds (if additional space necessary, please include additional sheets of paper):

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[] I am or will be represented by an attorney (provide name and address of attorney on lines below if applicable):

Executed on _____, 2024

(Signature)

<<Name>>

(Printed Name)

EMAIL TO THE ADMINISTRATOR: << _____@_____.COM>>

FAX TO THE ADMINITRATOR: <<(XXX) XXX-XXXX>>

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL
POSTMARKED NOT LATER THAN <<RESPONSE DEADLINE>>:

Nataliah Devol Green v. Morgan Cookie Group Culver LLC Administrator
[ADDRESS]

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EXHIBIT E

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**
10 **(UNLIMITED JURISDICTION)**

11 NATALIAH DEVOL GREEN, on behalf of
12 herself and all others similarly situated, and as an
13 “aggrieved employee” on behalf of other
14 “aggrieved employees” under the Labor Code
Private Attorneys General Act of 2004,

15 *Plaintiff(s),*

16 vs.

17 MORGAN COOKIE GROUP CULVER LLC, a
18 California limited liability company; MORGAN
19 COOKIE GROUP LLC, a California limited
20 liability company; CRUMBL LLC, a Utah
21 limited liability company; POCKETS SMITTY
22 CORONA LLC, a Utah limited liability
company; and DOES 1–50, inclusive,

23 *Defendant(s).*

Case No. 23STCV11939

**[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT**

Action filed: May 25, 2023
Dept: Dept. 11, The Honorable
David S. Cunningham

1 The Motion of Plaintiff Nataliah Devol Green (hereafter referred to as "Plaintiff") for
2 Preliminary Approval of a Class Action Settlement (the "Motion") was considered by the Court,
3 The Honorable David S. Cunningham presiding. The Court having considered the Motion, the
4 First Amended Class Action and PAGA Settlement Agreement and Class Notice ("Settlement"
5 or "Settlement Agreement"), and supporting papers, HEREBY ORDERS THE FOLLOWING:

6
7 1. The Court grants preliminary approval of the Settlement and the Settlement Class
8 based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary
9 Approval. All terms herein shall have the same meaning as defined in the Settlement. The Court
10 has determined only that there is sufficient evidence to suggest that the proposed settlement
11 might be fair, adequate, and reasonable, and that any final determination of those issues will be
12 made at the final hearing. The Court will make a determination at the hearing on the motion for
13 final approval of class action settlement (the "Final Approval Hearing") as to whether the
14 Settlement is fair, adequate and reasonable to the Settlement Class.
15

16 2. For purposes of this Preliminary Approval Order, the "Settlement Class" means
17 (collectively "Class Members"), all persons employed or otherwise contracted by (i) Pockets
18 Smitty Two, LLC; (ii) Pockets Smitty Riverside, LLC; (iii) Pockets Smitty Upland, LLC; (iv)
19 Pockets Smitty Menifee, LLC; (v) Morgan Cookie Group, LLC; (vi) Morgan Cookie Group
20 Culver, LLC; (vii) Pockets Smitty Fontana, LLC; (viii) Morgan Cookies Group Downey, LLC;
21 (ix) Pockets Smitty Corona, LLC and/or (x) Pockets Smitty Rosemead, LLC as non-exempt,
22 hourly employees during the Class Period. The "Class Period" shall mean the period of time from
23 May 25, 2019, through the date of preliminary approval of this Settlement.
24

25 3. Based on their records, Defendants estimate that, as of the date of the Settlement
26 Agreement, (1) there are 873 Class Member~~s~~ and 18,013.00 Total Class Workweeks during the

27 *Green v. Morgan Cookie Group Culver LLC, et*
28 *al.*

~~Class Action and PAGA Settlement~~
~~Agreement~~[PROPOSED] ORDER
PRELIMINARILY APPROVING CLASS
ACTION SETTLEMENT

1 Class period and (2) there were 683 Aggrieved Employees who worked 13,691 Pay Periods
2 during the PAGA Period.

3 4. “Effective Date” means the date by when both of the following have occurred: (a)
4 the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the
5 Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no
6 Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if
7 one or more Participating Class Members objects to the Settlement, the day after the deadline for
8 filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the
9 day after the appellate court affirms the Judgment and issues a remittitur.
10

11 5. This action is provisionally certified pursuant to section 382 of the California Code
12 of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action for
13 purposes of settlement only with respect to the proposed Settlement Class.
14

15 6. Not later than 15 days after the Court grants Preliminary Approval of the
16 Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in the
17 form of a Microsoft Excel spreadsheet. To protect Class Members’ privacy rights, the
18 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes
19 of the Settlement and for no other purpose, and restrict access to the Class Data to Administrator
20 employees who need access to the Class Data to effect and perform under the Settlement
21 Agreement. Defendants have a continuing duty to immediately notify Class Counsel if they
22 discover that the Class Data omitted class member identifying information and to provide
23 corrected or updated Class Data as soon as reasonably feasible. Without any extension of the
24 deadline by which Defendants must send the Class Data to the Administrator, the Parties and their
25 counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any
26

27 *Green v. Morgan Cookie Group Culver LLC, et*
28 *al.*

~~Class Action and PAGA Settlement~~
~~Agreement~~ [PROPOSED] ORDER
PRELIMINARILY APPROVING CLASS
ACTION SETTLEMENT

1 issues related to missing or omitted Class Data.

2 7. No later than three (3) business days after receipt of the Class Data, the
3 Administrator shall notify Class Counsel that the list has been received and state the number of
4 Class Members, PAGA Members, Class Workweeks, and PAGA Pay Periods in the Class Data.

5 8. Using best efforts to perform as soon as possible, and in no event later than 14
6 days after receiving the Class Data, the Administrator will send to all Class Members identified
7 in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Notice Packet
8 ~~with Spanish translation, if applicable,~~ substantially in the forms attached to ~~this order~~
9 the Settlement as Exhibits A, B, C, and D. The first page of the Class Notice shall prominently
10 estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment
11 payable to the Class Member, and the number of Class Workweeks and PAGA Pay Periods (if
12 applicable) used to calculate these amounts. Before mailing Notice Packets, the Administrator shall
13 update Class Member addresses using the National Change of Address database.
14

15 9. Not later than three (3) business days after the Administrator’s receipt of any
16 Notice Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice
17 Packet using any forwarding address provided by the USPS. If the USPS does not provide a
18 forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail
19 the Notice Packet to the most current address obtained. The Administrator has no obligation to
20 make further attempts to locate or send Notice Packet to Class Members whose Notice Packet is
21 returned by the USPS a second time.
22

23 10. Class Counsel’s contact information is David Glenn Spivak, Esq., The Spivak Law
24 Firm, 8605 Santa Monica Bl, PMB 42554, West Hollywood, CA 90069 and Benjamin Smith,
25 Esq., Smith Law, 8605 Santa Monica Bl, PMB 97638, West Hollywood, CA 90069. Defense
26

27 *Green v. Morgan Cookie Group Culver LLC, et*
28 *al.*

~~Class Action and PAGA Settlement~~
~~Agreement~~ [PROPOSED] ORDER
PRELIMINARILY APPROVING CLASS
ACTION SETTLEMENT

1 Counsel's contact information is Chris Jalian of Paul Hastings LLP, 515 South Flower Street
2 Twenty-Fifth, Floor, Los Angeles, California 90071-2228 and ~~Kevin Jackson~~ Sara Abarbanel of
3 Foley & Lardner LLP, 11988 EL CAMINO REAL, SUITE 400, SAN DIEGO, CA 92130-2594

4
5 11. The deadlines for Class Members' written objections, Challenges to Class
6 Workweeks and/or PAGA Pay Periods (disputes), and Requests for Exclusion will be extended
7 an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class
8 Members whose notice is re-mailed. The Administrator will inform the Class Member of the
9 extended deadline with the re-mailed Notice Packet.

10 12. If the Administrator, Defendants or Class Counsel is contacted by or otherwise
11 discovers any persons who believe they should have been included in the Class Data and should
12 have received Notice Packet, the Parties will expeditiously meet and confer in person or by
13 telephone, and in good faith, in an effort to agree on whether to include them as Class Members.
14 If the Parties agree, such persons will be Class Members entitled to the same rights as other Class
15 Members, and the Administrator will send, via email or overnight delivery, a Notice Packet
16 requiring them to exercise options under the Settlement Agreement not later than 14 days after
17 receipt of Notice Packet, or the deadline dates in the Notice Packet, which ever are later.

18
19 13. Requests for Exclusion. Class Members who wish to exclude themselves (opt-out
20 of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written
21 Request for Exclusion not later than 60 days after the Administrator mails the Notice Packet (plus
22 an additional 14 days for Class Members whose Notice Packet is re-mailed). A Request for
23 Exclusion is a letter from a Class Member or his/her representative that reasonably communicates
24 the Class Member's election to be excluded from the Settlement and includes the Class Member's
25 name, address and email address or telephone number. To be valid, a Request for Exclusion must

26
27 *Green v. Morgan Cookie Group Culver LLC, et*
28 *al.*

~~Class Action and PAGA Settlement~~
~~Agreement~~ [PROPOSED] ORDER
PRELIMINARILY APPROVING CLASS
ACTION SETTLEMENT

1 be timely faxed, emailed, or postmarked by the Response Deadline. An Election Not to Participate
2 in Settlement form, attached to the Settlement as Exhibit B, may be used for this purpose but is
3 not required.

4 14. The Administrator may not reject a Request for Exclusion as invalid because it
5 fails to contain all the information specified in the Class Notice. The Administrator shall accept
6 any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of
7 the person as a Class Member and the Class Member's desire to be excluded. The Administrator's
8 determination shall be final and not appealable or otherwise susceptible to challenge. If the
9 Administrator has reason to question the authenticity of a Request for Exclusion, the
10 Administrator may demand additional proof of the Class Member's identity. The Administrator's
11 determination of authenticity shall be final and not appealable or otherwise susceptible to
12 challenge.
13

14 15. Every Class Member who does not submit a timely and valid Request for Exclusion
15 is deemed to be a Participating Class Member under the Settlement Agreement, entitled to all
16 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
17 Members' Releases under Paragraphs 6.2 and 6.3 of the Settlement, regardless whether the
18 Participating Class Member actually receives the Class Notice or objects to the Settlement.
19

20 16. Every Class Member who submits a valid and timely Request for Exclusion is a
21 Non-Participating Class Member and shall not receive an Individual Class Payment or have the
22 right to object to the class action components of the Settlement. Plaintiff releases all claims for
23 civil penalties that could have been sought by the Labor Commissioner for the violations
24 identified in Plaintiffs Plaintiff's pre-filing letter to the LWDA; Plaintiff does not release the claim
25 for wages or damages of any Aggrieved Employee unless such Aggrieved Employee is a
26

27 *Green v. Morgan Cookie Group Culver LLC, et*
28 *al.*

~~Class Action and PAGA Settlement~~
Agreement[PROPOSED] ORDER
PRELIMINARILY APPROVING CLASS
ACTION SETTLEMENT

1 Participating Class Member.

2 17. Challenges to Calculation of Class Workweeks/PAGA Pay Periods. Each Class
3 Member shall have 60 days after the Administrator mails the Notice Packet (plus an additional
4 14 days for Class Members whose Notice Packet is re-mailed) to challenge the number of Class
5 Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice.
6 This is also known as a dispute. A Class Workweek/PAGA Pay Period Dispute form, attached
7 as Exhibit C to the Settlement, may be used for this purpose but is not required. The Class
8 Member may challenge the allocation by communicating with the Administrator via fax, email or
9 mail. The Administrator must encourage the challenging Class Member to submit supporting
10 documentation. In the absence of any contrary documentation, the Administrator is entitled to
11 presume that the Class Workweeks/ PAGA Pay Periods contained in the Class Notice are correct
12 so long as they are consistent with the Class Data. The Administrator's determination of each
13 Class Member's allocation of Class Workweeks and/or PAGA Pay Periods shall be final and not
14 appealable or otherwise susceptible to challenge. The Administrator shall promptly provide
15 copies of all challenges to calculation of Class Workweeks and/or PAGA Pay Periods to Defense
16 Counsel and Class Counsel and the Administrator's determination the challenges.

17 18. Objections to Settlement. Only Participating Class Members may object to the
18 class action components of the Settlement and/or this Agreement, including contesting the
19 fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class
20 Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

21 19. Participating Class Members may send written objections to the Administrator, by
22 fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire
23 an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A

24 *Green v. Morgan Cookie Group Culver LLC, et*
25 *al.*

~~Class Action and PAGA Settlement~~
~~Agreement~~ [PROPOSED] ORDER
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1 Participating Class Member who elects to send a written objection to the Administrator must do
2 so not later than 60 days after the Administrator's mailing of the Notice Packet (plus an additional
3 14 days for Class Members whose Notice Packet was re-mailed). An The Objection form attached
4 as Exhibit D to the Settlement may be used for this purpose but is not required.

5 20. Non-Participating Class Members have no right to object to any of the class action
6 components of the Settlement.

7
8 21. Not later than 14 days before the date by which Plaintiff is required to file the
9 Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and
10 Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and
11 compliance with all of its obligations under the Settlement Agreement, including, but not limited
12 to, its mailing of the Notice Packets, the Notice Packets returned as undelivered, the re-mailing
13 of Notice Packets, attempts to locate Class Members, the total number of Requests for Exclusion
14 from Settlement it received (both valid or invalid), the number of written objections and attach
15 the Exclusion List. The Administrator will supplement its declaration as needed or requested by
16 the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's
17 declaration(s) in Court.

18
19 22. The Court approves, as to form and content, the Class Notice in substantially the
20 form attached as Exhibit A to ~~this Order~~ the Settlement, the Election Not to Participate in
21 Settlement form in substantially the form attached as Exhibit B to ~~this Order~~ the Settlement, the
22 Class Workweeks Dispute form in substantially the form attached as Exhibit C to ~~this Order~~ the
23 Settlement, and the Objection form in substantially the form attached as Exhibit D to ~~this Order~~ the
24 Settlement.

25
26 23. The Court approves, for settlement purposes only, David Glenn Spivak of The
27 *Green v. Morgan Cookie Group Culver LLC, et*
28 *al.*

~~Class Action and PAGA Settlement~~
~~Agreement~~ [PROPOSED] ORDER
PRELIMINARILY APPROVING CLASS
ACTION SETTLEMENT

1 Spivak Law Firm and Benjamin J. Smith of Smith Law as Class Counsel.

2 24. The Court approves, for settlement purposes only, Nataliah Devol Green as the
3 Class Representative.

4 25. The Court approves Phoenix Class Action Administration Solutions as the
5 Administrator.

6 26. The Court preliminarily approves Class Counsel's request for attorneys' fees and
7 costs subject to final review by the Court.

8 27. The Court preliminarily approves the estimated Administrator costs payable to the
9 Administrator subject to final review by the Court.

10 28. The Court preliminarily approves Plaintiff's Class Representative Service
11 Payment subject to final review by the Court.

12 29. The Court preliminarily approves the installment payments and distribution
13 schedules incorporated in the Settlement.

14 30. A Final Approval Hearing shall be held on ____ at .m. in Department Dept. 11
15 of the Superior Court for the State of California, County of Los Angeles, located at the Spring
16 Street Courthouse, 312 N. Spring Street, Los Angeles, CA 90012 to consider the fairness,
17 adequacy and reasonableness of the proposed Settlement preliminarily approved by this
18 Preliminary Approval Order, and to consider the application of Class Counsel for attorneys' fees
19 and costs and the Class Representative Service Payment to the Class Representative. The notice
20 of motion and all briefs and materials in support of the motion for final approval of class action
21 settlement and motion for attorneys' fees and litigation costs shall be served and filed with this
22 Court on or before _____. Plaintiff's counsel must give notice to any objecting party of any
23 continuance of the hearing of the motion for final approval.

24 *Green v. Morgan Cookie Group Culver LLC, et*
25 *al.*

~~Class Action and PAGA Settlement~~
~~Agreement~~ [PROPOSED] ORDER
PRELIMINARILY APPROVING CLASS
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31. If for any reason the Court does not execute and file a Final Approval Order and judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason, the proposed Settlement that is the subject of this order, and all evidence and proceedings had in connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the litigation, as more specifically set forth in the Settlement.

32. The Court expressly reserves the right to adjourn or continue the Final Approval Hearing from time to time without further notice to members of the Class. The Plaintiff shall give prompt notice of any continuance to Settlement Class Members who object to the Settlement.

IT IS SO ORDERED.

DATE _____

**THE HONORABLE DAVID S.
CUNNINGHAM
SUPERIOR COURT JUDGE**

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EXHIBIT F

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
(UNLIMITED JURISDICTION)

NATALIAH DEVOL GREEN, on behalf of herself and all others similarly situated, and as an “aggrieved employee” on behalf of other “aggrieved employees” under the Labor Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

MORGAN COOKIE GROUP CULVER LLC, a California limited liability company; MORGAN COOKIE GROUP LLC, a California limited liability company; CRUMBL LLC, a Utah limited liability company; POCKETS SMITTY CORONA LLC, a Utah limited liability company; and DOES 1–50, inclusive,

Defendant(s).

Case No. 23STCV11939

[PROPOSED] FINAL ORDER AND JUDGMENT APPROVING CLASS ACTION SETTLEMENT

Action filed: May 25, 2023
Dept: Dept. 11, The Honorable David S. Cunningham

This matter came on for hearing on ____ at ____m. in Department Dept. 11 of the above-captioned court on Plaintiff’s Motion for Final Approval of a Class Action Settlement pursuant to California Rules of Court, Rule 3.769, as set forth in the ~~Joint Stipulation of First Amended Class Action~~ and PAGA Settlement and Release of Claims Agreement (the “Settlement”) filed herewith which provides for a Gross Settlement Amount (“GSA”) of up to \$450,000.00 in ~~Class Action and PAGA Settlement Agreement~~ [PROPOSED] FINAL ORDER AND JUDGMENT APPROVING CLASS ACTION SETTLEMENT

~~Green v. Morgan Cookie Group Culver LLC, et al.~~

1 compromise of all disputed claims on behalf of all persons employed or otherwise contracted by
2 (i) Pockets Smitty Two, LLC; (ii) Pockets Smitty Riverside, LLC; (iii) Pockets Smitty Upland,
3 LLC; (iv) Pockets Smitty Menifee, LLC; (v) Morgan Cookie Group, LLC; (vi) Morgan Cookie
4 Group Culver, LLC; (vii) Pockets Smitty Fontana, LLC; (viii) Morgan Cookies Group Downey,
5 LLC; (ix) Pockets Smitty Corona, LLC and/or (x) Pockets Smitty Rosemead, LLC as non-
6 exempt, hourly employees during the period of May 25, 2019 to the date of preliminary approval
7 of this Settlement (“Settlement Class Period”). All capitalized terms used herein shall have the
8 same meaning as defined in the Settlement.
9

10 In accordance with the Court’s prior Order Granting Preliminary Approval of Class
11 Action Settlement, Class Members have been given notice of the terms of the Settlement and the
12 opportunity to submit a claim, request exclusion, comment upon or object to it or to any of its
13 terms. Having received and considered the Settlement, the supporting papers filed by the Parties,
14 and the evidence and argument received by the Court in conjunction with the motions for
15 preliminary and final approval of the Settlement, the Court grants final approval of the Settlement
16 and HEREBY ORDERS, ADJUDGES, DECREES AND MAKES THE FOLLOWING
17 DETERMINATIONS¹:
18

19 1. The Court has jurisdiction over the subject matter of the Action and over all Parties
20 to the Action, including all Class Members. Pursuant to this Court’s Order Granting Preliminary
21 Approval of Class Action Settlement of ___, the Notice Packet was sent to each Class Member
22 by First Class U.S. mail. The Notice Packet informed Class Members of the terms of the
23
24

25
26 ¹ A true and correct copy of the Court’s ~~ruling order~~ on the Motion for Preliminary Approval of
27 Class Action Settlement entered on [REDACTED] is attached hereto as **Exhibit A** and incorporated by
28 ~~reference. A true and correct copy of the Court’s Minute Order dated [REDACTED] is attached hereto as~~
~~Green v. Morgan Cookie Group Culver, LLC, et al.~~ ~~Class Action and PAGA Settlement~~
~~Exhibit B and incorporated by reference.~~

1 Settlement, their right to receive their proportional share of the Settlement, their right to request
2 exclusion, their right to comment upon or object to the Settlement, and their right to appear in
3 person or by counsel at the final approval hearing and be heard regarding final approval of the
4 Settlement. Adequate periods of time were provided by each of these procedures. No member of
5 the Settlement Class presented written objections to the proposed Settlement as part of this notice
6 process, stated an intention to appear, or actually appeared at the final approval hearing.

8 2. For purposes of this Final Order and Judgment, the Class Members are all persons
9 employed or otherwise contracted by (i) Pockets Smitty Two, LLC; (ii) Pockets Smitty Riverside,
10 LLC; (iii) Pockets Smitty Upland, LLC; (iv) Pockets Smitty Menifee, LLC; (v) Morgan Cookie
11 Group, LLC; (vi) Morgan Cookie Group Culver, LLC; (vii) Pockets Smitty Fontana, LLC; (viii)
12 Morgan Cookies Group Downey, LLC; (ix) Pockets Smitty Corona, LLC and/or (x) Pockets
13 Smitty Rosemead, LLC as non-exempt, hourly employees at any time during the period of May
14 25, 2019 to the date of preliminary approval of this Settlement (“Settlement Class Period”).

16 3. The Court finds and determines that the notice procedure afforded adequate
17 protections to Class Members and provides the basis for the Court to make an informed decision
18 regarding final approval of the Settlement based on the responses of Class Members. The Court
19 finds and determines that the notice provided in this case was the best notice practicable, which
20 satisfied the requirements of law and due process as to all persons entitled to such notice.

22 4. **Release by Plaintiff and Class Members.** The Parties agree that it is their intent
23 that the resolution set forth in this Settlement will release and discharge the Released Claims by
24 way of any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or
25 other action of any kind by each and all of the Settlement Class Members (including participation
26 to any extent in any representative or collective action) against the Released Parties. This release

1 will not take effect until Defendants have paid the Gross Settlement Amount in full per this
2 Settlement Agreement.

3 5. **PAGA Release**. Plaintiff releases all claims for civil penalties that could have
4 been sought by the Labor Commissioner for the violations identified in Plaintiffs pre-filing
5 letter to the LWDA; Plaintiff does not release the claim for wages or damages of any Aggrieved
6 Employee unless such Aggrieved Employee is a Participating Class Member.

7
8 6. **“Released Claims”** shall mean all claims stated in the Operative Complaint and
9 based solely on the facts alleged in the Operative Complaint. **“Released Parties”** shall mean
10 Defendants, and each of their respective former and present directors, officers, shareholders,
11 owners, parents, subsidiaries, brother-sister companies, franchisors, affiliates, members,
12 attorneys, insurers, employees, predecessors, successors, and assigns, including, without
13 limitation, (i) Pockets Smitty Two, LLC; (ii) Pockets Smitty Riverside, LLC; (iii) Pockets Smitty
14 Upland, LLC; (iv) Pockets Smitty Menifee, LLC; (v) Morgan Cookie Group, LLC; (vi) Morgan
15 Cookie Group Culver, LLC; (vii) Pockets Smitty Fontana, LLC; (viii) Morgan Cookies Group
16 Downey, LLC; (ix) Pockets Smitty Corona, LLC and/or (x) Pockets Smitty Rosemead, LLC.

17
18 7. The Court further finds and determines that the terms of the Settlement are fair,
19 reasonable and adequate, that the Settlement is ordered finally approved, and that all terms and
20 provisions of the Settlement, including the release of claims contained therein, should be and
21 hereby are ordered to be consummated, and directs the Parties to effectuate the Settlement
22 according to its terms. As of the Effective Date of Settlement, and for the duration of the
23 Settlement Class Period, all Class Members are hereby deemed to have waived and released all
24 Released Claims and are forever barred and enjoined from prosecuting the Released Claims
25 against the Released Parties as fully set forth in the Settlement. No objections were received by
26

1 the Parties or the Court through the date of this Final Order and Judgment. The Court finds ____
2 Class Member(s) - ____ - submitted a request for exclusion from the Settlement as determined by
3 the Administrator and therefore is/are not in the Settlement Class.

4 8. The Court finds and determines that (a) the Settlement Shares to be paid to
5 Participating Class Members and (b) the LWDA payment as civil penalties under the California
6 Labor Code Private Attorneys General Act of 2004, as amended, California Labor Code sections
7 2699 *et seq.*, as provided for by the Settlement are fair and reasonable. The Court hereby grants
8 final approval to, and orders the payment of, those amounts be made to the Participating Class
9 Members and to the California Labor & Workforce Development Agency ("LWDA"), in
10 accordance with the terms of the Settlement.

11 9. The Court further grants final approval to and orders that the following payments
12 be made in accordance with the terms of the Settlement:

13 a. Class Counsel fees & costs of \$150,000.00 in attorneys' fees and
14 \$20,000.00 in litigation costs to Class Counsel;

15 b. \$15,000.00 as a Class Representative Service Payment award payable to
16 Plaintiff Nataliah Devol Green for her service as a Class Representative;

17 c. \$25,000.00 in costs of the Administrator payable to Phoenix Class Action
18 Administration Solutions for its services as the Administrator; and

19 d. Payment of \$3,750.00 (75% of the (\$5,000.00 PAGA penalty) to the
20 LWDA.

21 10. The settlement shall proceed as directed in the Settlement. Without affecting the
22 finality of this Final Order and Judgment in any way, the Court retains jurisdiction of all matters
23 relating to the interpretation, administration, implementation, effectuation and enforcement of this

1 Final Order and Judgment and the Settlement pursuant to California Rule of Court 3.769(h).

2 11. Within 14 calendar days of this Order, Defendants shall deposit \$175,000 of the
3 Gross Settlement into an account controlled by the Administrator of the Settlement within 15 days
4 of the Court granting final approval. Thereafter, Defendants shall make 24 monthly contributions
5 to the account controlled by the Administrator until the balance of the Gross Settlement Amount
6 is reached based on the payment schedule described in section 4. The first of the monthly
7 installment payments shall be paid 30 days after the initial \$175,000 payment. Defendants will
8 make each of the next 23 payments every 30 days thereafter. The 23 monthly payments shall be
9 in equal amounts of \$11,458.33 though the last and the final payment will be in the amount of
10 \$11,458.41. The Administrator shall make a total of three distributions. The first distribution will
11 occur 14 days after the Effective Date. The second distribution shall occur 14 days after the 12th
12 monthly installment payment and the third and last distribution will occur 14 days after the last
13 and final monthly installment payment. The Administrator shall disburse the Gross Settlement
14 Amount without asking or requiring Participating Class Members or Aggrieved Employees to
15 submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to
16 Defendants. Defendant CRUMBL LLC is not obligated to fund any portion of the Gross
17 Settlement Amount.

20 12. Other than their employer side payroll taxes, Defendants' payment of such sums
21 shall be the sole financial obligation of Defendants under the Settlement, and shall be in full
22 satisfaction of all claims released herein, including, without limitation, all claims for wages,
23 penalties, interest, attorneys' fees, costs and expenses.

25 13. Pursuant to CCP 384 and the Settlement, Participating Class Members shall have
26 one hundred and eighty (180) days from the date of the check's issuance to cash their Settlement

1 Share check. After the expiration of the 180-day period, on Defendants' behalf, the Administrator
2 shall remit any amounts from voided settlement checks and otherwise unclaimed, plus interest on
3 the Residue at the legal rate of interest from the date of entry of the initial judgement to the
4 California Unclaimed Property Fund.

5 14. The Parties shall file a final accounting report by _____. A non-appearance case
6 review re submission of a final report is scheduled for ____ at ____ .m. in Department Dept. 11.

7 ~~The Parties shall also prepare and file a stipulation and proposed order and proposed Amended~~
8 ~~Final Order and Judgment by _____ which includes the amount of distribution of unpaid cash~~
9 ~~Residue, and unclaimed or abandoned funds to the non-party, the accrued interest on that sum.~~
10 ~~The stipulation shall be signed by counsel for the class and defense counsel in accord with the~~
11 ~~proposed Amended Final Order and Judgment. If there are objections by any party or non-party,~~
12 ~~class counsel shall immediately notify the Court and the matter will be set for further hearing. A~~
13 ~~non-appearance hearing for the lodging of the stipulation and proposed order and separate~~
14 ~~amended judgment is scheduled for ____ at ____ .m. in Department Dept. 11.~~

15 15. Nothing in this Final Order and Judgment shall preclude any action to enforce the
16 Parties' obligations under the Settlement or hereunder, including the requirement that Defendants
17 deposit funds for distribution by the Administrator to Participating Class Members in accordance
18 with the Settlement.

19 16. The Court hereby enters final judgment in this case in accordance with the terms
20 of the Settlement, Order Granting Preliminary Approval of Class Action Settlement, and this Final
21 Order and Judgment.

22 17. The Parties are hereby ordered to comply with the terms of the Settlement.

23 18. The Parties shall bear their own costs and attorneys' fees except as otherwise

1 provided by the Settlement and this Final Order and Judgment.

2 19. The Settlement is not an admission by Defendants nor is this Final Order and
3 Judgment a finding of the validity of any claims in the Action or of any wrongdoing by
4 Defendants. Furthermore, the Settlement is not a concession by Defendants and shall not be used
5 as an admission of any fault, omission, or wrongdoing by Defendants. Neither this Final Order
6 and Judgment, the Settlement, any document referred to herein, any exhibit to any document
7 referred to herein, any action taken to carry out the Settlement, nor any negotiations or
8 proceedings related to the Settlement are to be construed as, or deemed to be evidence of, or an
9 admission or concession with regard to, the denials or defenses of Defendants, and shall not be
10 offered in evidence in any proceeding against the Parties hereto in any Court, administrative
11 agency, or other tribunal for any purpose whatsoever other than to enforce the provisions of this
12 Final Order and Judgment. This Final Order and Judgment, the Settlement and exhibits thereto,
13 and any other papers and records on file in the Action may be filed in this Court or in any other
14 litigation as evidence of the settlement by Defendants to support a defense of res judicata,
15 collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to
16 the Released Claims.
17

18
19 20. This document shall constitute a Judgment for purposes of California Rule of
20 Court 3.769(h).
21

22 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

23
24 _____
25 **DATE**

24 _____
25 **THE HONORABLE DAVID S.**
26 **CUNNINGHAM**
27 **SUPERIOR COURT JUDGE**

EXHIBIT D



ATTORNEY CONSULTATION AND FEE CONTRACT FOR CONTINGENCY CASES

THIS FEE CONTRACT FOR CONTINGENCY CASES ("Contract") is made on March 12, 2023, in Los Angeles, California between Nataliah Devol Green, hereinafter referred to as "Client", on the one hand, and The Spivak Law Firm of Los Angeles, CA and Smith Law of West Hollywood, CA, on the other hand, hereinafter referred to collectively as "Attorneys":

In consideration of the mutual promises herein contained, the parties hereto agree as follows:

I. PURPOSE OF REPRESENTATION

1.01 Client hereby retains and employs Attorneys to sue for and recover all monetary and equitable remedies to which Client may be entitled as well as to compromise and settle all claims described below:

Class & Private Attorneys General Act ("PAGA") lawsuit for unpaid wages, unprovided meal periods, unpermitted rest breaks, unreimbursed expenses, and related claims against Crumbl Cookies and related entities.

1.02 This agreement will not become binding on either party, and Attorneys will not begin providing legal services, until Client has signed this Agreement.

1.03 Attorneys will provide reasonably necessary legal services, and will take steps to keep Client informed of the progress of the case. Attorneys will respond within a reasonable time and manner to Client's inquiries. If court action becomes necessary, Attorneys will represent Client through trial and post-trial motions. Separate arrangements must be made for any appeal or execution proceedings that client wishes to pursue after judgment, or any other matters for which Client wishes to employ Attorneys other than the matter described above.

1.04 Client entered into a written contingency fee retainer agreement entitled "Terms of Engagement for Legal Services" with Smith Law dated July 5, 2022. A true

and correct copy of that written contingency fee retainer agreement is attached as exhibit "A." This "Attorney Consultation And Fee Contract For Contingency Cases" between Client and Attorneys supersedes the agreement at Exhibit A in all respects and Client and Attorneys agree that the new agreement is the final and complete expression of their agreement concerning matters identified in Section 1.01 above.

II. ATTORNEYS' FEE AND EXPENSES

2.01 In consideration of services rendered and to be rendered by Attorneys, Client hereby agrees to pay to Attorneys the following amounts on any settlements, monies, judgments or other consideration which have or may be paid on this legal matter:

2.01.1 Before the filing of a lawsuit or arbitration demand: 33 and 1/3 percent of any recovery.

2.01.2 After the filing of a lawsuit or arbitration demand: 40 percent of any recovery. In the event Client prevails at trial (or arbitration) of this matter, any fee awarded by the court, pursuant to statute or contract, in connection with the subject matter of this representation, shall be paid to Attorneys and shall be applied against Client's fee obligation under this Agreement, but shall not limit or discharge Client's fee obligation. In the event there is a fee award by the court upon Client prevailing at trial, the Attorneys shall receive either the fee award or 40% of the total award, whichever is greater.

2.02 It is agreed and understood that if the amount of attorney fees on this claim or cause of action are regulated or governed by law, and that law precludes any other fee arrangement other than the amount set by the law or regulation, then the amount payable hereunder to said Attorneys shall be limited to the maximum so allowed by law. In the event of a class action settlement or judgment, PAGA settlement or judgment, or other representative settlement or judgment, a court's approval of an award of attorney fees is necessary. Normally with such settlements and judgments, a request for attorney fees will be for no more than one third (33 and 1/3%) of the total value of the settlement or judgment amount. Attorneys will apply for an award of attorney fees from the court that may be more or less than the percentages stated above. Under such circumstances, Attorneys will also ask the court to separately award them the costs they have advanced for this matter. In advance of such requests to a Court

for attorney fees and costs, Attorneys will seek Client's written consent to the attorney fees and costs sought.

2.02.1 If the total legal fees received in this case are \$250,000.00 or greater, it is agreed that Smith Law shall receive 33 and 1/3% of the total legal fees received and the Spivak Law Firm shall receive the remaining 66 and 2/3% of the total legal fees received. If the total legal fees received in this case are less than \$250,000.00, it is agreed that Smith Law shall receive 25% of the total legal fees received and the Spivak Law Firm shall receive the remaining 75% of the total legal fees received.

2.03 This section concerns the possibility of settlement of individual claims, attorney fees, and costs in the event representative claims are no longer viable. Under this Agreement, Attorneys agree to represent Client in her pursuit of the claims described in Section 1.01 of this Agreement, stated above. These claims are representative claims because Client agrees that she will pursue the Claims for herself and all comparable employees and individuals. In this regard, Attorneys advise Client of the following material information:

2.03.1 Attorneys have chosen to represent Client primarily because she has claims that Client may be able to bring on behalf of numerous other comparable employees. As a result, Client's claims have the potential to support a class action lawsuit and/or a PAGA lawsuit.

2.03.2 Client's individual claims - and those of each of the other comparable employees that Attorneys will file the lawsuit on behalf of - are generally worth very small amounts in unpaid wages, unreimbursed work expenses, interest, and/or statutory monetary penalties. Attorneys would not have agreed to represent Client if it were not for the strong likelihood that a Court will permit Client's lawsuit to proceed to trial on behalf of numerous other employees with comparable claims to Client's claims.

2.03.3 Only by combining the claims of numerous individuals can Attorneys reasonably hope to recover the attorney fees and costs Attorneys incur as part of Attorneys' contingency representation of Client.

2.03.4 For reasons that are unknown at the time of this Agreement and for reasons that are well outside of the control of the Attorneys and the Client, Attorneys may discover after Client executes this Agreement that numerous

comparable employees with comparable claims to Client's claims do not exist. In this instance, the Attorneys and the Client may not be able to pursue the class action or PAGA claims any longer.

2.03.5 Based on Attorneys' prior experience, Defendants (the party or parties Client sues or intends to sue) in class actions and PAGA Actions often attempt to settle with the Plaintiff (the party suing or intending to sue) for the maximum value of the Plaintiff's individual claims. Such settlements prevent the Plaintiff from continuing to represent comparable individuals (sometimes known as "class members," "putative class members," "proposed class members," and/or "aggrieved employees") who Client brought the lawsuit on behalf of.

2.03.6 Based on Attorneys' prior experience, the Defendant may offer to settle Client's individual claims for an amount of money that equals or exceeds the maximum value of Client's claims. In this event, the Attorneys' fees and costs will likely exceed the maximum value of Client's individual claims. Often in Attorneys' experience, the Attorneys' fees and costs will far exceed the value of Client's individual claims.

2.03.7 Attorneys may advise Client to accept an individual settlement of Client's claims if numerous individuals with claims that are comparable to Client's do not exist and an individual settlement is in Client's best interest. Alternatively, Client may choose to enter into a settlement for an amount that equals or exceeds the maximum value of Client's individual claims even if there are numerous individuals with claims that are comparable to Client's claims.

2.03.8 Based on evidence Attorneys may obtain after entering into this Agreement with client, Attorneys' estimate of maximum value of Client's claims may change over the course of the Attorney-Client relationship under this Agreement.

2.03.9 In the event the Defendant offers to settle with Client for an amount of money that equals or exceeds the maximum value of Client's individual claims, Client agrees that, if the Attorneys' fees and costs exceed the maximum value of Client's claims, Attorneys may elect, solely at their option, that Client receive only the maximum value of Client's individual claims from the settlement funds and that the Attorneys receive the remaining settlement funds to cover all or part of the Attorneys' fees and costs and the risks that arise from Attorneys' contingency representation of Client. In other words, Client agrees to accept as settlement the amount equal to the

estimated maximum value of Client's claims. Attorneys disclose that attorney fees and costs incurred may substantially exceed the Client's net recovery.

2.03.10 Within seven days of Client's written request to Attorneys, they will provide Client with their estimate of the maximum value of Client's claims. This estimate of maximum value may change over the course of litigation.

2.03.11 Attorneys strongly recommend that Client consult with an independent lawyer about this provision, including whether this provision is in Client's best interests. By initialing below, Client agrees that Attorneys have provided Client with a reasonable opportunity to consult with an independent lawyer about this provision and Client consents to this provision.

NY (Client initials)

2.04 The rates set forth above are not set by law, but are negotiable between an attorney and client.

2.05 Client agrees to grant Attorneys a lien on any and all claims or causes of action that are the subject of this Agreement. The lien, to ensure payment of any sums owing to Attorneys at the conclusion of services performed, will attach to any recovery Client may obtain. Attorneys may compel payment of fees and costs from any such funds recovered on Client's behalf, even if Attorneys have been discharged before the end of the case. Client may seek the opinion of an independent lawyer of her choice before agreeing to this lien. By initialing below, Client agrees that she has had reasonable opportunity to consult an independent law firm, regardless of whether she has actually consulted such law firm, and she agrees that Attorneys will have a lien as specified above.

NY (Client initials here) DS (David Spivak initials here)

III. APPROVAL NECESSARY FOR SETTLEMENT

3.01 Attorneys are hereby authorized to enter into any and all settlement negotiations on behalf of those whom Attorneys represent as they deem appropriate. This includes, but is not limited to, Attorneys' prerogative to pursue cash or structured payment settlement negotiations.

3.02 Client hereby grants unto Attorneys a power of attorney to handle negotiations and settlement discussions regarding the obtaining of possession of any and all monies or other things of value subject of the matter due to Client under this claim as fully as Client could do so in person.

3.02.1 This expressly includes the right to sign Client's name on and to any insurance company drafts, money orders, cashier's checks, checks or other negotiable instruments made payable to Attorneys and Client, Attorneys, or to Client without the joinder of Attorneys, submitted to Attorneys on behalf of Client in full or partial settlement of this case.

3.02.2 This limited power of attorney further authorizes Attorneys to place these monies, referred to above, in The Spivak Law Firm trust account and from that trust account, make distributions and payments to Attorneys for the agreed to fee stated above, reimbursement to Attorneys for any and all expenses incurred by Attorneys in handling this case, payments to Client of Client's interest in the monies recovered as stated above, and payments to parties other than Client and Attorneys for their services performed, fees charged or bills rendered in connection with representing Client, including but not limited to medical bills, court reporter fees, deposition fees, investigative services, costs of exhibits or other special expenses incurred by Attorneys on behalf of Client.

3.03 No settlement of any nature shall be made for any of the aforesaid claims or profits of Client without the complete approval of Client, nor shall Client obtain any settlement on the aforesaid claims without the complete approval of attorney.

3.04 Attorneys are granted a limited power of attorney so that Attorneys may have full authority to prepare, sign and file all legal instruments, pleadings, drafts, authorizations and papers as shall be reasonably necessary to conclude this representation, including settlement and/or reduce to possession any and all monies or other things of value due to Client under this claim as fully as Client could do so in person.

IV. REPRESENTATIONS

4.01 It is expressly agreed and understood that no promises or guarantees as to the outcome of the case have been made to Client by Attorney. Attorneys have not represented to Client that Client will recover all or any of the funds so desired. Client also acknowledges that obtaining a judgment does not guarantee that the opposing party will be able to satisfy the judgment. It is further expressly understood and agreed that no other representations have been made to Client, except for those set out in this Contract.

V. DEDUCTION OF EXPENSES

5.01 All reasonable expenses incurred by Attorneys in the handling of this legal matter shall be deducted from the gross settlement proceeds at the time the case is settled or resolved, and before the contingent fee is calculated.

5.02 The expenses contemplated above, include but are not limited to any and all out-of-pocket expenses incurred in connection with this case, including but not limited to the following expenses: filing fees, court costs, certified copies of documents, pleadings, orders etc., transcripts, depositions, duplication costs, postage, office supplies, photographs, trial exhibits, long distance phone and fax calls, appraisal fees, consultants, expert witnesses and other fees associated with preparation and trial testimony, investigation fees, delivery charges, overnight mail/parcel services, parking, toll road and mileage expenses, out of town expenses including travel expense, air fare, hotels, meals, and any other expense incurred in connection with the matter.

5.03 Except for the following, all expenses and costs will be charged to Client at Attorneys' cost: mileage at \$0.50/mile and photocopying at \$0.25/page.

VI. COOPERATION OF CLIENT

6.01 Client shall keep Attorneys advised of Client's whereabouts at all times, and provide Attorneys with any changes of address, phone number or business affiliation during the time period which Attorneys' services are required, and shall comply with all reasonable requests of Attorneys in connection with the preparation and presentation of aforesaid representation.

6.02 Attorneys may, at Attorneys' option, withdraw from the case and cease to represent Client for any reason, including without limitation Client's failure to timely pay fees and expenses or deposits for same in accordance with this Contract, subject to the professional responsibility requirements to which attorneys are subject.

6.03 It is further understood and agreed between the parties that upon such termination of any services of Attorney, any of Client's deposits remaining in The Spivak Law Firm Trust Account shall be applied to any balance remaining owing to Attorneys for fees and/or expenses and any surplus then remaining shall be refunded to Client.

6.04 Duties As A Class Representative In A Class Action or PAGA action. Client has retained Attorneys to prosecute a class action and/or PAGA action on behalf of Client and comparable employees and other individuals. This section applies only to Client's responsibilities as a class representative or as a private attorney general. Client will have certain duties and responsibilities to the comparable individuals the lawsuit is on behalf of. Certain of these duties are explained in greater detail below.

6.04.1 Attorneys may apply to the Court for a special award to compensate the Client as the class representative or private attorneys general for Client's contribution to the action and/or Client's release of all individual claims Client may have. Client understands however that unless such an award is approved by the Court, Client will only be entitled to Client's pro rata share of funds available for distribution to all class members, aggrieved employees, and comparable individuals.

6.04.2 A class representative represents the interests of all members of his class in litigation to recover money unpaid wages, penalties, reimbursement, restitution and/or obtain injunctive relief for the class. Likewise, a private attorneys general represents the interests of all comparable aggrieved employees in litigation to recover money civil penalties (monetary penalties that traditionally only the State can sue for) on behalf of the Client, other aggrieved employees, and the State of California.

6.04.3 The class or group of aggrieved employees usually consists of all persons who are similarly situated with respect to a common course of conduct or practice. In other words, all those persons who are affected by the challenged behavior.

6.04.4 A class representative or private attorneys general has claims that are typical of those of the class or group of aggrieved employees, and thus involve

common issues of law or fact. For example, as a class representative, Client's claims against the defendant are typical of the class and private attorney general claims against the defendant, simply because Client was injured by the same unlawful employment practices as the other class members and aggrieved employees.

6.04.5 A class representative and private attorney general always considers the interests of the class and/or aggrieved employees just as Client would consider Client's own interests and, in some cases, must put the interests of the class and other aggrieved employees before Client's own interests. This means that Client is a champion of the other individuals or a fiduciary litigant.

6.04.6 A class representative or private attorney general always actively participates in the lawsuit, as necessary, by among other things, answering interrogatories, producing documents to the defendants and giving deposition and trial testimony if requested. Client may be required to travel to give such testimony.

6.04.7 A class representative or private attorney general recognizes and accepts that any resolution of the lawsuit by dismissal or settlement, is subject to court approval, and must be designed in the best interest of the class as a whole.

6.04.8 A class representative or private attorney general is not required to be particularly sophisticated or knowledgeable about the subject of the lawsuit. However, a class representative private attorney general should follow the progress of the lawsuit and should provide all relevant facts to the lawyers for the class or aggrieved employees.

6.04.9 A class representative or private attorney general volunteers to represent or champion many other people with similar claims and injuries because of the importance of the case and that necessity that all class members or aggrieved employees benefit from the lawsuit equally; the savings of time, money and effort should benefit all parties and the court. Class actions and PAGA actions are an important tool to assure compliance with the law even where an individual's losses may be relatively small.

By initially below, Client has reviewed and acknowledges Client's duties as a class representative and/or private attorney general.

 (Client initials here)

VII. CALIFORNIA LAW TO APPLY

7.01 This Agreement shall be construed under the laws of California, and all obligations of the parties created hereunder are performable in Los Angeles County, CA.

VIII. PARTIES BOUND

8.01 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.

IX. LEGAL CONSTRUCTION

9.01 In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

X. PRIOR AGREEMENTS SUPERSEDED

10.01 This Agreement constitutes the sole and only agreement by and between the parties. It supersedes any prior understandings or written or oral agreements between the parties concerning the subject matter discussed herein.

XI. RESOLUTION OF DISPUTES BY ARBITRATION

11.01 Client has the right to elect arbitration pursuant to the fee arbitration procedures of the State Bar of California, in any dispute subject to the jurisdiction of

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FURTHERMORE, CLIENT SHOULD OBTAIN PROFESSIONAL HELP REGARDING THE VALUATION AND LOCATION OF ALL ASSETS WHICH MAY BE THE SUBJECT OF A LEGAL MATTER INCLUDING BUT NOT LIMITED TO PENSIONS, EMPLOYMENT BENEFIT AND PROFIT SHARING RIGHTS THAT MAY BE CONTROLLED BY ANY OTHER PARTY TO THE LEGAL MATTER.

XII. DISCLAIMER OF GUARANTEE

12.01 Nothing in this Agreement and nothing in Attorneys' statements to Client will be construed as a promise or guarantee about the outcome of the matter. Attorneys make no such promises or guarantees. There can be no assurance that Client will recover any sum or sums in this matter. Attorneys' comments about the outcome of this matter are expressions of opinion only. Client acknowledges that Attorneys have made no promises or guarantees about the outcome.

XIII. DISCHARGE AND WITHDRAWAL

13.01 Client may discharge Attorneys at any time, with written notice. Attorneys may withdraw with Client's consent, or for good cause, which includes Client's breach of this Agreement, refusal to cooperate or communicate with Attorneys on this matter, or any fact or circumstance that would render Attorneys' representation unlawful or unethical. Attorneys will, upon Client's request, deliver Client's file and property in their possession, unless subject to lien as provided above, whether or not Client has completed payment for all services rendered.

XIV. EFFECTIVE DATE

14.01 This Agreement will govern all legal services beginning on the date that Attorneys began performing work for Client. That date of this document is to be used for reference only. Client will be required to pay Attorneys the reasonable value of services performed by Attorneys, even if this agreement never takes effect.

I further certify and acknowledge that I have read this Contract, and that I have voluntarily entered into this Contract fully aware of its terms and conditions as of the date Attorneys first provided services. All clients signing below agree to be liable, jointly and severally, for all obligations under this agreement.

Signed on: 04 / 03 / 2023



Nataliah Devol Green

THE SPIVAK LAW FIRM

Signed on: 04 / 07 / 2023



David G. Spivak
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(213) 725-9094
(877) 277-2950 Toll-free
(213) 634-2485 Fax
California State Bar No. 179684

SMITH LAW

Signed on: 04 / 03 / 2023



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STATEMENT OF CLIENT'S RIGHTS FOR CONTINGENCY FEES

Before you, the prospective client, arrange a contingent fee agreement with a lawyer, you should understand this statement of your rights as a client. This statement is not a part of the actual contract between you and your lawyer, but, as a prospective client, you should be aware of these rights.

1. There is no legal requirement that a lawyer charge a client a set fee or a percentage of money recovered in a case. You, the Client, have the right to talk with your lawyer about the proposed fee and to bargain about the rate or percentage as in any other contract. If you do not reach an agreement with one (1) lawyer you may talk with other lawyers.

2. Any contingent fee contract must be in writing and you have three (3) business days to reconsider the contract. You may cancel the contract without any reason if you notify your lawyer in writing within 3 business days of signing the contract. If you withdraw from the contract within the first three (3) business days, you do not owe the lawyer a fee although you may be responsible for the lawyer's actual costs during that time. If your lawyer begins to represent you, your lawyer may not withdraw from the case without giving you notice, delivering necessary papers to you, and allowing you time to employ another lawyer. Often, your lawyer must obtain court approval before withdrawing from a case. If you discharge your lawyer without good cause after the 3-day period, you have to pay a fee for work the lawyer has done.

3. Before hiring a lawyer, you, the Client, have the right to know about the lawyer's education, training, and experience. If you ask, the lawyer should tell you specifically about the lawyer's actual experience dealing with cases similar to yours. If you ask, the lawyer should provide information about special training or knowledge and give you this information in writing if you request it.

4. Before signing a contingent fee contract with you, a lawyer must advise you whether the lawyer intends to handle your case alone or whether other lawyers will be helping with the case. If your lawyer intends to refer the case to other lawyers, the lawyer should tell you what kind of fee sharing arrangement will be made with the other lawyers. If lawyers from different law firms will represent you, at least one (1) lawyer from each law firm must sign the contingent fee contract.

5. If your lawyer intends to refer your case to another lawyer or counsel with other lawyers, your lawyer should tell you about that at the beginning. If your lawyer takes the case and later decides to refer it to another lawyer or to associate with other lawyers, you should sign a new contract that includes the new lawyers. You, the Client, also have the right to consult with each lawyer working on your case and each lawyer is legally responsible to represent your interest and is legally responsible for the acts of the other lawyers involved in the case.

6. You, the Client, have the right to know in advance how you will need to pay the expenses and the legal fees at the end of the case. If you pay a deposit in advance for costs, you may ask reasonable questions about how the money has or will be spent and how much of it remains unspent. Your lawyer should give a reasonable estimate about future necessary costs. If your lawyer agrees to lend or advance you money to prepare or research the case, you have the right to know periodically how much money your lawyer has spent on your behalf. You also have the right to decide, after consulting with your lawyer, how much money is to be spent to prepare a case. If you pay the expenses, you have the right to decide how much to spend. Your lawyer should also inform you whether the fee will be based on the gross amount recovered or on the amount recovered minus the costs.

7. You, the Client, have the right to be told by your lawyer about the possible adverse consequences if you lose the case. Those adverse consequences might include money that you might have to pay to your lawyer for costs and liability you might have for attorney fees, costs, and expenses to the other side.

8. You, the Client, have the right to receive and approve a closing statement at the end of the case before you pay any money. The statement must list all of the financial details of the entire case, including the amount recovered, all expenses, and a precise statement of your lawyer's fee. Until you approve the closing statement your lawyer cannot pay any money to anyone, including you, without an appropriate order of the court. You also have the right to have every lawyer or law firm on your case sign this closing statement.

9. You, the Client, have the right to ask your lawyer at reasonable intervals how the case is progressing and to have these questions answered to the best of the lawyer's ability.

10. You, the Client, have the right to make the final decision regarding settlement of a case. Your lawyer must notify you of all offers of settlement before and after the trial. Offers during the trial must be immediately communicated and you should consult with your lawyer regarding whether to accept a settlement. However, you must make the final decision to accept or reject a settlement.

11. If at any time you, the Client, believe that your lawyer has charged an excessive or illegal fee, you have the right to report the matter to The California Bar, the agency that oversees the practice and behavior of all lawyers in California. For information on how to reach The California Bar, contact the local bar association. Any disagreement between you and your lawyer about a fee can be taken to court and you may wish to hire another lawyer to help you resolve this disagreement. Usually fee disputes must be handled in a separate lawsuit, unless your fee contract provides for arbitration.

Signed on: 04 / 03 / 2023



Nataliah Devol Green

THE SPIVAK LAW FIRM

Signed on: 04 / 07 / 2023



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California State Bar No. 179684

Signed on: 04 / 03 / 2023



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EXHIBIT A

SMITH LAW

BENJAMIN SMITH

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California and New York**

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PRIVILEGED & CONFIDENTIAL

ATTORNEY-CLIENT PRIVILEGED

June 1, 2022

Re: Terms of Engagement for Legal Services

Dear Natalie:

We are pleased you have decided to retain Smith Law Corporation (the "Firm") to render legal services in connection with your legal matter (the "Action"). Since California law encourages attorneys to reduce to writing the lawyer-client relationship, this Agreement (the "Agreement") sets forth the terms, conditions, and limitations of your engagement of the Firm.

This letter agreement is entered into by and between you and the Firm. It will not take effect and our Firm will have no obligation to provide legal services to you, until and unless you return a signed and fully completed copy of this Agreement. Your Action is governed by several statutes of limitations that place deadlines by which one or more applicable claims need to be filed. In the event you do not retain us pursuant to this Agreement, we advise you to consult another attorney as soon as possible about all applicable statutes of limitations.

Scope of Representation

The scope of our representation is limited to the dispute arising from your employment with Crumbl Cookie. The Firm's representation of you will include, as reasonably required, pre-litigation communications and negotiations; the pursuit of a lawsuit, arbitration proceeding, or equivalent procedure through settlement; the entry of a judgment; and/or the rendering of an award with respect to your Action. We are still continuing to investigate your claims and reserve the right to decline further representation based on the results of such investigation.

The Firm's representation does not include (a) defending you against, or representing you in, any claims that may be asserted against you as a cross-claim or counter-claim in your Action; (b) representing you in any related matters that may arise, including, without limitation, any workers' compensation claims; and/or (c) representing you in pursuing claims for other benefits,

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pursuing or answering an appeal from a judgment or award in your Action, or taking steps to collect any judgment or award in your Action.

The scope of our representation may expand from the work described above only as specifically agreed by both parties and subject to a separate retainer agreement pursuant to which the Firm may charge additional legal fees.

Legal Fees – No Recovery / No Fee*Contingent Fee Arrangement*

If no recovery is obtained on your behalf, then the Firm shall not be entitled to any legal fees. However, if any recovery is obtained on your behalf, then in exchange for providing you with our services, we shall be entitled to the following legal fee: (45%) of the gross value (if a Severance has been offered the gross value will be the amount in excess of the initial offer from the employer), before payment of any costs, of any settlement or other recovery.

Installment or Non-Cash Recovery

The contingency fee shall be paid out of the first funds or property received by client. If any recovery obtained on your behalf consists of payments to be made over a period of time, or of property not entirely cash or cash-equivalent, the contingency fee shall be based on the present cash value of the recovery as determined by generally recognized accounting and appraisal standards. For example, if the recovery consists of \$1,000 payable at \$100/year over 10 years, its present value may be approximately \$380, depending on prevalent interest rates. Further, in computing the contingency fee, in the event one or more non-cash benefits (e.g., reinstatement, job placement, stock purchase, retirement benefits, medical benefits, workers' compensation and/or disability benefits) are a part of your recovery, you and our Firm shall make a good faith effort to determine the monetary value of any such benefits, and such value shall be added to the gross value of your recovery for purposes of calculating our contingency fees.

Award of Attorneys' Fees

In the event that your recovery includes an award of attorneys' fees and costs, our Firm would be entitled recover the greater of (a) the entire attorneys' fee and costs award or (b) our Firm's contingency percentage of the gross value of the recovery (including such awarded attorneys' fees and costs) so that, at a minimum, our Firm's net contingency fee would be equal to our Firm's contingency percentage of all amounts recovered (including the award of attorneys' fees and costs) as set forth above. We will seek such full hourly rate in connection

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with any attorneys' fee and costs award to be granted by any applicable court or other proceeding.

Contingency Fee Negotiable

You acknowledge being advised by our Firm and being aware that contingency arrangements are not set by law, and that a contingency fee between you and the Firm is negotiable.

Award of Sanctions

Monetary sanctions awarded to our Firm during the course of any litigation, arbitration or other formal proceeding shall not be considered part of your recovery, unless intended as recovery to you by the applicable court or other adjudicative body. Any such sanctions shall be deemed compensation to, and shall belong to, the Firm for extraordinary time and effort expended as a result of an opposing party's bad faith conduct or failure to comply with discovery demands, court orders or similar obligations. But if the sanctions award includes an item of cost (such as the filing fee for making a motion), the amount thereof shall be credited to your costs account upon reimbursement of costs to our Firm.

Legal Costs – Our Firm Advances All Costs

Our Firm may advance all costs of litigation, including, but not limited to, costs of investigators, process servers, attorney services and messengers, court reporters, expert witnesses, discovery referees and mediators, filing fees and other court costs, and charges for photocopies, and postage (in each case, to the extent applicable). Costs are due upon recovery of any settlement or judgment, or as otherwise ordered by the Court.

In the event that Client receives an offer of settlement or compromise that Attorneys believe to be fair and reasonable, and Attorneys recommend that Client accept the offer, but Client elects to reject the offer against Attorneys recommendation, Attorneys may elect, as a result, to cease advancing costs in the Action, and Client will thereafter be responsible for costs of litigation. Attorneys elect to pay costs at Attorneys' exclusive option.

You understand and agree that costs are not deducted from any recovery before calculating the amount of legal fees due to our Firm as described in the section above entitled "*Contingent Fee Arrangement*." Your share of the gross value of any recovery shall be the balance remaining after full payment of our contingency fee and reimbursement of all costs.

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In addition, you understand that if your case proceeds to court action or arbitration, you may be required to pay fees and/or costs to other parties in the Action. Any such award shall be entirely your responsibility.

Client Responsibilities

You acknowledge that your responsibilities as a client include, without limitation, being reasonably available, in person and by telephone, to communicate with our Firm on all aspects of your Action, to be truthful and forthright in all of your communications with our Firm, to provide our Firm with all relevant information, witness contacts, and documents in a timely manner, to keep us apprised of your current work and home addresses and telephone numbers at all times, to comply with your monetary obligations set forth in this agreement, to make diligent efforts to find new employment (assuming you are physically and mentally able) if applicable, to take no action that will jeopardize or diminish your claims (including but not limited to deleting any documents which could conceivably relate to your claims -- You must err on the side of caution by not deleting anything such as emails, documents, voicemails, text messages, etc), and to not unreasonably refuse a settlement offer which we recommend you take, or unreasonably agree to accept a settlement offer we recommend that you not take.

Your obligation to be reasonable with respect to the acceptance of a settlement offer is a material condition of our agreement to represent you on a contingency fee basis. Accordingly, if you refuse to accept a reasonable settlement offer, or insist on accepting an unreasonable offer, either of us will have the right to terminate our attorney-client relationship at that time. You will not make any settlement of any nature of any of your claims without prior notice to our Firm.

Lien & Power of Attorney

To secure payment to our Firm of all sums due under this Agreement for services rendered, you hereby grant our Firm a first-priority lien on your Action and any cause of action or lawsuit filed thereon, and to any recovery you may obtain, whether by settlement, judgment or otherwise. Whenever a verdict, judgment, award or settlement is obtained in this matter, you hereby give power of attorney to our Firm to sign your name to any dismissals, forms, checks, drafts, and other papers and to deposit the proceeds into our Firm's trust account, and to distribute the funds in accordance with this Agreement.

Firm Discretion and Outside Attorneys

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Termination of Representation

We do not foresee any circumstance that would lead to termination of our attorney-client relationship, other than completion of all anticipated tasks on your behalf. However, you are permitted to discharge our Firm at any time and for any reason upon written notice to our Firm; provided, that, in the event of such discharge either initiated by you or, as determined by the court or arbitrator, results from your failure to cooperate reasonably in the prosecution of your case, (a) you shall promptly reimburse us for any and all costs advanced by our Firm in connection with your Action; and (b) such discharge shall not affect your obligation to pay our Firm's contingency fees (in full), to be paid by you out of any subsequent recovery on the claims covered by this Agreement.

Our Firm may withdraw as counsel at any time and for any reason upon written notice to you, subject to compliance with applicable state and federal law. You shall promptly reimburse us for any and all costs advanced by our Firm in connection with your Action subject to compliance with applicable state and federal law. In addition, and subject to compliance with applicable state and federal law, our Firm shall be entitled to the reasonable value of legal services performed prior to withdrawal (based upon our Firm's hourly rate), to be paid by you out of any subsequent recovery on the claims covered by this Agreement. For such purposes, please note that our current hourly rate for contingency litigation matters is \$650 per hour for each hour or fraction thereof expended by our Firm. Notwithstanding the foregoing, in the event that prior to any such early termination of our Firm's representation of you in connection with the Action, our Firm had negotiated a settlement that we recommended to you and, subsequent to termination, you accept said settlement or any settlement within 25% of said settlement, you shall pay our Firm the full amount of our legal fees (as calculated in accordance with the section above entitled "Legal Fees – No Recovery / No Fee") from that recommended settlement, in lieu of our hourly rate.

Under no circumstances shall our Firm be responsible for continuing legal services following withdrawal or for any costs incurred in connection with your procurement of substitute legal counsel in the unlikely event that you discharge our services.

File Retention

To the extent prohibited by applicable law, our firm does not maintain paper files and/or documents at all, but all originals are scanned and electronically retained. All files and/or

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If a Dispute Arises Between Us

We appreciate the opportunity to serve as your attorneys. However, in the event that you become dissatisfied with any aspect of our relationship including, for example, the quality or adequacy of our representation or the fees charged, we encourage you to bring any such concerns to our attention immediately. It is our belief that most problems can be resolved by a good faith discussion between us. Nevertheless, it is always possible that a dispute may arise which cannot be resolved by a discussion between us.

If a dispute or controversy arises between us, including about the construction, application, or performance of any services under this Agreement, or if any claim arises out of or relating to this Agreement or any alleged breach thereof, it shall be submitted to binding arbitration upon the written request of one party after service of that request on the other party. This agreement to arbitrate includes but is not limited to any claims regarding attorney's fees or costs under this Agreement or regarding a claim of attorney malpractice, that is, whether any legal services the Firm has rendered, under this Agreement or otherwise, were improperly, negligently, or incompetently rendered, or otherwise rendered in breach of a contractual or ethical duty. The parties shall select a single arbitrator to hear and determine the dispute. The arbitration shall be conducted in accordance with the California Arbitration Act, codified at California Code of Civil Procedure section 1280, et seq. The arbitrator must be an attorney in good standing with the State Bar of California. The cost of arbitration, excluding legal fees and costs, shall be shared equally by the parties, but the arbitrator shall have the right to allocate costs in the award at the arbitrator's discretion.

Notwithstanding the foregoing paragraph above, in any dispute subject to the jurisdiction of the State of California over attorney's fees, charges, costs, or expenses, you have

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the right to elect arbitration under the fee arbitration procedures of the State Bar of California, as set forth in California Business & Professions Code section 6200, et seq. Those procedures permit a trial after fee arbitration, unless the parties agree in writing, after the dispute has arisen, to be bound by the fee arbitration award. If, after receiving notice of your right to arbitration, you do not elect to proceed under the State Bar fee arbitration procedures and file a request for fee arbitration within 30 days, any dispute over fees, charges, costs, or expenses will be resolved by binding arbitration as provided in the foregoing paragraph. In addition, any trial after fee arbitration shall be pursued in arbitration under the foregoing paragraph above. By your signature below, you acknowledge that you have read and understand this paragraph and the foregoing paragraph above, and voluntarily agree to binding arbitration. In doing so, you and the Firm mutually and voluntarily give up important rights to trial by judge or jury, as well as rights to appeal. You are advised that you have the right to have independent counsel review the foregoing arbitration provisions and this Agreement prior to signing the Agreement.

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This Agreement sets forth the full understanding between you and our Firm with respect to the subject matter hereof and supersedes all prior understandings, written, unwritten, or implied. You acknowledge independent counsel may be retained to advise you regarding the terms and conditions set forth herein. No failure on the part of either party to exercise any right, power, or privilege hereunder shall operate as a waiver thereof. This Agreement may not be amended or modified, and no provision of this Agreement may be waived, except by a written document executed by the party against whom any such amendment, modification, or waiver would be enforced. The parties intend that this Agreement shall be interpreted and enforced to carry out its intent, notwithstanding that any particular provision of this Agreement shall be declared unenforceable for any reason. This Agreement shall not be construed strictly against the drafter hereof. Counterparts and facsimile copies of this Agreement shall be binding.

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BENJAMIN J. SMITH

Date [7/5/2022]

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8605 Santa Monica Blvd**PMB 97638****West Hollywood, CA 90069-4109****Mediation Disclosure Notification and Acknowledgment*****Required Disclosure Pursuant to California Evidence Code Section 1129***

To promote communication in mediation, California law generally makes mediation a confidential process. California's mediation confidentiality laws are laid out in Sections 703.5 and 1115 to 1129, inclusive, of the Evidence Code. Those laws establish the confidentiality of mediation and limit the disclosure, admissibility, and a court's consideration of communications, writings, and conduct in connection with a mediation. In general, those laws mean the following:

- All communications, negotiations, or settlement offers in the course of a mediation must remain confidential.
- Statements made and writings prepared in connection with a mediation are not admissible or subject to discovery or compelled disclosure in noncriminal proceedings.
- A mediator's report, opinion, recommendation, or finding about what occurred in a mediation may not be submitted to or considered by a court or another adjudicative body.
- A mediator cannot testify in any subsequent civil proceeding about any communication or conduct occurring at, or in connection with, a mediation.

This means that all communications between you and your attorney made in preparation for a mediation, or during a mediation, are confidential and cannot be disclosed or used (except in extremely limited circumstances), even if you later decide to sue your attorney for malpractice because of something that happens during the mediation.

By signing this document, you understand that, unless all participants agree otherwise, no oral or written communication made during a mediation, or in preparation for a mediation, including communications between you and your attorney, can be used as evidence in any subsequent noncriminal legal action including an action against your attorney for malpractice or an ethical violation.

Please note that this disclosure and signed acknowledgment does not limit your attorney's potential liability to you for professional malpractice, or prevent you from (1) reporting any professional misconduct by your attorney to the State Bar of California or (2) cooperating with any disciplinary investigation or criminal prosecution of your attorney.

Date: 7/5/2022

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EXHIBIT E

2013 WL 766535
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.
Court of Appeal,
Second District, Division 2, California.

Pearline ZALEWA et al., Plaintiffs and Respondents,
v.
TEMPO RESEARCH CORPORATION et al., Defendants and Appellants.

B238142 | Filed March 1, 2013

APPEAL from a judgment of the Superior Court of Los Angeles County. [Charles F. Palmer](#), Judge. Reversed and remanded.
(Los Angeles County Super. Ct. No. BC319156)

Attorneys and Law Firms

Dickstein Shapiro, [Arthur Silbergeld](#), [Christine de Bretteville](#) for Defendants and Appellants.

Altshuler Berzon, [Michael Rubin](#), [Eileen B. Goldsmith](#); Law Offices of Joseph D. Tuchmayer, [Joseph D. Tuchmayer](#); Law Offices of Todd Arron, [Todd S. Arron](#) for Plaintiffs and Respondents.

Opinion

[BOREN](#), P.J.

***1** We remanded this employment case to the trial court to determine (1) if attorney fees are authorized by statute following our reversal of the judgment in favor of plaintiffs, and (2) if fees are authorized, are they warranted by the facts of the case. On remand, both sides submitted demands for attorney fees to the trial court. The court awarded fees to plaintiff former employees as the “**prevailing** party” under [Labor Code section 218.5](#).¹

We reverse. Plaintiffs were not the **prevailing** party: they lost the case because their demands for bonuses were unfounded. Given that plaintiffs had no right to bonuses after they were laid off, defendants’ payment of money to some former employees during the litigation was a gift that cannot be viewed—as a matter of law—as a “catalyst” warranting an award of attorney fees to plaintiffs.

FACTS²

Plaintiffs are former employees of defendant Rifocs, a fiber optics company. In 1999, Rifocs merged with codefendant Textron. The merged entity was subsequently acquired by codefendant Tempo Research Corporation. The 1999 merger agreement contained a bonus clause. The bonus was intended to reward key employees for past performance and give them an incentive to remain with the company after the merger. Plaintiff employees were not third party beneficiaries of the merger agreement, which expressly forbids them from suing to enforce its terms.

To qualify for a bonus, plaintiffs had to be employed by the corporation at the end of the calendar year from 2000 through 2003. Plaintiffs received bonuses pursuant to the merger agreement beginning in December 2000. Plaintiff Laws received a bonus of \$10,000 for 2000–2001 and Zalewa received a bonus of \$75,000 for 2000–2002.

In 2001, defendants began employee layoffs because the market for fiber optics cooled. Defendants’ employment roster declined from 125 employees in April 2001 to seven employees in 2003. After being laid off, plaintiffs received no further

bonuses; however, they were entitled to—and received—severance pay. They signed releases agreeing not to sue on any claim arising from their employment with defendants.

In 2004, plaintiffs filed suit alleging Labor Code violations, unfair business practices, breach of contract, conversion, promissory estoppel, bad faith, and private attorney general (PAGA) penalties. In July 2005, defendants offered payments to laid-off employees, though not to the plaintiffs. After defendants made the payments, plaintiffs amended their complaint to allege a class action and assert a new claim for a “residual bonus.” A class was certified in 2007.

A bench trial was conducted in 2008. The court found that plaintiffs are entitled to recover a direct bonus, but no residual bonus. Because the bonus was unpaid wages, plaintiffs were awarded prejudgment interest and attorney fees under § 218.5. The court denied penalties to plaintiffs, finding that it would be unjust because defendants voluntarily tendered almost all of the outstanding direct bonus amounts to class members. The court awarded 11 employees \$0 because they were paid *more* money by defendants than they were owed. The remaining eight former employees were awarded sums ranging from \$455 to \$35,719. The court awarded plaintiffs’ counsel attorney fees of \$881,715. The court rejected plaintiffs’ claim under PAGA for lack of standing, because plaintiffs left defendants’ employ before PAGA took effect in 2004.

*2 Plaintiffs appealed the judgment because they felt entitled to residual bonuses and waiting time penalties, among other things. Defendants cross-appealed, challenging the trial court’s award of a direct bonus, its invalidation of the releases signed by plaintiffs, and the court’s award of attorney fees.

This Court reversed the judgment in favor of plaintiffs.

First, the trial court improperly invalidated the releases signed by plaintiffs after finding that defendants reasonably and in good faith believed that they did not owe plaintiffs a bonus. In a bona fide dispute over wages, defendants can legitimately offer plaintiffs money in return for their release of all claims. There was no evidence that the releases were coerced or improperly obtained. We wrote that plaintiffs “could, and did, accept payments that exceeded their earned severance, in return for releasing all claims, when there was a bona fide dispute over the wages owing. This is proper, even if the payment made by defendants was less than the bonus amounts claimed by the employees.”

Second, the trial court erred by finding that plaintiffs are entitled to a direct bonus. Although plaintiffs benefit from the bonus clause, the merger agreement prohibits them from suing to enforce its terms. Further, plaintiffs did not rely on any written or oral promises from defendants that they would receive a bonus even if they were laid off from their jobs due to depressed economic conditions. Because plaintiffs are not entitled to a bonus after they were laid off, they are not entitled to waiting time penalties, other Labor Code penalties, or prejudgment interest.

Finally, we reversed the trial court’s award of \$881,715 in attorney fees. We remanded the case to the trial court to determine whether an award of attorney fees is authorized by statute and warranted by the facts. Notably, we did *not* specify that either plaintiffs or defendants might be entitled to fees.³

On remand, the parties filed cross-motions for attorney fees. Plaintiffs requested an award of \$307,146 as the **prevailing** party pursuant to § 218.5, reasoning that this litigation was the catalyst for defendants’ July 2005 payments. Plaintiffs did not request attorney fees for litigation occurring after the 2005 payments, because the claims that went to trial were found by this Court to lack merit.

Defendants countered with a request for \$2,210,360 in costs and attorney fees incurred at trial and on appeal. Defendants argued that they are the **prevailing** parties: the appeal showed that they had no obligation to pay anything to plaintiffs. Like plaintiffs, defendants relied upon § 218.5 as authority for their right to recover attorney fees. In opposition to plaintiffs’ request for fees, defendants observed that their 2005 payments were made to nonparties, not to plaintiffs, and plaintiffs are not the **prevailing** parties because they did not recover any relief against defendants at trial. In defendants’ view, the “catalyst” theory is inapposite because no public interest was vindicated by plaintiffs’ lawsuit.

THE TRIAL COURT’S RULING

*3 The trial court denied defendants' motion for attorney fees. Citing § 218.5, the court granted plaintiffs' motion for fees, finding that plaintiffs are the prevailing parties, even if they did not obtain a favorable judgment in the litigation. The court reasoned that plaintiffs' lawsuit was a catalyst, provoking defendants to make the 2005 payments to some former employees. Plaintiffs initially won their lawsuit in the trial court and other employees recovered their bonuses from defendants in administrative proceedings: these factors demonstrated that the lawsuit was not frivolous, groundless or unreasonable. Finally, plaintiffs made demands for their bonus before the action was filed but were rebuffed, demonstrating that the litigation was necessary. Plaintiffs' attorneys were awarded a total of \$346,947.

DISCUSSION

1. Appeal and Review

The appeal arises from a postjudgment order awarding attorney fees and costs. (Code Civ. Proc., § 904.1, subd. (a)(2); *Raff v. Raff* (1964) 61 Cal.2d 514, 519; *Breckler v. Thaler* (1978) 87 Cal.App.3d 189, 193.) An attorney fee award generally is reviewed for an abuse of discretion; however, when the parties dispute whether the trial court was legally authorized to make an award because "the criteria for making an award" were unmet, this calls for statutory construction and presents a question of law. (*Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1213–1214; *Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169, 1175.) Specifically, we are asked whether § 218.5 permits, under a catalyst theory, an award of attorney fees to plaintiffs who did not prevail on any of the claims made in their lawsuit. Review is de novo, because the issue is whether there is a legal basis for awarding attorney fees. (*Earley v. Superior Court* (2000) 79 Cal.App.4th 1420, 1426; *Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 149.)

2. Overview of § 218.5

Section 218.5 reads, in relevant part, "In any action brought for the nonpayment of wages ... the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action." The statute is a reciprocal fee recovery provision that works in favor of either employees or employers, whichever is the prevailing party in a lawsuit claiming unpaid wages. (*Earley v. Superior Court, supra*, 79 Cal.App.4th at p. 1427.) In employee class action suits, class representatives assume a fiduciary responsibility on behalf of absent parties and are potentially responsible for defense fees if their case fails. (*Id.* at pp. 1434–1436.) An unpaid bonus is treated as a claim for unpaid wages. (*Hunter v. Ryan* (1930) 109 Cal.App. 736, 738.)

3. The Catalyst Theory

The catalyst theory arises from the private attorney general doctrine codified in Code of Civil Procedure section 1021.5.⁴ It allows courts to award attorney fees to a "successful party" in an action that results in "the enforcement of an important right affecting the public interest" if there is (a) a significant benefit conferred on the general public or a large class of persons, (b) the financial burden of private enforcement makes the award appropriate, and (c) the fees should not be paid out of any recovery. (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 565 (*Graham*).)

*4 The doctrine " " "rests upon the recognition that privately initiated lawsuits are often essential to the effectuation of the fundamental public policies embodied in constitutional or statutory provisions, and that, without some mechanism authorizing the award of attorney fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible." " " (*Graham, supra*, 34 Cal.4th at p. 565.) It does not apply when a lawsuit's "primary effect was the vindication of [plaintiff's] personal right and economic interest." (*Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 637.)

"Under the catalyst theory, attorney fees may be awarded even when litigation does not result in a judicial resolution if the defendant changes its behavior substantially because of, and in the manner sought by, the litigation.... In order to be eligible for attorney fees[,] a plaintiff must not only be a catalyst to defendant's changed behavior, but the lawsuit must have some merit [] and the plaintiff must have engaged in a reasonable attempt to settle its dispute with the defendant prior to

litigation.” (*Graham, supra*, 34 Cal.4th at pp. 560–561.)

“ ‘A plaintiff will be considered a “successful party” where an important right is vindicated “by activating defendants to modify their behavior.” ’ ” (*Graham, supra*, 34 Cal.4th at p. 567.) Plaintiff need not secure a favorable final judgment to succeed: the case may be won on a preliminary issue; or by convincing a public agency to implement state law; or by reaching a settlement with a corporation in a shareholder derivative suit. (*Id.* at pp. 565–567, citing cases.) In *Graham*, the plaintiffs sued Chrysler for making false statements about the towing capacity of its trucks, inspiring the company to offer to repurchase or replace the trucks. The lawsuit caused Chrysler to change its behavior, “implicated an issue of public safety, and [] benefited thousands of consumers and potentially thousands more by acting as a deterrent to discourage lax responses to known safety hazards.” (*Id.* at pp. 577–578.)

4. Plaintiffs’ Right to Recover Attorney Fees

Plaintiffs originally brought suit in 2004 “on behalf of themselves and the general public.” They requested attorney fees pursuant to § 218.5. While the case was pending, but before plaintiffs amended their complaint to include class allegations, defendants paid money to some of the laid-off employees, but not to plaintiffs. Plaintiffs proceeded to trial, where they won their unpaid bonus money. The victory was short-lived, as defendants had a successful appeal.

To determine the prevailing party under § 218.5, we import the definition used in the Code of Civil Procedure (*On-Line Power, Inc. v. Mazur* (2007) 149 Cal.App.4th 1079, 1085–1087), which defines a prevailing party as “the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant.” (Code Civ. Proc., § 1032, subd. (a)(4).) Plaintiffs did not have a net monetary recovery against defendants. In fact, they recovered nothing. Under the plain language of § 218.5, plaintiffs were not the prevailing party because all of their claims against defendant were denied.

While no court has yet applied the catalyst theory to a case arising from § 218.5, plaintiffs argue that the theory should apply, based on defendants’ July 2005 payments to some former employees. It is unclear whether the permissive fee shifting described in the catalyst theory applies to a statute like § 218.5, which mandates an award of attorney fees to the “prevailing party.” Assuming the catalyst theory applies to Labor Code cases, its application does not assist plaintiffs in their quest for attorney fees.

*5 The opinion in the prior appeal shows that plaintiffs had no right to collect a bonus after they were laid off from their jobs with defendants. By extension, the laid-off, nonparty employees who received payments from defendants in July 2005 also had no right to collect a bonus. Had the employees not accepted the 2005 payments, they would have received nothing in the litigation. In the eyes of the law, defendants’ 2005 payments were a gift, not a contractual or statutory obligation to remit unpaid wages.

When deciding whether to award attorney fees, the court reviews the facts “not only to determine the lawsuit’s catalytic effect but also its merits. Attorney fees should not be awarded for a lawsuit that lacks merit.” (*Graham, supra*, 34 Cal.4th at p. 576.) Plaintiffs cannot be a “successful party” if a reviewing court flatly rejects their case on the merits. (*Marine Forests Society v. California Coastal Com.* (2008) 160 Cal.App.4th 867, 877.) Although plaintiffs’ lawsuit provoked the 2005 payments, the lawsuit itself lacked merit, because plaintiffs demanded bonuses and penalties that they were not entitled to collect.

A lawsuit that provokes a defendant to make a gift is not a ground for awarding attorney fees: no significant benefit is conferred on the public or a large class of persons by such a lawsuit (*Graham, supra*, 34 Cal.4th at p. 578), and defendants engaged in no detrimental behavior that needed to be changed. As discussed in our prior opinion, defendants had the right to behave the way they did, laying off employees they could not afford to keep and denying bonuses to employees who were not on the payroll at year’s end. (Compare *Tipton–Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 607–610 [city instituted remedial practices in its police department after plaintiff sued for race and sex discrimination, justifying application of the “catalyst” theory of fee recovery]; *Harbor v. Deukmejian* (1987) 43 Cal.3d 1078, 1103 [catalyst theory applied when plaintiffs successfully challenged the governor’s constitutional veto authority, which conferred a significant benefit on the general public]; *Hogar Dulce Hogar v. Community Development Com. of City of Escondido* (2007) 157 Cal.App.4th 1358,

1368 [plaintiffs successfully obtained an amendment to a tax sharing agreement and a \$1.35 million reimbursement to a city housing fund, giving rise to catalyst fees].)

In sum, this lawsuit was instigated by a handful of employees who felt entitled to collect a bonus for years after they stopped working. By no stretch of imagination did this lawsuit aim to vindicate an important right affecting the public interest; nor did it confer a significant benefit on the general public or a large class of persons; nor did it cure detrimental behavior by defendants, who did not engage in improper conduct. This was not a lawsuit “ ‘that genuinely provide[d] a public benefit.’ ” (*Vasquez v. State of California* (2008) 45 Cal.4th 243, 255.) The catalyst theory does not apply here.

5. Defendants’ Right to Recover Attorney Fees

Section 218.5 is a reciprocal attorney fees statute that requires an award of fees to the “prevailing party” so long as one of the parties demands those fees upon the initiation of the action. Here, plaintiffs demanded fees pursuant to § 218.5 when they filed suit. Defendants were the prevailing parties on appeal, which resolved the entire lawsuit in their favor. (Code Civ. Proc., § 1032, subd. (a)(4) [prevailing party is the defendant if neither plaintiff nor defendant obtains any relief, and the defendant when the plaintiff recovers no relief against that defendant].) Plaintiffs did not prevail on any claims.

*6 Plaintiffs contend that their claims for fees under § 218.5 were inextricably intertwined with their PAGA claim, making it impossible to award attorney fees to defendants as the prevailing party under § 218.5. As the trial court found, plaintiffs had no standing to bring a PAGA claim because PAGA did not exist when plaintiffs were terminated from their employment with defendants. In any event, § 218.5 lists only one remotely pertinent exception: “This section does not apply to any action for which attorney’s fees are recoverable under Section 1194.”⁵ Plaintiffs did not proceed under section 1194, a one-way fee shifting statute authorizing attorney fees to employees who prevail on their minimum wage or overtime compensation claims.

Section 218.5 contains no equitable exemption allowing the courts to give a pass to employees who invoke its provisions then lose their case, causing the employer to become the prevailing party in the litigation. Defendants are the prevailing party under § 218.5, and are entitled to recover reasonable attorney fees they incurred in this litigation, including the two appeals.⁶

DISPOSITION

The postjudgment order awarding attorney fees and costs to plaintiffs is reversed. The case is remanded to the trial court to determine a reasonable award of attorney fees and costs for defendants. Defendants are entitled to recover their costs on appeal, as the prevailing party.

We concur:

ASHMANN–GERST, J.

FERNS, J.*

Footnotes

¹ Labor Code section 218.5 will be referred to in this opinion as § 218.5.

² The facts are largely derived from our opinion in *Zalewa v. Tempo Research Corporation* (Sept. 27, 2010) B210429 (nonpub. opn., as modified Oct. 27, 2010).

³ Plaintiffs misinformed the trial court that the case was remanded to resolve “whether and in what amount plaintiffs are entitled to

reasonable fees for having achieved [a] substantial result for so many of the affected employees.” (Italics added.) The opinion does not give a nod to plaintiffs’ claim for fees.

- 4 The statute reads, in relevant part, “Upon motion, a court may award attorneys’ fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement ... are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any.”
- 5 [Section 218.5](#) contains several express exceptions: it does not apply to an action brought by the Labor Commissioner; it does not apply to a surety issuing a bond pursuant to the Business and Professions Code; and it does not apply to an action to enforce a mechanics lien under the Civil Code. The statute does not mention PAGA.
- 6 The issue of attorney fees following reversal of the judgment first arose in plaintiffs’ petition for rehearing, when it was procedurally inopportune to resolve a new issue, hence the remand. We never intended to confuse the trial court by remanding for further proceedings on the issue of attorney fees.
- * Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to [article VI, section 6 of the California Constitution](#).

EXHIBIT F

2011 WL 5979937
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
Only the Westlaw citation is currently available.

California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.

Court of Appeal, First District, Division 5, California.

Maria Tun CUN, Plaintiff and Appellant,
v.
CAFE TIRAMISU LLC, Defendant and Respondent.

No. A131241. | (San Francisco County Super. Ct. No. CGC–09–484879). | Nov. 30, 2011.

Attorneys and Law Firms

[Michael Paul Guta](#), Law Offices of John E. Hill, Oakland, CA, for Plaintiff and Appellant.

[Wesley Jerome Fastiff](#), [Michael Gayland Pedhirney](#), Littler Mendelson, San Francisco, CA, for Defendant and Respondent.

Opinion

[NEEDHAM](#), J.

*1 Maria Tun Cun appeals from an order awarding attorney fees to respondent Café Tiramisu LLC, pursuant to [Labor Code section 218.5](#), after the court granted respondent’s motion for summary judgment. Appellant contends: (1) [Labor Code section 218.5](#) did not apply, because the action she brought for unpaid wages was really for unpaid overtime, for which an award of attorney fees is available only to successful plaintiffs under [Labor Code section 1194](#); (2) the court should have apportioned the attorney fees between appellant’s unpaid wages claim and her constructive termination claim, for which no attorney’s fee award is available; and (3) the court improperly awarded amounts for attorney services rendered in defense of claims other than those asserted by appellant. We will affirm the order.

I. FACTS AND PROCEDURAL HISTORY

In February 2009, appellant Maria Tun Cun, along with Vicente Tapia Gonzalez and Evangelina Tun Cun, filed a complaint against respondent Café Tiramisu LLC.¹

Maria asserted three causes of action. In a cause of action for recovery of unpaid wages, she alleged that she was employed by Café Tiramisu between February 9, 2005 until her termination on March 21, 2007, she was “owed wages” and was “owed for accrued paid time off,” and she was entitled to a statutory penalty for unpaid wages under [Labor Code section 203](#) and reasonable attorney fees and costs pursuant to [Labor Code section 218.5](#). In a cause of action for constructive termination in violation of public policy, Maria alleged that Café Tiramisu’s “conduct in refusing to pay plaintiffs wages owed created an intolerable working condition, necessitating plaintiffs to leave employment.” In her cause of action for unfair business practices, she alleged that Café Tiramisu violated [Business and Professions Code section 17200](#) by committing these same acts.

In her prayer for relief, Maria sought, among other things, damages and “reasonable attorney’s fees, pursuant to [Labor Code Section 218.5](#).” Nowhere in the complaint did Maria allege that Café Tiramisu owed her for unpaid overtime.

A first amended complaint, filed in April 2010, retained Maria's allegations and causes of action. Like the original complaint, it did not allege entitlement to unpaid overtime.

Café Tiramisu filed a motion for summary judgment or, in the alternative, summary adjudication. In September 2010, the court granted the motion, finding that Maria could not prevail on any of her causes of action as a matter of law because, before the lawsuit, the parties had entered into settlement agreements by which Maria released all of her employment-related claims.

Judgment was entered against Maria on September 21, 2010. The judgment noted that Café Tiramisu, as the prevailing party, was eligible to recover its reasonable attorney fees and costs.²

Café Tiramisu filed a motion for attorney fees on November 18, 2010, contending it was the prevailing party and entitled to recover its fees and costs under Labor Code section 218.5. Café Tiramisu requested \$36,612.50 in fees, supporting its request with a declaration from one of its attorneys and invoices for the fees incurred.

*2 Maria opposed the motion. She contended that Café Tiramisu was not entitled to recover attorney fees under Labor Code section 218.5, which authorizes recovery by the prevailing party, because her action was for overtime wages governed by Labor Code section 1194, which authorizes recovery only by successful plaintiffs. She further contended that Café Tiramisu could not recover for the portion of attorney fees incurred in connection with her claim for wrongful termination. Café Tiramisu's reply brief addressed these arguments.

By written order filed on or about January 5, 2011, the court granted the motion and awarded Café Tiramisu attorney fees in the full amount of \$36,612.50. This appeal followed.

II. DISCUSSION

As mentioned, Maria contends the court erred because: (1) Labor Code section 218.5 was inapplicable because her claim for unpaid wages was really a claim for unpaid overtime; (2) the court failed to apportion the attorney fees spent on the claim for unpaid wages as opposed to her claim for wrongful termination; and (3) Café Tiramisu should not recover for fees incurred in defending against claims by others. We address each contention in turn.

A. Recovery of Attorney Fees Under Labor Code Section 218.5

Café Tiramisu sought recovery for its attorney fees, and the trial court awarded them, pursuant to Labor Code section 218.5.³ Section 218.5 provides in pertinent part: "In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action." (Italics added.)

Each requirement of section 218.5 was met. First, Maria brought an action for the nonpayment of wages. In her original and amended complaints, Maria claimed that she was "owed wages" and, in addition, had accrued and was owed "paid time off pursuant to Labor Code [sections] 226.7 and 227.3." Section 226.7 refers to pay for time worked during mandated meal periods, and section 227.3 refers to vested vacation pay; both are considered "wages." (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1114 [time worked during mandatory meal periods]; *Suastez v. Plastic Dress-Up Co.* (1982) 31 Cal.3d 774, 784 [vested vacation pay].)

Second, Café Tiramisu was the prevailing party. Its summary judgment was granted, and judgment was entered in its favor, with Maria taking nothing by her amended complaint. (Code Civ. Proc. § 1032, subd. (a)(4).)

Third, Maria expressly requested attorney fees and costs pursuant to section 218.5 upon the initiation of her action, in both the original and amended complaints. Accordingly, Café Tiramisu was entitled to recover its reasonable attorney fees under

section 218.5.

Maria's sole argument to the contrary is that her cause of action for unpaid wages was really a claim for unpaid *overtime*, such that section 1194, rather than section 218.5, should govern. Section 1194, subdivision (a) provides for one-way fee shifting to a successful plaintiff only: "Notwithstanding any agreement to work for a lesser wage, any *employee* receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee *is entitled to recover* in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, *reasonable attorney's fees*, and costs of suit." (Italics added.)

*3 Because section 1194 authorizes an award of attorney fees only to a successful plaintiff, and not to the **prevailing** party, Maria contends that the trial court erred and Café Tiramisu was not entitled to an award of attorney fees. Indeed, section 218.5 provides: "This section does not apply to any action for which attorney's fees are recoverable under Section 1194." The question Maria presents, therefore, is whether her claim for unpaid wages was really a claim for overtime compensation.

Maria's effort to recast her complaint as one seeking recovery for unpaid overtime is unpersuasive. Neither her original complaint nor the amended complaint mentions "overtime," "overtime wages," or section 1194. It refers instead to "wages," paid time off (also wages), and section 218.5.

Ignoring this, Maria argues that the claim she eventually tried to *prove* was that she was not paid wages at the overtime rate. In particular, in opposition to respondent's summary judgment motion, she contended that she repeatedly worked overtime hours, presented payroll records evincing overtime hours, and purportedly asserted that it was her exhaustion from overtime hours that led to her constructive termination.⁴

Maria's argument is unconvincing. The fact that she was eventually unable to support her broadly-alleged claim for unpaid wages except with evidence of unpaid overtime does not mean that her "action" was really for overtime compensation. (See §§ 218.5, 1194.) Nor does it convert the action she brought into a different action she had never specifically alleged. To hold otherwise would reward a plaintiff for not having any evidence to support her claims as pled, and penalize a defendant who incurs attorney fees in defending against the claims *as they were pled*. Thus, while Maria may have tried to prove her cause of action for unpaid wages with evidence of unpaid overtime, the court did not err in concluding that the "action" Maria actually "brought" was for nonpayment of wages within the meaning of section 218.5, not for nonpayment of overtime within the meaning of section 1194.

Maria further argues that this court, by its August 2011 decision in appeal number A129899 from the grant of summary judgment, characterized her claim as one for overtime wages. Her argument has no merit. In the first place, our August 2011 opinion in appeal number A129899 was not before the trial court when it granted the attorney fees motion in January 2011, and Maria does not explain how the trial court could have erred in January based on our characterization of her claim in August. Furthermore, any characterization of Maria's cause of action in appeal number A129899 would not be germane to this case, because it did not involve the issue we address now. At issue in appeal number A129899 was whether the settlement release was enforceable; we were not called upon in that case, as we are in this case, to decide whether her cause of action for unpaid wages was really a cause of action for unpaid overtime. Lastly, contrary to Maria's representations, we did *not* characterize Maria's claim as one for overtime wages. Rather, we stated: "On April 2, 2010, a First Amended Complaint (Complaint) was filed; appellant alleged causes of action for recovery of *unpaid wages*, constructive termination and unfair business practices." (Italics added.) While we acknowledged that Maria ended up claiming damages for unpaid overtime in her summary judgment motion, we also noted that her underlying complaint to the Department of Labor contended that she was "entitled to additional unpaid wages, *including* for unpaid overtime," but not exclusively for unpaid overtime. (Italics added.) In short, for all of these reasons, our opinion in appeal number A129899 does not establish that the trial court erred in deciding respondent's motion for attorney fees.

*4 Maria also refers us to *Earley v. Superior Court* (2000) 79 Cal.App.4th 1420 (*Earley*). There, petitioners had brought a class action to recover unpaid overtime compensation. (*Id.* at p. 1423.) They objected to an order requiring petitioners to notify absent class members that they might be liable for attorney fees and costs if their claim was unsuccessful. (*Id.* at pp. 1423–1424.) To decide the appeal, the appellate court had to determine, among other things, if section 1194 alone governed whether attorney fees could be awarded in the defendant's favor, or if section 218.5 also applied, such that the two statutes could be read together to allow the **prevailing** party to recover attorney fees. (*Earley*, at p. 1426.) The court ruled that only

section 1194 applied to the petitioner's cause of action for unpaid overtime, in light of legislative history, the distinct legislative source of the right to overtime compensation, and the fact that the Legislature specifically provided that only plaintiffs should recover attorney fees in overtime cases. (*Earley*, at pp. 1429–1431.) The court concluded: “The only reasonable interpretation which would avoid nullification of section 1194 would be one which bars employers from relying on section 218.5 to recover fees in any action for *minimum* wages or *overtime* compensation. Section 218.5 would still be available for an action brought to recover nonpayment of contractually agreed-upon or bargained-for ‘wages, fringe benefits, or health and welfare or pension fund contributions.’ [Footnote omitted.]” (*Earley*, at p. 1430.)

Maria's reliance on *Earley* is unavailing. There, the plaintiffs expressly *alleged* a claim for unpaid overtime. (*Earley*, *supra*, 79 Cal.App.4th at p. 1424.) Here, Maria did not bring a claim specifically for unpaid overtime, but a broader claim for unpaid wages, which did not refer to overtime but instead to other types of wages. In other words, while *Earley* decided that only section 1194 applies to an action alleged explicitly and solely to recover unpaid overtime, Maria did not *allege* such an action to recover unpaid overtime.⁵

B. Apportionment Among Causes of Action

Maria argues that the trial court erred in failing to apportion the attorney fees between the first cause of action for unpaid wages and her cause of action for wrongful termination. We disagree.

In general, where attorney fees are recoverable for one cause of action but not another, a court need not apportion attorney fees between the causes of action if there is an issue common to the causes of action or the issues are so interrelated that it would be impossible to separate them. (See, e.g., *Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 129–130; *Erickson v. R.E.M. Concepts, Inc.* (2005) 126 Cal.App.4th 1073, 1083–1086; *Akins v. Enterprise Rent-A-Car Co.* (2000) 79 Cal.App.4th 1127, 1133.)

Here, Maria expressly based her wrongful termination claim on her allegation that her resignation from Café Tiramisu was due to its “refusal to pay [her] wages owed.” As such, the issue of whether Café Tiramisu owed Maria wages was common to both the unpaid wages claim and the constructive termination claim. Furthermore, Maria's unfair business practice claim was based on the acts underlying her other claims. Thus, from the outset, all of Maria's causes of action required resolution of one common issue: whether Café Tiramisu owed Maria “wages.”

*5 Moreover, the successful defense to *all* of Maria's causes of action was the same: Maria was not entitled to pursue any of the claims, or obtain any recovery by her lawsuit, because of the settlement agreement in which she released all of her employment-related claims. For this reason as well, the court did not err in deciding not to apportion fees among the causes of action.

C. Apportionment as to Other Plaintiffs

Maria further argues that the trial court awarded fees for work Café Tiramisu's attorneys performed in defending against the claims of the other plaintiffs. She asserts the trial court awarded attorney fees for the “deposition of Spinoso and Scopetta which necessarily involved all three plaintiff's cases.” She also states: “respondent's attorneys time records does not distinguish between deposition time for Mr. Scopetta and Spinosso [sic] spent on the claim of Tapia–Gonzalez which was settled and Evangelina Tun Cun [record citation] which respondent sought attorney fees by a separate Motion and which appeal is pending before this court.”

As Café Tiramisu points out, however, Maria did not raise this argument in the trial court. Although she argued that the court should apportion the time spent on the wrongful termination claim, she did not raise any issue concerning time purportedly spent on other cases or with respect to other plaintiffs. The issue is therefore waived. (See *North Coast Business Park v. Nielsen Construction Co.* (1993) 17 Cal.App.4th 22, 28–29.)

Maria fails to establish error.

III. DISPOSITION

The order is affirmed.

We concur: [SIMONS](#), Acting P.J., and [BRUINIERS](#), J.

Footnotes

- ¹ The appeal of Evangelina Tun Cun is pending in appeal number A131240. Because Evangelina Tun Cun and Maria Tun Cun have the same last names, we will refer to them by their first names for purposes of clarity, without disrespect.
- ² Maria appealed from the summary judgment (appeal number A129899), contending that the settlement agreements were void under [Labor Code section 206.5](#). In August 2011, we affirmed the judgment.
- ³ Except where otherwise indicated, all statutory references hereafter are to the Labor Code.
- ⁴ Maria's opposition to the motion for attorney fees quoted an excerpt from her opposition to the summary judgment motion as follows: " 'Maria Tun Cun's pay stubs for several periods immediately before she was constructively terminated show she worked as many as 140 hours in a bimonthly pay period.... It is mathematically impossible to work more than 96 hours in a bimonthly pay period without working overtime hours (i.e. more than 40 hours in any week).' "
- ⁵ It might be argued that Maria's first "cause of action" covered both a claim for unpaid overtime *and* a claim for other unpaid wages, and an attorney fees award cannot include amounts incurred in defense of the unpaid overtime claim. Maria does not make an apportionment argument on this ground, so we need not and do not decide this issue.

EXHIBIT G

2003 WL 352422
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
Only the Westlaw citation is currently available.

California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.

Court of Appeal, Fourth District, Division 1, California.

Cecilia CSASZI, Plaintiff and Appellant,
v.
SHARP HEALTHCARE, Defendant and Respondent.

No. D038558. | (Super.Ct.No. 740594). | Feb. 18, 2003.

Former employee brought action against former employer, claiming employer was liable for unlawful discrimination and unpaid wages pertaining to on-call time. The Superior Court, San Diego County, No. 740594, [S. Charles Wickersham, J.](#), granted employer's motion for summary adjudication with respect to discrimination claims, and, following a bench trial, entered judgment for employer on wage claim. Employee appealed. The Court of Appeal, [Haller, J.](#), held that: (1) employee's motion to reconsider summary adjudication order based on new or different facts was untimely; (2) employee failed to set forth any new or different facts, and thus motion to reconsider summary adjudication order was properly denied; (3) employee did not qualify for mandatory relief from summary adjudication order allegedly entered as a result of attorney's neglect or mistake; (4) attorney who failed to file an opposition to employer's summary adjudication motion engaged in positive misconduct, justifying relief from summary adjudication order; (5) employer was not required to compensate employee for time spent on-call but not actually answering calls at same rate established for time she spent on-call and actually answering calls; and (6) statute authorizing award of attorney fees only to successful plaintiff in actions seeking to recover unpaid overtime did not prohibit award of attorney fees to employer.

Affirmed in part and reversed in part.

APPEAL from a judgment of the Superior Court of San Diego County, [S. Charles Wickersham](#), Judge. Affirmed in part and reversed in part.

Opinion

[HALLER, J.](#)

*1 Cecilia Csaszi sued her former employer, Sharp Healthcare¹ (Sharp), claiming Sharp was liable for unlawful discrimination and unpaid wages pertaining to on-call time. The court granted summary adjudication on all claims except for the unpaid wages cause of action. After a court trial on this claim, the court found Csaszi did not prove she was owed any wages, and entered final judgment in Sharp's favor on all of Csaszi's causes of action. The court denied Csaszi's motions seeking relief from the summary adjudication ruling. ([Code Civ. Proc.](#), §§ 473, 1008.) Csaszi appeals.

We affirm the portions of the judgment finding in Sharp's favor on Csaszi's claim for unpaid wages and awarding Sharp attorney fees for prevailing on this claim. ([Lab.Code](#), § 218.5.) We reverse the portion of the judgment entered on the summary adjudication of Csaszi's employment discrimination causes of action. The trial court shall vacate its order granting summary adjudication on these causes of action, permit the parties to file opposition and reply briefs, and then consider Sharp's summary adjudication motion on its merits.

FACTUAL AND PROCEDURAL SUMMARY

In March 1996, Sharp hired Csaszi as a utilization review/quality assurance nurse responsible for evaluating patients for discharge at Tri-City Medical Center. Two and one-half years later, Csaszi's supervisors readjusted the workloads of Csaszi and a co-worker. Csaszi was unhappy about the change in her assignment, and complained about what she believed was unfair treatment. In March 1999, Csaszi was given several written notices regarding perceived problems with her performance and the need to improve to avoid being terminated. Two months later, in May 1999, Sharp terminated Csaszi, stating she had failed to properly perform her job assignments and acted in an improper manner toward other health care employees.

In December 1999, Csaszi filed a complaint against Sharp, alleging (1) employment discrimination claims (wrongful termination in violation of public policy, unlawful discrimination and retaliation in violation of the Fair Employment and Housing Act (FEHA), and wrongful demotion in retaliation for complaining about racial discrimination); and (2) a claim for the failure to properly pay "on-call" wages in violation of [Labor Code section 201](#).

Sharp moved for summary adjudication on Csaszi's discrimination claims on the grounds that Csaszi could not establish she was performing her job in a satisfactory manner, Sharp had legitimate, nondiscriminatory reasons for terminating Csaszi, and Csaszi had no evidence that Sharp's stated reasons were a pretext for unlawful discrimination. Csaszi's attorney, Michael W. Loker, did not file an opposition to that motion, even though (as detailed below) Loker told Csaszi that he *had* filed an opposition.

On November 22, 2000, the court granted Sharp's summary adjudication motion, ruling that Sharp met its burden to establish a legitimate reason for Csaszi's termination and Csaszi failed to present any evidence that the proffered reason for the termination was untrue or pretextual.

*2 On the date scheduled for trial on her remaining claim, Csaszi appeared with attorney Loker, and informed the trial court that she wished to terminate Loker. The trial court granted the request and, over Sharp's objections, granted Csaszi's request for a 90-day trial continuance.

On December 14, 2000, Csaszi, represented by new counsel William Evans, filed a [Code of Civil Procedure section 1008](#) motion ([section 1008](#)), requesting the court to reconsider its summary adjudication ruling. The court denied the motion, finding the motion was not timely (it was filed more than 10 days after the summary adjudication order was entered) and Csaszi "fail[ed] to set forth any 'new or different facts, circumstances, or law' that would affect the outcome of" the summary adjudication motion.

On March 9, 2001, a court trial began on Csaszi's remaining claim for unpaid wages relating to her on-call time. After considering all the evidence (which will be detailed below), the court found Csaszi failed to meet her burden to show she was entitled to unpaid wages for her on-call time.

The next month, on April 6, 2001, Csaszi moved for relief from the summary adjudication order under [Code of Civil Procedure section 473](#) ([section 473](#)). In support, Csaszi submitted her declaration, the declaration of her former attorney (Loker), and proposed responsive papers to Sharp's summary adjudication motion. The court denied the [section 473](#) motion, stating Csaszi "made no showing that a judgment, dismissal, order, or other proceeding has been taken against her as a result of her or her attorney's mistake, inadvertence, surprise, or excusable neglect, as is required by the section."

Sharp then moved for its attorney fees as the prevailing party on the FEHA and unpaid wage claims. The court initially granted the motion on both grounds, but after oral argument, concluded that Csaszi's "discrimination case was not totally groundless" and therefore awarded only those fees pertaining to the unpaid wage claim (\$20,269) based on [Labor Code section 218.5](#).

On appeal, Csaszi challenges the denial of her motions to vacate the summary adjudication and the court's rulings pertaining to the unpaid wage claim.

DISCUSSION

I. Motion for Reconsideration

Csaszi first contends the court abused its discretion in denying her motion to reconsider the summary adjudication order under [section 1008](#), which permits a court to revoke a previous order based on new or different facts and an adequate justification for the failure to previously produce those facts. The contention is unavailing.

^[1] First, the motion was untimely. [Section 1008](#) requires that a reconsideration motion be brought “within 10 days after service upon the party of written notice of entry of the order....” (See *Advanced Building Maintenance v. State Comp. Ins. Fund* (1996) 49 Cal.App.4th 1388, 1392, 57 Cal.Rptr.2d 310.) Sharp served written notice of entry of the order on November 22, 2000, and Csaszi filed her reconsideration motion 22 days later, on December 14, 2000.

*3 ^[2] Additionally, the trial court properly denied the motion on the basis that Csaszi “fail[ed] to set forth any ‘new or different facts, circumstances, or law’ that would affect the outcome of” the summary adjudication motion. Csaszi did not proffer any new facts or law relevant to the summary adjudication ruling. Instead, she focused exclusively on explaining the circumstances of her prior attorney’s failure to adequately represent her. These circumstances do not constitute the type of “new or different facts” that permit a reconsideration of the trial court’s order under [section 1008](#).

II. Section 473 Ruling

Csaszi alternatively contends the trial court erred in denying her [section 473](#) motion seeking to vacate the summary adjudication order because of her attorney’s neglect.

A. Relevant Facts

In moving for relief under [section 473](#), Csaszi requested the trial court to vacate the summary adjudication order because the motion was granted without the benefit of her opposition papers and the failure to file an opposition was caused by her attorney’s misconduct. In support, she submitted her own declaration and copies of facsimiles (faxes) received from attorney Loker, which set forth the following facts:

Csaszi retained Loker in September 1999. Loker thereafter filed the complaint and, in April 2000, “began discovery requests.” In May 2000, Loker notified Csaszi he had attended a case management conference, and the trial date was scheduled for October 20, 2000. During the next two months, Csaszi made numerous attempts to contact Loker, but Loker did not return any of Csaszi’s telephone calls or respond to her written correspondence. In August 2000, Csaszi’s husband went to the superior court and discovered that Sharp had obtained a continuance of the trial to December 1, 2000.

On September 7, 2000, Loker called Csaszi and told her Sharp wanted to take her deposition. Csaszi expressed her concern about being unable to contact Loker, but Loker did not explain why he failed to respond to her calls and letters, and said only that he now intended to “move” on Csaszi’s case. Csaszi thereafter met with Loker on two separate days to prepare for her deposition. Sharp deposed Csaszi on three different dates, and each time Loker was present to represent her.

On October 12, Sharp filed its summary adjudication motion, but Loker did not tell Csaszi of this filing. Loker thereafter scheduled depositions of three Sharp employees, but these depositions were postponed for unspecified reasons and later rescheduled to October 30. On October 26, Csaszi met with Loker to review her deposition transcript, and she also gave Loker \$1,000 to pay for the three upcoming Sharp employee depositions. On that date, Loker also informed Csaszi about Sharp’s summary adjudication motion for the first time. Loker told her he would be filing an opposition to the summary judgment motion, but did not tell her the opposition was due on October 26.

*4 On October 30, Csaszi met with Loker to determine why the Sharp employees’ depositions were cancelled that morning. During that meeting Loker did not tell Csaszi that he had filed an ex parte application to continue the hearing on the summary judgment motion.

Ten days later, on November 9, Loker faxed Csaszi a note stating that he was in the library and that he would:

“[F]ile our response in opposition to the summary judgment today and argument is on [November] 17th, for which you will be present. Contrary to my message yesterday, I do not need your signature at this time, but I do need to see you Saturday, and I need you to drop off today the filing fee for the opposition to the Summary Judgment, payable to the Clerk of the Superior Court, in the amount of \$116. Also, the copies of your deposition are payable at this time, because I am using them in our opposition, in the amount of \$615.46, which should be by separate check, made payable to this office.... Therefore, though I need not, and cannot meet today (*because of the fact that I am in the law library today all day working on the opposition*), please drop off two drafts for the filing fee and deposition copy fee, in the amounts noted respectively. Also please leave a time in which we may meet Saturday, if you are not otherwise occupied. *I am optimistic.*” (Italics added.)

Csaszi thereafter wrote the requested checks, but Loker was not in his office when she delivered them. Csaszi telephoned Loker on a daily basis for the next eight days, but was unable to reach him and Loker did not respond to these calls. In the early morning of November 17 (the date scheduled for oral argument on the summary adjudication motion), Csaszi received a fax from Loker stating:

“The court announced yesterday that it will review the briefs submitted and rule telephonically on 22 Dec. (on the summary judgment). *I will fax you our opposition if you haven’t received.* Therefore there are no hearings today. P.S. *There was no charge for filing the opposition, a rule change.* You may ‘void’ that check, which I will destroy. Tx.” (Italics added.)

In fact, Loker never filed an opposition. Further, the applicable rules have never required a party opposing a summary judgment to pay a fee. (See Super. Ct. San Diego County, Fee Schedule & Forms List.)

In response to this fax, Csaszi repeatedly attempted to contact Loker, but was unable to reach him. Csaszi then directly contacted the superior court, and learned from the court that a trial call on her remaining claim was scheduled for December 1, 2000. The morning of December 1, Loker faxed Csaszi a note stating there was no hearing and that he intended to meet with her during the weekend to discuss the overtime pay claim. Csaszi nonetheless attended the trial call, and at the hearing, the court said that Loker was scheduled to call the court at 9:30 a.m. Csaszi confirmed that Loker was still her attorney.

*5 That weekend, Csaszi met with Loker and discussed the unpaid wage claim, but Loker refused to discuss the court’s summary adjudication ruling. The next day, Csaszi appeared at court with a written statement stating that she wanted to obtain new counsel, and the court granted the motion.

In support of her [section 473](#) motion, Csaszi also submitted Loker’s declaration which stated in relevant part: “I did not prepare an opposition to Defendant Sharp’s motion for summary adjudication on the discrimination claims. I did not feel that Csaszi would prevail on the discrimination claims and I felt that to oppose Sharp’s motion might impair her credibility on the remaining issues dealing with the overtime claim and that she would incur additional costs in opposing the discrimination part of the case. However, I was apparently unable to adequately convey my feelings regarding her chances of prevailing on these issues to her. I thought I had convinced her of my recommendations prior to the scheduled opposition to Sharp’s summary adjudication motion. She did inform me that she wanted to proceed with her discrimination claims at the December 4, 2000, hearing. [¶] There was no fault attributable to Plaintiff in any failure to make a timely filing of the opposition to Defendant’s Motion For Summary Adjudication.”

B. Legal Analysis

Under [section 473](#), a party may potentially seek two types of relief for orders entered as a result of an attorney’s neglect or mistake: one that is mandatory and one that is discretionary. (*Metropolitan Service Corp. v. Casa de Palms, Ltd.* (1995) 31 Cal.App.4th 1481, 1486, 37 Cal.Rptr.2d 575 (*Metropolitan Service*)).

First, under the mandatory provision, a court “shall” grant relief whenever an application for relief meets the six-month statutory time period *and* the motion is “accompanied by an attorney’s sworn affidavit attesting to his or her mistake,

inadvertence, surprise, or neglect” (§ 473; see *In re Marriage of Hock & Gordon-Hock* (2000) 80 Cal.App.4th 1438, 1442, 96 Cal.Rptr.2d 546.) “The purpose of this law is to relieve the innocent client of the burden of the attorney’s fault, to impose the burden on the erring attorney, and to avoid precipitating more litigation in the form of malpractice suits.” (*Metropolitan Service, supra*, 31 Cal.App.4th at p. 1487, 37 Cal.Rptr.2d 575.)

^[3] This mandatory relief provision is inapplicable here because Loker, Csaszi’s former attorney, did not “attest[] to [a] mistake, inadvertence, surprise, or neglect....” Instead, in his affidavit, attorney Loker said he did not file an opposition because he made the tactical decision not to oppose the motion. This assertion does not satisfy the statute’s requirement that the attorney admit a “mistake, inadvertence, surprise, or neglect.” (§ 473, see *Metropolitan Service, supra*, 31 Cal.App.4th at p. 1487, 37 Cal.Rptr.2d 575 [mandatory relief provisions apply “if the attorney *admits* neglect”], italics added.)²

^[4] But even if a party cannot satisfy section 473’s mandatory relief requirements, the party may obtain relief under the statute’s discretionary provisions. Specifically, a court “may” grant relief if the moving party shows an order was taken against him or her because of the attorney’s *excusable neglect*. (§ 473; see *Metropolitan Service, supra*, 31 Cal.App.4th at pp. 1486-1487, 37 Cal.Rptr.2d 575.) Generally, conduct falling below the professional standard of care is considered inexcusable and therefore discretionary relief cannot be granted based on such conduct. (See *Carroll v. Abbott Laboratories, Inc.* (1982) 32 Cal.3d 892, 895, 187 Cal.Rptr. 592, 654 P.2d 775 (*Carroll*); *Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 682, 68 Cal.Rptr.2d 228.) Csaszi asserts Loker’s conduct in failing to oppose the summary judgment was the result of professional incompetence. Therefore Loker’s conduct was not “excusable” under section 473.

*6 However, an exception to the rule requiring a showing of excusable neglect applies if the party establishes the attorney’s neglect was of an extreme degree amounting to “‘positive misconduct.’” (*Carroll, supra*, 32 Cal.3d at pp. 898-899, 187 Cal.Rptr. 592, 654 P.2d 775; see *Fleming v. Gallegos* (1994) 23 Cal.App.4th 68, 72-73, 28 Cal.Rptr.2d 350.) “‘Positive misconduct is found where there is a total failure on the part of counsel to represent his client.’” (*People v. One Parcel of Land* (1991) 235 Cal.App.3d 579, 584, 286 Cal.Rptr. 739; *Aldrich v. San Fernando Valley Lumber Co.* (1985) 170 Cal.App.3d 725, 738-739, 216 Cal.Rptr. 300.) The attorney’s conduct is said to obliterate the existence of the attorney-client relationship and therefore cannot be imputed to the client. (*Carroll, supra*, 32 Cal.3d at p. 898, 187 Cal.Rptr. 592, 654 P.2d 775 [“‘[a]n attorney’s authority to bind his client does not permit him to impair or destroy the client’s cause of action or defense,’” quoting *Orange Empire Nat. Bank v. Kirk* (1968) 259 Cal.App.2d 347, 353].)

Carroll held an attorney who “grossly mishandled” a document production did not engage in “‘positive misconduct’” because he otherwise acted on behalf of his client in the litigation including attending his client’s deposition, propounding and timely responding to interrogatories, propounding requests for admissions, settling with one of the defendants, and timely filing a section 473 motion. (*Carroll, supra*, 32 Cal.3d at pp. 899-900, 187 Cal.Rptr. 592, 654 P.2d 775.) *Carroll* contrasted these circumstances with the situations in *Daley v. County of Butte* (1964) 227 Cal.App.2d 380, 38 Cal.Rptr. 693 and *Orange Empire Nat. Bank v. Kirk, supra*, 259 Cal.App.2d 347, 66 Cal.Rptr. 240, where the courts found attorney misconduct had effectively deprived a party of representation. (*Carroll, supra*, 32 Cal.3d at pp. 899-900, 187 Cal.Rptr. 592, 654 P.2d 775.) In *Daley*, the plaintiff’s attorney abandoned his client by failing to communicate with the plaintiff, serve necessary parties, and appear at critical hearings. (*Daley v. County of Butte, supra*, 227 Cal.App.2d at pp. 391-392, 38 Cal.Rptr. 693.) In *Orange Empire*, the defendant’s attorney failed to assert a defense, appear at the trial, or file relief from a default judgment within the statutory period. (*Orange Empire Nat. Bank v. Kirk, supra*, 259 Cal.App.2d at p. 354, 66 Cal.Rptr. 240.)

We conclude the circumstances here fall within the *Daley-Orange Empire* line of cases. Although Loker filed the complaint and was initially involved in some limited discovery, Loker completely abandoned Csaszi at a critical time by failing to file an opposition to the summary adjudication motion. Further, by falsely telling Csaszi that he was filing, *and had filed*, an opposition to the summary adjudication motion, Loker did more than abandon his client—he affirmatively precluded Csaszi from protecting herself and seeking other counsel to file an opposition or seeking timely section 1008 relief. Loker additionally continued to affirmatively harm Csaszi’s interests when he asserted in his declaration in support of her section 473 motion that his decision not to file the summary judgment motion was a tactical decision, an assertion that is flatly contradicted by his own words reflected on the faxes sent to his client. This false assertion prevented Csaszi from obtaining mandatory relief under the statute.

*7 In light of Loker’s misrepresentations to Csaszi and his submission of a declaration that contradicts his written correspondence to his client, Loker’s activities amounted to positive misconduct justifying relief under section 473. In so

concluding, we are unpersuaded by Sharp's reliance on a list of the various contacts between Loker and Csaszi during the relevant times. If anything, Loker's sporadic contacts with Csaszi made the situation worse by misleading Csaszi into believing he was taking care of her interests. (See *Fleming v. Gallegos*, *supra*, 23 Cal.App.4th at p. 73, 28 Cal.Rptr.2d 350 [trial court erred by failing to find attorney abandonment where plaintiff's "attorneys displayed an unwillingness to either prosecute her lawsuit or to cease representing her"].) Further, these contacts do not show a lack of abandonment, instead they reveal merely that Loker remained Csaszi's attorney of record. *Carroll* does not require that an attorney-client relationship be formally severed before positive misconduct may be proven.

Although a [section 473](#) motion lies within the sound discretion of the trial court, " 'the trial court's discretion is not unlimited and must be exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice.' [Citation.] The law strongly favors trial and disposition on the merits. Therefore any doubts in applying [section 473](#) must be resolved in favor of the party seeking relief. When the moving party promptly seeks relief and there is no prejudice to the opposing party, very slight evidence is required to justify relief. We will more carefully scrutinize an order denying relief than one which permits a trial on the merits." (*Mink v. Superior Court* (1992) 2 Cal.App.4th 1338, 1343, 4 Cal.Rptr.2d 195; see *Stafford v. Mach* (1998) 64 Cal.App.4th 1174, 1180-1181, 75 Cal.Rptr.2d 809.) Applying these principles here, we conclude the trial court abused its discretion in failing to vacate the summary adjudication based on Csaszi's showing that her counsel engaged in "positive misconduct."

¹⁵¹ We note that Sharp does not argue, nor does the law permit, this court to sustain the trial court's denial of the [section 473](#) motion on the alternate ground that Csaszi's proposed opposition to the summary adjudication motion does not raise a triable issue of fact. In considering the propriety of a court's ruling on a [section 473](#) motion, an appellate court is limited to the question whether the court abused its discretion in granting or denying the motion, and may not reach the substantive issue as to whether the position proffered by the party seeking relief has merit. (*Uriarte v. United States Pipe & Foundry Co.* (1996) 51 Cal.App.4th 780, 786-787, 59 Cal.Rptr.2d 332; see 8 Witkin, Cal. Procedure (4th ed. 1997) Attack on Judgment in Trial Court, § 184 at p. 692, 59 Cal.Rptr.2d 332.)³

Finally, we reject Sharp's argument that the trial court properly denied the [section 473](#) motion because the motion constituted an "end-run" around [section 1008](#) governing reconsideration motions. Because Csaszi satisfied the requirements of a [section 473](#) motion, the fact that the motion was not timely under [section 1008](#) does not defeat the grounds for granting the motion under [section 473](#).

III. Unpaid Wage Claim

*8 Csaszi next contends the court erred in failing to find in her favor on the unpaid wage claim, which was tried before the court sitting without a jury.

The evidence at trial showed that Csaszi was assigned to on-call shifts during which she was given a pager and was responsible for answering telephone calls pertaining to patients discharged outside of regular business hours. Sharp paid its on-call employees \$2.50 per hour for time spent on-call but not actually working, i.e., being available for a call. For time spent actually answering a call (known as "call-back time"), Sharp paid its employees one and one-half times the employee's regular hourly rate of pay, regardless whether this time reflected overtime work. Csaszi was paid \$2.50 for each hour that she reported she was on-call, and would have been paid her overtime rate if she had reported any time answering calls.

The essential basis of Csaszi's unpaid wages claim at trial was that Sharp was required to pay her time and one-half for her on-call time (when she was not actually answering calls) instead of \$2.50 because this time was devoted primarily to her employer's interests. In support, Csaszi relied on federal law providing that an employee should be fully compensated for on-call time if the time is spent " 'primarily for the benefit of the employer and his business.' " (*Armour & Co. v. Wantock* (1944) 323 U.S. 126, 132, 65 S.Ct. 165, 89 L.Ed. 118.)

To show that her on-call time was spent primarily for Sharp's benefit, Csaszi testified that when she was on-call she was unable to attend to her personal activities and she was paged "very frequently." She said that during her entire on-call period, she would sit in a room with a telephone, facsimile machine and documents needed to perform her job duties. Csaszi claimed she could not shop, cook, sleep, travel, interact with her family or otherwise engage in any personal activities. Csaszi sought \$40,380, calculated as the total number of on-call hours multiplied by the time and one-half rate subtracted by the amount she

was paid per hour (\$2.50). Csaszi had no record of the time she actually responded to calls, explaining that she never identified this time on her timesheets because she did not understand how to do so.⁴

In contrast to this evidence, Sharp presented the testimony of its human resource director who said that employees were instructed on the manner in which they should report call-back time and that the employees did not need to limit their activities while waiting for a call. Sharp employees corroborated this testimony. These employees testified that while on-call, they wore pagers and attended to various personal activities, including cooking, shopping, attending church services, and entertaining. The pagers given to the employees had a range of at least 250 miles, and therefore the employees were free to travel throughout Southern California. Csaszi's co-workers testified they received varying numbers of calls while on-call, which averaged two to four per week, and that they knew how to claim this call-back time on their timesheets. The employees were required to respond to a pager within a 15- or 20-minute period. The employees were always paid time and one-half for the time they were actually answering a call.

*9 After considering the evidence, the court stated: "The issue to be decided is whether the requirements of being on-call as a discharge planner precluded [Csaszi] from using the time effectively for her own purposes, thus entitling her to back wages. [Citations.] [¶] The Court finds that although [Csaszi] may have subjectively believed that she needed to avoid engaging in personal activities while on-call, the evidence shows that the job duties of being on-call did not require her to do so. The fact that Ms. Csaszi elected not to engage in personal activities while on-call may be laudable, but it does not transform the on-call time to working time compensable under statute. Both the written policies of the employer as well as the actions of the employees indicate that the express and implied agreement was that employees would be paid \$2.50 for time spent on-call but not actually working and one and one-half times their regular hours rate for time spent actually working while on-call. [¶] Based on the above-stated findings and the fact that [Csaszi] did not offer any evidence specifying the dates or hours she actually worked while on-call, the Court finds that [Csaszi] has failed to meet her burden to show that she is entitled to back wages...."

[6] We find no error. Although there is no California law directly on point, federal law sets forth appropriate standards for determining Csaszi's claim to additional wages for on-call time. Under this law, an employee must be fully compensated for on-call time spent primarily for the employer's benefit, and the question whether the time is spent primarily for the employer depends on numerous factors and a consideration of these factors in the context of the particular circumstances of the case. (See *Armour & Co. v. Wantock*, *supra*, 323 U.S. at p. 133; *Berry v. County of Sonoma* (9th Cir.1994) 30 F.3d 1174, 1183.) Although no single factor is dispositive, the predominant considerations are the agreement of the parties and the degree to which the employee is free to engage in personal activities. (*Owens v. Local No. 169, Assn. of Western Pulp & Paper Workers* (9th Cir.1992) 971 F.2d 347, 350-354.) The court must balance the factors permitting personal pursuits against the factors restricting personal pursuits to determine whether the employee is "so restricted that he is effectively engaged to wait." (*Berry v. County of Sonoma*, *supra*, 30 F.3d at p. 1183.)

Applying these principles, the trial court found Sharp's evidence credible, and concluded that the time Csaszi spent on-call was not time that was required to be spent predominately for the employer's benefit. Substantial evidence supports the court's factual conclusion. The court, as the finder of fact, was entitled to reject Csaszi's contrary evidence.

In nonetheless challenging the court's factual conclusions, Csaszi contends that Sharp's agreement to pay \$2.50 during on-call hours "amounted to an admission that [Sharp] maintained control over the employees" and therefore the trial court was required to find as a matter of law that Sharp was under a mandatory obligation to pay the same pay rate that it applied for call-back work.

*10 This argument is unsupported factually and legally.

First, the fact that Sharp paid employees \$2.50 per hour to be available to respond to phone calls was not an admission that the time spent was primarily for Sharp's benefit. Instead, Sharp's human resources director specifically testified that employees were paid for being on-call as "an incentive for carrying the pager and being available on call." She explained the pay was "additional compensation that was paid to carry the pager, to be available during a specific time should additional work be needed by that individual." She emphasized that during this waiting time, the "time is not controlled [by Sharp]" and that employee "is free to move around, engage in personal activities."

Csaszi's position is also legally unsupported. Csaszi relies solely on *Paniagua v. City of Galveston, Texas* (5th Cir.1993) 995 F.2d 1310 and *Berry v. County of Sonoma, supra*, 30 F.3d at p. 1178. In *Paniagua*, the court specifically rejected the identical argument asserted here-that an employer's agreement to compensate employees for the inconvenience of being on call "automatically render[s] the time spent on standby 'working time'...." (995 F.2d at p. 1317.) In *Berry*, the court noted that an employer's agreement to provide "at least some type of compensation for on-call waiting time may suggest the parties characterize waiting time as work," but the court made clear that this was merely one of many factors in the overall analysis. (*Berry v. County of Sonoma, supra*, 30 F.3d at p. 1181 .)

The trial court here expressly noted the evidence showing that Sharp paid \$2.50 for on-call waiting time, but stated that based on the totality of the circumstances, this payment was merely compensation for the inconvenience of carrying a pager and did not reflect that the time spent by on-call employees was for the employer's benefit. Substantial evidence supported the trial court's conclusion.

Csaszi failed to establish that the trial court erred in reaching its factual conclusions with respect to the unpaid wage claim or that the court erred in applying these factual findings to the applicable legal principles.

IV. Attorney Fees

^[7] The trial court awarded \$20,269 in attorney fees to Sharp under [Labor Code section 218.5](#), which provides in relevant part: "In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action."⁵

Csaszi contends the court erred in awarding fees under this section because the applicable statute is [section 1194](#), which contains a "one-way" fee provision, permitting attorney fees only for a prevailing employee and not for a prevailing employer. [Section 1194](#), subdivision (a) states: "[n]otwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance ..., including interest thereon, reasonable attorney's fees, and costs of suit."

*11 Both [sections 218.5](#) and [1194](#) potentially apply to an action seeking overtime wages, but establish different attorney fees rules. In *Earley v. Superior Court* (2000) 79 Cal.App.4th 1420, 95 Cal.Rptr.2d 57, the court noted the potential conflict between the code sections, and concluded the Legislature intended that [section 1194](#) alone applies to recovery of attorney fees for overtime compensation claims, even though such claims could be construed as seeking payment of wages under [section 218.5](#). In a well-reasoned decision, the court explained that the only reasonable interpretation of the Legislature's one-way fee shifting rule in [section 1194](#) "would be one which bars employers from relying on [section 218.5](#) to recover fees in any action for *minimum* wages or *overtime* compensation. [Section 218.5](#) would still be available for an action brought to recover nonpayment of contractually agreed-upon or bargained for 'wages....' [¶] Such a harmonization of these two sections is fully justified. An employee's right to wages and overtime compensation clearly have different sources. Straight-time wages ... are a matter of private contract between the employer and employee. Entitlement to overtime compensation, on the other hand, is mandated by statute and is based on an important public policy.... 'California courts have long recognized [that] wage and hour laws "concern not only health and welfare of the workers themselves, but also the public health and general welfare." ... [¶] There can be no doubt that the one-way fee-shifting rule in [section 1194](#) was meant to 'encourage injured parties to seek redress-and thus simultaneously enforce [the minimum wage and overtime laws]-in situations where they otherwise would not find it economical to sue.' [Citation.] To allow employers to invoke [section 218.5](#) in an overtime case would defeat that legislative intent and create a chilling effect on workers who have had their *statutory* rights violated. Such a result would undermine statutorily-established public policy. That policy can only be properly enforced by a recognition that [section 1194](#) alone applies to overtime compensation claims." (*Earley v. Superior Court, supra*, 79 Cal.App.4th at p. 1430, 95 Cal.Rptr.2d 57.)

We agree with the *Earley* court that when an employee seeks overtime wages, the attorney fees rules are exclusively set forth in [section 1194](#). However, that principle is inapplicable here because Csaszi never alleged, or sought to prove at trial, that Sharp failed to pay her for overtime work. Instead, Csaszi brought her claim to enforce Sharp's alleged agreement that it would pay time and one-half for time spent working outside of the hospital's physical environment and that on-call time constituted "working" under established legal principles. The claim at issue concerned solely a matter of private contract

between the employer and employee, i.e., that Sharp had agreed to pay a certain wage for time answering calls, and that because her time spent waiting for those calls primarily benefited Sharp, Sharp was required to compensate her at this same established wage rate. Because Csaszi never claimed or presented evidence that she was working overtime without overtime pay, the case does not come within the ambit of [section 1194](#). Thus, the court properly concluded that attorney fees were mandatory to the prevailing employer under [section 218.5](#).

*12 Csaszi alternatively argues that even if [section 218.5](#) is the correct statute to apply, the code section does not permit a defendant to recover attorney fees because the fees must be requested at “the initiation of the action.” (§ 218.5.) Csaszi, however, ignores the beginning part of this sentence which provides for reasonable attorney fees “if *any* party to the action requests attorney’s fees and costs upon the initiation of the action .” (§ 218.5, italics added.) Read in context, this statutory language does not limit an attorney fees award to a plaintiff, and instead merely requires that the prevailing party show it had sought attorney fees at the beginning of the litigation. Here, Sharp stated in its answer that it was seeking to be “awarded its costs of suit and attorney fees incurred therein....” That statement is sufficient to satisfy [section 218.5](#)’s requirement that attorney fees be requested at the “initiation of the action.”

DISPOSITION

We affirm the portions of the judgment finding in Sharp’s favor on Csaszi’s claim for unpaid wages and awarding attorney fees to Sharp for prevailing on this claim. We reverse the portion of the judgment dismissing Csaszi’s first, second, third and fifth causes of action based on the summary adjudication. The court is ordered to vacate its order granting summary adjudication on these causes of action, permit Csaszi to file an opposition, and consider Sharp’s motion on the merits.

The parties to bear their own costs on appeal.

WE CONCUR: [KREMER](#), P.J., and [BENKE](#), J.

Footnotes

¹ Although it appears that the correct name of Csaszi’s former employer is Sharp Mission Park, the defendant is named in the caption of Csaszi’s complaint as Sharp Healthcare. Our review of the record on appeal does not reveal an amendment to the complaint correcting the defendant’s name.

² Because Csaszi did not submit an attorney fault declaration satisfying the mandatory relief provision requirements, we do not reach the issue raised by the parties in their supplemental briefs whether [section 473](#)’s mandatory provision applies to provide relief for summary adjudication orders, an issue that has been the subject of different conclusions by the appellate courts. (Compare *English v. Ikon Business Solutions, Inc.* (2001) 94 Cal.App.4th 130, 114 Cal.Rptr.2d 93 with *Avila v. Chua* (1997) 57 Cal.App.4th 860, 67 Cal.Rptr.2d 373.)

³ We recognize that this rule may lead to an empty victory for Csaszi if she is unable to come forward with any real evidence that she was discriminated against based on her race. However, the standard of review on a [section 473](#) motion does not permit this court to reach the merits of the underlying claim. Moreover, the policy of providing a party with a hearing on the merits of his or her claim in the trial court outweighs any possible judicial economy objectives that would be served if we were to consider the merits of the discrimination claim based solely on Csaszi’s proposed opposition filings contained in the appellate record.

⁴ Although it appears that Csaszi was not paid the time and one-half for all of her call-back time, at trial she never claimed any unpaid wages for such time, presumably because she never recorded this *call-back* time on her timesheets except for one occasion. Thus, this appeal concerns only the question whether Csaszi was owed any wages for her *on-call* time.

⁵ All further statutory references are to the Labor Code.

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EXHIBIT H

2009 WL 4718721

Only the Westlaw citation is currently available.
United States District Court,
E.D. California.

Boanerges VILLALOBOS, et al., Plaintiffs,
v.
James GUERTIN, et al., Defendants.

No. CIV. S-07-2778 LKK/GGH. | Dec. 3, 2009.

Attorneys and Law Firms

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Kimberley Ann Worley, [Stephen R. Holden](#), Holden Law Group, Auburn, CA, for Defendant.

Opinion

ORDER

[LAWRENCE K. KARLTON](#), Senior District Judge.

*1 On August 19, 2009, the court granted defendants' motion for judgment on the pleadings, dismissing four of plaintiffs' causes of action for failure to state a claim, and dismissing the fifth and sole remaining cause of action for lack of subject matter jurisdictions. Defendants have submitted a bill of costs and separately moved for attorneys' fees, both of which have been opposed by plaintiffs. The court resolves the matter on the papers and after oral argument. For the reasons stated below, defendants' motion for fees and costs is granted in part.

I. BACKGROUND

Defendants Heidi and James Guertin allegedly operate a business under the name Norcal Plastering. Plaintiffs, four individuals formerly employed by Norcal, filed suit purporting to represent themselves and others similarly situated. The complaint stated five causes of action, for violations of (1) [California Labor Code section 1194](#), (2) the Fair Labor Standards Act, (3) [California Labor Code section 226.7](#), (4) [California Labor Code section 203](#), and (5) [California Business and Professions Code section 17203](#).

On August 19, 2009, the court held that plaintiffs' allegations were insufficient to support the second through fifth claims. The Fair Labor Standards Act claim failed because plaintiffs had not alleged facts sufficient to support the inference that Norcal Plastering or plaintiffs themselves engaged in interstate commerce, a predicate for liability under the act. Order at 8-11. The Third, Fourth, and Fifth claims failed because the allegations therein pertained to entities not party to this suit. *Id.* at 11-12. The court denied plaintiff's request for leave to amend to correct these deficiencies, explaining that plaintiffs had notice of these deficiencies before the scheduling order was entered, but that plaintiffs had taken no action to correct them until discovery in the case had closed. The court dismissed these claims, and declined to retain supplemental jurisdiction over plaintiffs' sole remaining claim. Judgment on the pleadings under [Fed.R.Civ.P. 12\(c\)](#) was entered for defendants on August 19, 2009.

Defendants filed a bill of costs and motion for attorneys fees. Plaintiffs oppose both, arguing that defendants were not

“prevailing parties” because, as plaintiffs understood this court’s August 19, 2009 order, the state law claims had been dismissed without prejudice, and plaintiffs were free to refile the federal claim in federal court. Plaintiffs alternatively argue that even if defendants prevailed, they are not entitled to a fee award under the court’s inherent power or under any statute.

II. DISCUSSION

A. Defendants Are A Prevailing Party

Under all of the fee shifting authorizations at issue in this case, fees and costs are only available to prevailing parties. Under California law, “a defendant in whose favor a dismissal is entered” is a prevailing party. [Cal.Code Civ. P. § 1032\(a\)\(4\)](#). Under federal law, a party has not prevailed unless it “experienced an alteration in the legal relationship” with the other parties. [Avery v. First Resolution Management Corp.](#), 568 F.3d 1018, 1024 (9th Cir.2009). Plaintiffs argue that the court’s order permits plaintiffs to refile each of their claims, and that as a result, no such change has occurred. *Id.*, [Oscar v. Alaska Dep’t of Educ. & Early Dev.](#), 541 F.3d 978, 982 (9th Cir.2008).

*2 Plaintiffs misunderstand the nature of the prior order and its effect under California and federal law. [Fed.R.Civ.P. 41\(b\)](#) provides that “[u]nless the dismissal order states otherwise ... any dismissal not under [Rule 41]—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits.” Thus, although the dismissal order did not specifically state that it was “on the merits” or “with prejudice,” dismissal of the second through fifth claims was precisely such an adjudication. [Stewart v. United States Bancorp.](#), 297 F.3d 953, 956 (9th Cir.2002). Plaintiffs’ contention that a dismissal for failure to allege the elements of a cause of action is not a substantive dismissal is without merit. *Id.*

Plaintiffs’ first claim, which was dismissed for lack of subject matter jurisdiction, was not adjudicated on the merits. [Avery](#), 568 F.3d at 1024. The fact that plaintiff may refile this one claim does not defeat defendants’ claim to prevailing party status as to the others.

B. Particular Fee Shifting Provisions

Defendants argue that they are entitled to fees under [28 U.S.C. section 1927](#), under [Cal. Lab.Code section 218.5](#), and under the court’s inherent authority. The court discusses each in turn.

1. [28 U.S.C. § 1927](#)

“Any attorney ... who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys’ fees reasonably incurred because of such conduct.” [28 U.S.C. § 1927](#). Here, defendants have not identified any act by which plaintiffs multiplied the proceedings. Filing of the initial complaint cannot itself violate this section. “Because the section authorizes sanctions only for the ‘multipl[ication of] proceedings,’ it applies only to unnecessary filings and tactics once a lawsuit has begun.” [Moore v. Keegan Mgmt. Co. \(In re Keegan Mgmt. Co., Sec. Litig.\)](#), 78 F.3d 431, 435 (9th Cir.1996). Nor did plaintiffs’ counsel’s response to depositions noticed by defendants “multipl[y] the proceedings.”

Rather than identify affirmative acts, defendants argue that plaintiffs’ counsel multiplied proceedings by failing to withdraw and dismiss the case after the close of discovery. The only authority provided for this interpretation of [section 1927](#) is a case from the Southern District of Florida. See [Murray v. Playmaker Servs., LLC](#), 548 F.Supp.2d 1378, 1383 (S.D.Fla.2008). The court respectfully disagrees, and thereby declines to conclude that an attorney multiplies proceedings simply by failing to voluntarily dismiss an existing lawsuit.

2. The Court's Inherent Powers

The court has an inherent authority to order payment of fees as a sanction “when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons, delaying or disrupting litigation, or has taken actions in the litigation for an improper purpose.” *Fink v. Gomez*, 239 F.3d 989, 992 (9th Cir.2001) (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45–46 and n. 10, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991)); see also *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 767, 100 S.Ct. 2455, 65 L.Ed.2d 488 (1980). In this case, defendants argue that plaintiffs have done a poor job of litigating this case, and that this demonstrates that they filed their a purported class action for the allegedly improper purpose of pressuring defendants to settle, rather than for any belief as to the action's merits. This argument is unsupported. Although, as noted in the order granting defendants' motion for judgment on the pleadings, plaintiffs did little in the litigation of this case, this does not demonstrate bad faith or other grounds for sanction under the court's inherent authority.

*3 Defendants also argue that plaintiffs have demonstrated bad faith by filing a complaint in state court that re-alleges the four the state-law claims previously filed in this court. Whether that filing is in bad faith is an issue for the state court.

3. Cal. Lab.Code § 218.5

Lastly, defendants argue that the court should award fees under [California Labor Code section 218.5](#). This statute provides that “in any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party.” [Cal. Lab.Code § 218.5](#). The Ninth Circuit has held that this provision may be applied in suits filed in federal court. *Winterrowd v. Am. Gen. Annuity Ins. Co.*, 556 F.3d 815 (9th Cir.2009) (affirming award of fees to a prevailing plaintiff); see also *Diamond v. John Martin Co.*, 753 F.2d 1465, 1467 (9th Cir.1985) (“federal courts in diversity actions apply state law with regard to the allowance (or disallowance) of attorneys' fees.”). The court concludes that this section applies to one of plaintiffs' claims, that an award of fees is mandatory and not limited to cases in which plaintiffs acted wrongfully, and that defendants prevailed for purposes of this statute.

First, [section 218.5](#) does not apply to all wage claims. The statute contains an exemption, specifying that “[t]his section does not apply to any action for which attorney's fees are recoverable under [\[California Labor Code\] Section 1194](#).”¹ [Section 1194](#) governs actions alleging failure to pay minimum wages or overtime. Of the claims brought in this suit, plaintiffs concede that their claim for failure to pay for missed meal periods is a claim “for nonpayment of wages” under [section 218.5](#).² See *Murphy v. Kenneth Cole Production, Inc.*, 40 Cal.4th 1094, 1115, 56 Cal.Rptr.3d 880, 155 P.3d 284 (2007) (characterizing money owed for missed meal periods as wages rather than a penalty). Plaintiffs argue that their claims for waiting time penalties and for restitution of unpaid overtime do not fall within [section 218.5](#), and defendants do not dispute this argument.

Second, plaintiffs request that the court apply federal cases interpreting fee shifting under Title VII of the Civil Rights Act to the California Labor Code. Under Title VII, a court awards fees to a prevailing defendant only when the plaintiff's claim was frivolous, unreasonable, groundless, or brought in bad faith. *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 422, 98 S.Ct. 694, 54 L.Ed.2d 648 (1978). *Christiansburg*'s holding was predicated on the fact that Title VII grants courts discretion to award fees. *Christiansburg*, 434 U.S. at 416; see also 42 U.S.C. § 2000e–5(k) (“the court, in its discretion, may allow the prevailing party, ... a reasonable attorney's fee.”).³ The Court's holding directed the lower courts in their exercise of this discretion. [Section 218.5](#), in contrast, provides that the court “shall” award fees. “As used in the Labor Code, ‘shall’ is mandatory.” *Smith v. Rae–Venter Law Group*, 29 Cal.4th 345, 357, 127 Cal.Rptr.2d 516, 58 P.3d 367 (2002), *superceded on other grounds as stated in Eicher v. Advanced Business Integrators, Inc.*, 151 Cal.App.4th 1363, 1384, 61 Cal.Rptr.3d 114 (2007) (citing Cal. Stats.2003, ch. 93, § 1). Under California law, when a statute provides for a mandatory fee award, a court has only discretion to deny the award when it is unclear whether the party prevailed, a circumstance not present here. [Cal.Code. Civ. P. § 1032\(a\)\(4\)](#), *On–Line Power, Inc. v. Mazur*, 149 Cal.App.4th 1079, 1087, 57 Cal.Rptr.3d 698 (2007). It appears that no published California case, nor any federal case, has held that when a claim is of a type encompassed by [section 218.5](#), a party must show anything more than that it prevailed to be entitled to a mandatory award of fees.⁴

*4 Finally, plaintiffs argue that defendants did not prevail on this claim because it was not brought as to them. As noted above, the court dismissed plaintiffs' meal period claim in part because the allegations supporting the claim referred to persons other than defendants. Plaintiffs now argue that in so doing, the court concluded that this claim was not brought as to defendants in this suit, such that defendants were not party to, and therefore did not prevail on, this claim. This argument fails. Although plaintiffs' allegations of particular conduct referred to other persons, plaintiffs' prayer for relief sought from defendants an award of meal time premium payments. Defendants therefore prevailed on this claim.

C. Reasonableness and Scope of The Fees

Although defendants are entitled to an award of fees only in connection with one of plaintiffs' claims, defendants may recover all fees incurred on issues pertinent to this claim regardless of whether those issues were also pertinent to other claims. *Diamond*, 753 F.2d at 1467 (quoting *Reynolds Metals Co. v. Alperson*, 25 Cal.3d 124, 129, 158 Cal.Rptr. 1, 599 P.2d 83 (1979)).

Defendants request \$29,964.00 in fees, for 85.6 hours of work in the case not including the time spent on the motion for a fee award, billed at \$315 per hour.⁵ The court has previously held that \$300 per hour is a reasonable local rate for attorneys with defense counsel's experience, and reduces the hourly rate accordingly.

Defendants have not specified how this time was spent. At least some of this time must have been spent on issues not pertinent to plaintiffs' meal period claim. Notably, a significant fraction of the memorandum submitted in support of defendants' motion for judgment on the pleadings was specific to plaintiffs' Fair Labor Standards Act claim. (Doc. No. 23–1 pages 4–6; Doc. No. 26 pages 4–5). Defendants are not entitled to recover fees expended in connection with this issue. *Diamond*, 753 F.2d at 1467. Defendants' contention that disclosure of the amount of time spent on this issue would breach attorney-client or work-product privileges is meritless. "Where the documentation of hours is inadequate, the district court may reduce the award accordingly." *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983) (concerning fee awards under 42 U.S.C. § 1988). Here, the court reduces the number of hours by the maximum amount that the court estimates were likely to have been spent on issues not pertinent to the meal period claim (which in this case means on issues solely pertinent to the FLSA claim). The record indicates that defendant's stated 85.6 hours were spent on preparation and filing of an answer, status report, motion for judgment on the pleadings, and on preparation for and attendance of a status conference, at least two depositions, and the hearing on the motion for judgment on the pleadings. *See* Declaration of Kimberly A. Worley Setting Forth Memorandum of Costs (Doc. No. 32–2). The court concludes that at most 15 hours of this time were spent on the FLSA issue, and reduces the fee award accordingly.

*5 Thus, defendants are entitled to a fees for 70.6 hours of work at \$300 per hour, or \$21,180. Plaintiff has not objected to defendants' statement of costs (other than to argue that defendants are not a prevailing party). Defendants are therefore further entitled to an award of \$1,525.80 in costs.

D. Who Pays The Fees

Cal. Labor Code section 218.5 provides that fees shall be awarded to the prevailing party, but does not specify where the award shall come from. Nothing in the parties' briefing indicates whether fees awarded under section 218.5 should be paid by plaintiffs' counsel or by plaintiffs themselves. Moreover, had plaintiffs' counsel offered argument on this issue, it would have been against his clients' interests. None of the cases citing section 218.5 have addressed this issue, and the court is not aware of any California law regarding fee awards generally.

It may be that as a general rule, fee awards, rather than sanctions, are to be paid by the party rather than counsel. In this particular case, however, where there is no controlling authority, equity demands that the award be paid by plaintiffs' counsel. As explained more fully in the prior order, dismissal resulted from counsel's failure to properly plead, and counsel's subsequent failure to identify his mistakes or to prosecute this litigation. It may be that defendants would have prevailed absent these failings, but the court has no way to evaluate that possibility. Although plaintiff's counsel's conduct is not sanctionable under federal law, when California law compels an award of fees, the exceptional circumstances of this case compel the court to conclude that this award should lie against plaintiff's counsel.

IV. CONCLUSION

For the reasons stated above, defendants' motion for attorney fees, Doc. No. 35 is GRANTED IN PART.

1. Plaintiff's counsel is ordered to pay \$21,180 in fees and \$1,525.80 in costs to defense counsel.
2. Counsel shall file an affidavit accompanying the payment which states that it is paid personally by counsel, out of personal funds, and is not and will not be billed, directly or indirectly, to the client or in any way made the responsibility of the client as attorneys' fees or costs.

IT IS SO ORDERED.

Footnotes

- ¹ The statute contains several other exceptions not pertinent here. In addition, for [section 218.5](#) to apply, at least one party must have requested fees at the initiation of the action. In this case, both the complaint and the answer request fees.
- ² Plaintiffs refer to this claim as their fourth. However, plaintiffs' meal break claim was enumerated as their third claim. Complaint ¶¶ 28–32.
- ³ *Christiansburg* explicitly juxtaposed Title VII's fee shifting provision, which provided discretion to award fees to any prevailing party, against statutes providing a mandatory award of fees to prevailing plaintiffs, e.g. the Fair Labor Standards Act, [29 U.S.C. § 216\(b\)](#), and against statutes providing discretion to award fees but only as to certain parties, e.g., the Privacy Act, [5 U.S.C. § 552a\(g\)\(2\)\(B\)](#). *Christiansburg*, 434 U.S. 415–16, n. 5, n. 6.
- ⁴ Although not citable as precedent by California courts, an unpublished decision of the California Court of Appeal held that [section 218.5](#) provided for mandatory fee awards to plaintiffs and defendants, despite possible policy concerns akin to those identified in *Christiansburg*. *Torres v. Auto Chlor Sys. of N. Cal.*, 2007 Cal.App. Unpub. LEXIS 7706, 2007 WL 2774706 (Cal.App. 6th Dist. Sept. 25, 2007).
- ⁵ Defense counsel declares that this is her standard rate, as an attorney with fifteen years of experience.

EXHIBIT I

05-30-2013 | 05:13 PM | Author: [Robin Shea](#)

Employees: Better Think Twice Before Suing Your Employer (Four Reasons Why)



Earlier, I busted on "my own side" by giving [four reasons why employers shouldn't be so quick to fire their employees](#). To be fair, this week I'll talk about the other side -- four reasons why employees shouldn't be too quick to sue their employers.

DISCLAIMER: I am a defense lawyer. That means that, in any kind of workplace legal dispute, I am on the employer's side, not the employee's side. Always. Even though many of my best friends are employees and plaintiffs' lawyers. The following is not legal advice.

So, you don't have to believe what I'm about to say. But I make this post in good faith, based on my experience and observations in many years of employment litigation.

Are you still here? Cool! Here we go.

1. Even if you got the shaft at work, it is unlikely that you were treated illegally. The law does not require employers to treat their employees like "family," or to be nice, or even to be particularly fair. In fact, employers can usually be downright jerks as long as they are equally jerky to everybody. They can be arbitrary and play favorites as long as they're not making distinctions based on "protected" categories, like race or sex.

If you read this blog very often, you know that I am a strong advocate of treating employees respectfully, fairly, and with dignity. So is everybody in Human Resources who's worth a darn. But we feel that way because it's the right thing to do, not because it's the law.

The American legal system would collapse in a heap if people could sue every time their feelings were hurt. Our system is designed to prevent only the worst kinds of behavior -- you know, like murder, armed robbery, and driving 70 in a 55. It's supposed to keep us from being at each others' throats. That's it. Anything more is left to our respective senses of common decency. (Scary, I know!)

If you sue your employer, it won't be enough for you to prove that your employer made the wrong decision, or even that your employer was a no-goodnik. If you don't have a valid legal claim against your employer, then you will ultimately lose your case. One big reason to think twice before you sue.

2. Litigation is long, drawn-out, stressful, and painful. The only people who really enjoy litigation are lawyers. No one else could possibly be that sick. And, here's a secret: not even lawyers are that crazy about litigation. Judges (who are usually lawyers) are always after the parties to try to settle, which would end the case before the judge has to hear it. Lawyers are usually the same way -- they are rarely averse to settlement, although they'll fight to the death if that's what the client wants. Why do you think most courts nowadays have mandatory mediation? If even lawyers don't necessarily like litigation, just think about how much you will hate it.

"Well," you retort, "if lawsuits are that bad, then my employer will pay any amount to get rid of it, right? So it's still worth it to sue."

Well, no. Or, at least, not necessarily. You see, your employer gets sued a lot. This is what they call a "cost of doing business" in the United States. It is true that your lawsuit will be stressful and disruptive for your company. But it will be a lot more stressful and disruptive for you, who are not used to the court system or dealing with lawyers, and you don't even know whether it's a trap when the employer's lawyer says hello to you and offers to shake hands.

The distraction and stress of a lawsuit may also make it more difficult for you to do well in your new job. And having to continually dwell on an unpleasant experience (as you'll have to do while your lawsuit lasts) is difficult and stressful.

3. You may find out that your co-workers are not on your side. You feel very strongly that your employer did you wrong. You find a lawyer willing to take your case. You sue, and start taking depositions of all of your co-workers, who were your BFFs when you worked there. Well. It turns out that your BFFs weren't such BFFs after all. They say, "I liked Maudie, but I felt that she was out of line, and in my opinion she was treated fairly." And then you have the co-worker who saw you when you were not at your best, and she testifies about all the things you said to her in confidence when you were having a rotten day. Which are embarrassing. And which do not help your case. On the record. In a verbatim transcript, for cryin' out loud.

What happened to these people?

Most plaintiffs' lawyers will tell you that the co-workers are afraid of retaliation by the company if they don't side with the company and diss you. I am sure that happens sometimes, but I don't think it explains the majority of these situations. What I see most of the time are two phenomena:

*Most people consider a lawsuit an "act of war." They probably were on your side when you all worked together and went out for mai tais and kvetched about what was going on at the office. But that was just gossip, harmless venting. Nobody thought you were really going to sue! And now, thanks to you, they're being dragged in front of lawyers and court reporters and judges and juries, and they're ticked off. And maybe what they said to you in confidence about the boss is coming out -- while the boss is sitting across the table with a stern-looking lawyer in a pinstripe suit. AWKWARD! No wonder they've turned on you.

*Some employees really, sincerely do believe the company was in the right. Is the boss perfect? Of course not. But he's an overall decent guy who tries to be fair and treat employees right. And maybe you shouldn't have been so stubborn/absent from work/insubordinate/lazy yourself.

Recall No. 2, above. Finding out that your co-workers don't support you is one of the "painful" parts.

4. You may be opening up your own life to scrutiny. This is another "painful" part. In order to get more money, and because you really were very upset when you were fired, your lawyer includes a claim for emotional distress in your lawsuit. Next thing you know, the company has asked for your medical and psychiatric records dating back 10 years. And maybe you saw a shrink a few times and have been diagnosed as bipolar. Along with a few physical conditions that are not appropriate to mention in a family blog. Surely you don't have to share that information with the company's lawyers! Do you?

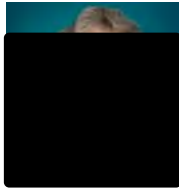
YOU ALMOST CERTAINLY DO. If you claim emotional distress (you don't have to, but you may not get as much money if you don't), most courts say you have put your own emotional condition at issue and the employer is entitled to find out how much of your (just as an example) bipolar disorder was caused by your termination and how much you had all along (in which case the company isn't responsible for it).

Your employer may also be able to dig into your past employment record, including that time you got fired from a previous job after you tested positive for angel dust, your criminal background, your five previous marriages, and your history of filing lawsuits. Perhaps you have nothing to hide. But a lot of people (most?) have a few skeletons that they'd just as soon not have the rest of the world know about.

What you probably don't have to worry about

Now, note what I have not mentioned: (1) That your employer will fire you for filing the lawsuit (assuming you did it while still employed); or (2) that your employer will blacklist you, and you'll never work again if you sue. The reason that I did not mention these is that they very rarely happen. Retaliation -- either during employment or afterward -- for filing a lawsuit in good faith against an employer is usually illegal, and almost all employers know that. If it happens and you can prove it, you might have a pretty good case. But don't bet on being able to do that.

Of course, I'm not saying you should never file a lawsuit against an employer, but it should almost always be a last resort. It's better to try resolving your dispute through the company's grievance procedure or open-door policy, or by going to Human Resources. If you're terminated, you may be better off negotiating a nice separation package and shaking the dust from your feet. If all of those fail, and if you've taken a good, critical look at your own performance and behavior, and still feel strongly that you were mistreated, then by all means consult with a lawyer who represents employees in workplace disputes. But keep in mind these hidden costs of litigation that you'll face, no matter how strong your case may be.



Visit the [Employment and Labor Law Insider](#) for additional insights from [Robin Shea](#), a partner with the national labor and employment law firm Constangy, Brooks & Smith, LLP.

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Tags: [employee lawsuits](#)

EXHIBIT J

April 29, 2014

HUFF
POST

BUSINESS

What to Expect If You Sue Your Employer

Posted: 01/10/12 02:03 PM ET

In the last half century or so, workers in the U.S. have seen improved working conditions through policies and laws addressing discrimination, harassment, whistleblower protection and safety violations. But when these protective measures are disregarded, enforcing them falls on individual workers who must pursue their claims through arbitration, investigations by external agencies (such as the EEOC) or litigation. Whatever the reason a worker might consider taking such actions, before filing any internal or external complaint or lawsuit -- or even threatening to do so -- there are some things to keep in mind. And the first thing to keep in mind is that there are a lot of myths about what it means to sue an employer.

The first myth is that the employer is afraid of a lawsuit. Employers do not like lawsuits, but they do not fear them. If they did, the worker never would have had a legal claim in the first place. Why? Because if the employer sincerely feared a lawsuit, they would have respected the law in the first place. And not only are managers who violate workplace laws unlikely to be held accountable for their actions, there are many ways they can benefit from a lawsuit, even one their own conduct brought on.

They can benefit by finding a lawful reason to fire the complaining worker, or by providing witnesses against the complainant who are either "similarly situated" (such as members of the same protected group), or who work closely with them and are persuaded to testify against the worker. By courting these people, sympathizing with their conflicting emotions regarding the worker and providing opportunities and benefits previously withheld, the manager conditions the workforce to consider ways in which distancing from the worker, and aligning with the interests of management, are in their own interests.

Once this step is taken, greater acts of distancing -- through gossip, rumors, and shunning - make it easier for former allies and others to turn against the worker. When this happens, the manager who may have instigated the lawsuit in the first place is able to score points with higher management by demonstrating that it is "the difficult employee" -- not the manager, who is the problem, and the manager who has provided a solution -- witnesses to discredit the worker's claims.

The second myth is that once a lawsuit is filed, further adverse action will not be taken against the worker because that would be viewed as retaliation. Your employer can and will retaliate against you in a multitude of ways, many of them legal.

Federal laws protect against retaliation for certain protected acts, such as reporting sexual harassment, discrimination, and some types of "whistle blowing." But federal law also permits employers to fire such employees for legitimate reasons -- such as theft, making threats, or acts of violence.

No matter how law-abiding a worker might be, once involved in litigation against an employer, accusations of wrongdoing are likely to commence, and escalate. For that reason, by encouraging the workforce to view the litigating worker as a threat to their own livelihoods, chronically unhappy and complaining, and mentally unstable, it takes little time before gossip escalates to accusation, and the worker is accused of an escalating series of "inappropriate" behaviors and often, crimes.

Should the worker express any anger or outrage at the mistreatment they receive, that anger will be viewed as a threat. Increasingly, employers are using the slightest pretext of "threats" or accusations of theft to bring in the police and have employees publicly escorted off the premises -- a humiliating tactic that is sure to instill fear in the workforce and further erode the worker's support and reputation, regardless of whether or not there was any basis to the accusation. (And while it remains unlawful to terminate an employee for false pretext, proving pretext is difficult and the damage will have already been done.)

The third myth is that once an employer realizes they could be sued for their actions, they will obey the law. If a worker threatens to sue, or an employer receives a letter from a worker's attorney, they may well clean up their act. But chances are, every level of higher management will be alerted and go on the defense, which to their legal team will mean an offense.

They will immediately notify all coworkers that a lawsuit is pending and not to destroy any emails or other correspondence about, to or from the worker, and not to discuss the case with the worker. And when they get those memos informing them that their (potentially embarrassing) emails will end up in the hands of their bosses, those coworkers are not going to resent their bosses, they are going to resent the worker whose legal action brought it on.

At this stage, the workforce, not management, will fuel the aggression aimed at the worker. Management will encourage the workforce to keep a close eye on the worker, and document any detail, no matter how seemingly benign, that shows the worker is unstable, unproductive, or ineffective. As the workforce takes note of the severe toll on the worker who filed the complaint, they will

not only alter their perceptions of the worker to justify avoiding and testifying against them, but they will also be far less likely to ever voice a similar complaint of their own in the future -- in other words, the more severe the punishment, the less likely management will have to fear future workers coming forward with similar complaints.

The fourth myth is that if a worker does sue, they can win big money, and be vindicated. If a worker does sue, and does win, they will be very, very happy. Why? Because by the time an employment case gets to the point of "winning," the worker will have spent years fighting. They will be emotionally and financially exhausted. They will have gone into great debt to pay legal costs; even if their case was litigated on a contingency fee basis, they will have had to pay a costly retainer, costs of mediations, investigations, depositions and travel expenses. And the worker will have had one heck of a time finding work, because not only will s/he be exhausted by legal battles, they will have had little time or strength to be productive in the process.

They will also be stained by no references, a record of suing an employer -- which no potential employer wants to see -- and a reputation that has been severely damaged through rumors.

And as for that big money verdict? There are caps on what a worker can get and juries are often very conservative -- many a career has been valued at less than a whiplash, because jurors like to think they would never find themselves in such a mess, and that no one should receive big money for not being able to work, when the juror may well work a lifetime for less. And anything over \$150,000 is currently taxed at one-third; a whiplash settlement, however, is currently not taxed.

The fifth myth is that the case will never get to trial and will settle out of court. Most cases do settle out of court, and when they do, they either settle fairly early in the game, or right before trial. In the meantime, the employer's legal team will bank on delays to wear the worker out. Until that time, efforts to resolve the matter will be in vein -- the only early resolution once a suit is filed will likely be at terms favorable to the employer. In the meantime, the worker's work and even home computers will be subpoenaed, along with their medical records. Investigators may have monitored the worker, and contacted past employers -- who will have been told all kinds of unsavory things about their former employee -- even family members, friends and neighbors may be questioned, scrutinized and had their own reputations slandered.

Suing an employer is the last thing a worker should ever do if the aim is a successful career. But sometimes an employer goes so far, breaches so many laws and causes so much damage that a worker cannot possibly recover without a legal remedy. And if that happens, the worker must be prepared. They must safeguard against the assured betrayals from close friends and colleagues, the adversarial scrutiny of their lives and communications, and an avalanche of accusations and smears upon their professional and personal lives.

And for the employer facing potential litigation, it is far easier to resolve a conflict with a worker than it is to close ranks and destroy them. Rare is the lawsuit that an effective manager can't prevent by acting with integrity in the first place, and rare is the lawsuit that an effective employee can't prevent, by knowing when the management is just no good and it's best to walk away.

Follow Janice Harper on Twitter: www.twitter.com/Janice_Harper

6 people are discussing this article with 11 comments

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Highlighted Most Recent Oldest Most Faved My Conversations

Pippen

287 Fans

2

My question to myself lately has been :

Are we teaching our college age young adults - Profits over People ? Money Talks and BS walks ? Your nothing unless you financially rape your environment and destroy your economic enemies ?

Is this what we're teaching them? Because they are snugly fitting in nicely to the Money Rules All mode of capitalism.

Why can't we start a business without any intent to reflect a profit beyond paying employees a living wage building a community and moving the business into the next year with strength. Profits would not be a priority and people would be valued. The prosperity alone would jolt this countries GNP.

What shocks me are the massive amount of business leaders and upper level managers I know personally who go to church and pretend to be a respected member of the faithful community followers of faith after having offshored 20,000 employees so they can garner a bonus and a shot at CEO even though they have a salary of upper

6 figures for years.

At church they hug people, neighbors, other leaders talk about their childrens future.
How they found God.

I almost want to vomit typing this.

11 JAN 2012 5:02 AM

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DHC

SUPER USER · 56 Fans

1

Another precise and informative article. Well done.

10 JAN 2012 7:11 PM

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kjk326

2 Fans

Excellent article, right on topic. I went through this nightmare & found just how chilling & hostile a formerly friendly environment can become overnight. People who were your close friends hesitate to talk to you and avoid being seen with you. Your every move is put under the microscope and twisted into some type of bad behavior while the person who committed the illegal act is lauded and promoted and you are made to feel like a social outcast at best and I say this even though in the end I prevailed. You are left so emotionally drained, sadly it seems to be the American way; forget ethics, it's the dollar that prevails. Most of all I don't know how HR people sleep at night when they defend someone they know clearly committed an illegal act,

10 JAN 2012 8:34 PM

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ARTICLE AUTHOR

Janice Harper

HUFFPOST BLOGGER · 218 Fans

Thank you for sharing your experience. I think it's significant that you say in the end you prevailed -- sadly, that is the sixth myth -- that it will all be worth it. It rarely is. The toll on the worker who pursues an employment claim is enormous, and few attorneys, no matter how skilled, adequately prepare plaintiffs for what's up ahead. I'm so sorry you had to go through it.

Yet we have made great advances in working conditions in the U.S. in part due to lawsuits, and there are cases where workers are left with no recourse but to turn to the courts. In those cases, the more a person knows what to expect and how to be prepared, the better the emotional outcome. Thank you again for sharing your story.

10 JAN 2012 8:55 PM

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3 PEOPLE IN THE CONVERSATION

Read Conversation →

noahmarder

512 Fans · Exposing the regressive lies, one by one

There is no justice in this country. What else is new? Risk/reward probably favors stealing from your employer rather than suing them. At least with theft, your career is ruined only if you get caught. You also have a better chance of stealing significant money than of winning anything but an airtight case. I don't see a moral problem either, so long as what is stolen doesn't exceed the damage done by the employer, plus the effort required for the theft, plus the chance of being caught multiplied by the penalty

for being caught. It is the employer, after all, who has taken away any legal remedies through the retaliation mechanisms described in the article.

10 JAN 2012 9:09 PM

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Pippen

287 Fans

If you think all of that is bad apply it to Texas where employment is an "at will" state. Another way of putting this would be outright slavery and the slave master can fabricate reality on how they feel that morning and your life is forever changed.

America sets itself apart from 3rd world countries with the arguement that we have a

- 1 Superior Justice System
- 2 Freedom of religion
- 3 Separation of Church and State
- 4 Opportunity to pursue your capitalist dreams of career and family
- 5 That taxes pay for your well being (roads, FDA, national safety etc..)
- 6 National security (threat of invasion and subjugation by an enemy rule...)
- 7 Democratically elected officials (fair voting)

I want you to look hard at those 7 American beliefs. See any of them that are actually working as intended ? Or are they working as intended ?

Did we just wake up or is this something that has emerged from the closet when GW Bush took office?

11 JAN 2012 4:52 AM

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