

## **SETTLEMENT AGREEMENT AND RELEASE OF PAGA CLAIM**

This Settlement Agreement and Release of PAGA Claim (“Settlement Agreement”) is made by and between Plaintiff Ryan Jackson (“Plaintiff”), on behalf of himself and as a representative for the California Labor Workforce Development Agency (“LWDA”), and Bailey Food and Beverage Group, LLC doing business as The Library Gentlemen’s Club, Bob Martin, Inc., and CBDM Redlands, LLC (collectively referred to herein as the “Defendants”), who may collectively be referred to herein as the “Parties,” and each may be individually referred to as a “Party.” This Settlement Agreement is subject to approval of the Court and is made for the sole purpose of attempting to consummate settlement of the Action (as defined below) on a PAGA basis subject to the following terms and conditions. As detailed below, if the Court does not enter an order granting approval of the Settlement (as defined below) and enter judgment, or the conditions precedent are not met for any reason, this Settlement Agreement is void and of no force or effect whatsoever.

### **A. Definitions**

The following terms, when used in this Settlement Agreement, shall have the following meanings specified below. To the extent terms or phrases used in this Settlement Agreement are not specifically defined below, but are defined elsewhere in this Settlement Agreement, they are incorporated by reference into this definition section.

1. “Action” or “Lawsuit” means: (a) the civil action titled *Ryan Jackson v. Bailey Food And Beverage Group, LLC, dba The Library Gentlemen’s Club, et al.*, Superior Court of the State of California for the County of San Bernardino, Case No.: CIVSB2316631, filed on or about July 19, 2023, and (b) the underlying LWDA Notices sent to the LWDA by Plaintiff on May 12, 2023 and July 18, 2023.

2. “Agreement,” “Stipulation,” or “Settlement Agreement,” mean this Settlement Agreement and Release of PAGA Claim, including any attached Exhibits.

3. “Approval and Fairness Hearing” means the hearing held to ascertain the fairness, reasonableness, and adequacy of the PAGA Settlement. At this hearing, the Court will consider PAGA Counsel’s application for Attorneys’ Fees and Costs, Service Awards, Settlement Administration Costs, and approval of the LWDA Settlement Payment.

4. “Attorneys’ Fees and Costs” means the amount of Thirty-Eight Thousand Five Hundred Dollars (\$38,500) which includes: (a) attorneys’ fees not to exceed the amount of Twenty-Two Thousand and Five Hundred Dollars, or thirty-three and one-third percent of the Settlement Amount (\$22,500) which shall be allocated to Plaintiff’s Counsel, and (b) costs not to exceed the amount of Sixteen Thousand Dollars (\$16,000), all of which shall be paid out of the Gross Settlement Amount. This Settlement is not conditioned on approval of the Attorneys’ Fees and Costs; in other words, this Settlement shall remain in full force and effect if the Court awards less than the requested Attorneys’ Fees and Costs. If less than \$38,500 is awarded for Attorneys’ Fees and Costs, the difference shall return to the Net Settlement Amount.

5. “Court” (or “Judge”) means the San Bernardino County Superior Court, the Honorable Donald Alvarez, Judge Presiding.

6. “Defendants” means Bailey Food and Beverage Group, LLC, Bob Martin, Inc., and CBDM Redlands, LLC.

7. “Defendants’ Counsel” means Jeffrey A. Dinkin and Jared W. Speier, of Stradling Yocca Carlson & Rauth LLP, 800 Anacapa, Suite A, Santa Barbara, California 93101.

8. “Effective Date” means the later of the time when: (a) the date of final affirmance of the Judgment on an appeal of the Judgment, the expiration of the time for, or the denial of, a petition to review the Judgment, or if review is granted, the date of final affirmance of the Judgment following review pursuant to that grant; (b) the date of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding to review the Judgment, provided that the Judgment is affirmed and/or not reversed in any part; (c) the final resolution (or withdrawal) of any filed appeal in a way that affirms the Final Order and Judgment in a form substantially identical to the form of the Final Order and Judgment entered by the Court, and the time to petition for review with respect to any appellate decision affirming the Final Approval Order has expired; or (d) if no appeal is filed, the day after the Court enters approval of the settlement and the Judgment approving this Agreement.

9. “Eligible Pay Period” means any pay period worked by a PAGA Employee during the PAGA Release Period.

10. “Final Approval Date” means the date that the Court enters the Final Order and Judgment.

11. “Final Order and Judgment” means the Court’s order approving this Private Attorneys General Act of 2004 (“PAGA”) Settlement and Final Judgment. The Final Order and Judgment will be submitted, substantially in the form attached hereto as **Exhibit 1**, in connection with the Stipulation for Approval of this Settlement.

12. “Gross Settlement Amount” means the agreed upon maximum settlement amount that Defendants will pay in connection with this Settlement, which is Sixty-Seven Thousand and Five Hundred Dollars (\$67,500), which includes the Attorneys’ Fees and Costs, Settlement Administration Costs, Service Award to Plaintiff (if any), and LWDA Settlement Payment, and Individual Settlement Payments. Defendants shall not be required to pay more than the Gross Settlement Amount. This is a non-reversionary Settlement; no portion of the Gross Settlement Amount will return to Defendants under any circumstances.

13. “Individual Settlement Payment(s)” mean the proportionate share of the Net Settlement Amount to be distributed to each PAGA Employee based on the number of his or her work weeks worked in the PAGA Release Period in relation to the aggregate number of work weeks worked by the PAGA Employees during the PAGA Release Period.

14. “LWDA Settlement Payment” means the seventy-five percent (75%) of the Net Settlement Amount that shall be paid to the LWDA.

15. “LWDA Notices” means the notices submitted on May 12, 2023 and July 18, 2023 by Plaintiff, to the LWDA notifying the LWDA of alleged violations by Defendants.

16. “Net Settlement Amount” means the amount that remains after deducting Attorneys’ Fees and Costs, Settlement Administration Costs, and the Service Awards, from the Gross Settlement Amount. The Parties intend that the Net Settlement Amount shall be sufficient to pay all valid claims of PAGA Employees. Accordingly, if for any reason the total value of Individual Settlement Payments to PAGA Employees exceeds this amount, then payment to each PAGA Employee will be adjusted on a pro-rated basis so that the total payout to PAGA Employees does not exceed the Net Settlement Amount.

17. “Notice” means the notice that will be sent to the PAGA Employees with Individual Settlement Payment after the Final Order and Judgment is entered by the Court. The Notice will be sent to PAGA Employees substantially in the form attached hereto as **Exhibit 2**. The Notice will also be sent in Spanish.

18. “PAGA” means the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2699, *et seq.*

19. “PAGA Employees” means all current and former hourly-paid or non-exempt, W-2 employees who were employed by Defendants at anytime in the State of California, during the period of time from May 13, 2022 through December 31, 2022.

20. “PAGA Employees Settlement Proceeds Fund” means the twenty-five percent (25%) of the Net Settlement Amount that shall be paid to the PAGA Employees.

21. “PAGA List” means the information for each PAGA Employee, which Defendants shall compile from their business records and provide to the Settlement Administrator for purposes of providing notice of the Settlement to the PAGA Employees. The PAGA List shall be in a readable, ready to use, Microsoft Excel spreadsheet, which will provide for each PAGA Employee, the following information: (a) full name; (b) last-known mailing address; (c) telephone number(s); (d) Social Security Number; (e) number of pay periods and workweeks employed as a PAGA Employee during the PAGA Release Period. The PAGA List will be provided to the Settlement Administrator within thirty (30) calendar days of Defendants receiving written notification that the Court granted approval of the Settlement.

22. “PAGA Representative Claims” means any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys’ fees, damages, action or causes of action contingent or accrued during the time period from May 13, 2022 through December 31, 2022, arising out of or reasonably related to the PAGA claim and factual allegations asserted in the operative complaint and/or the LWDA Notices, including, but not limited to, the following claims: 1) failure to provide, maintain records and give notice of COVID-19 Supplemental Paid Sick Leave, 2) failure to provide suitable resting facilities and changing rooms, 3) failure to provide suitable seating; and 4) failure to maintain reasonable temperatures in the workplace. This release shall include a release for PAGA claims under California Labor Code Sections 226, 247.5, 248.6, 1174.5, and IWC Wage Order 5-2001, Sections 13, 14 and 15, only.

23. “PAGA Settlement” or “Settlement” means the settlement of the Action as memorialized in this Agreement, including any attached Exhibits, and subject to the Court’s approval.

24. “PAGA Release Period” means May 13, 2022 through December 31, 2022.

25. “Parties” means Plaintiff and Defendants collectively.

26. “Plaintiff” means Ryan Jackson.

27. “Plaintiff’s Counsel” or “PAGA Counsel” means Scott E. Wheeler and Justin A. Wheeler of the Law Office of Scott E. Wheeler.

28. “Released Claims” means all claims and theories that were set forth, or that could have been set forth based on the facts alleged in the Action during the PAGA Release Period, pursuant to *Huff v. Securitas Services USA, Inc.* (2018) 25 Cal.App.5th 745, including, but not limited to the PAGA Representative Claims.

29. “Released Parties” means Bailey Food and Beverage Group, LLC, Bob Martin, Inc., CBDM Redlands, LLC, and any of their officers, directors, executives, partners, managers, owners, shareholders, members, employees, agents, attorneys, any of their former and present parents, subsidiaries, successors, assigns and affiliates and related entities, and their officers, directors, managers, owners, executives, partners, employees, shareholders, agents, attorneys, and any other successors, assigns, or legal representatives.

30. “Settlement” means the settlement between the Parties, which is memorialized in this Agreement, including any attached Exhibits, and subject to Court approval.

31. “Settlement Administrator” means Phoenix Settlement Administrators. The Settlement Administrator will agree to enter into a confidentiality agreement by which it agrees to maintain as confidential the information so designated by Defendants and not to disseminate any designated information without the written approval of Defendants. The Settlement Administrator will be responsible for, *inter alia*, sending Notices and payments to PAGA Employees and the LWDA and distributing other payments as set forth in this Agreement.

32. “Settlement Administration Costs” means the amount of Four Thousand Seven Hundred Fifty Dollars (\$4,750) which shall be paid to the Settlement Administrator for performing the duties provided under the Settlement. The Settlement Administration Costs shall be paid from the Gross Settlement Amount. The Settlement Administration Costs shall be no more than \$4,750 and if less than \$4,750 is approved for Settlement Administration costs, the difference shall return to the Net Settlement Amount.

33. “Service Award” means the amount of up to Five Thousand Dollars (\$5,000) which shall be allocated to Plaintiff, subject to Court approval, in recognition for his efforts in prosecuting the case, obtaining the benefit of the Settlement, and as consideration for Plaintiff’s released claims, which includes a broad general release, against Defendants. The Service Award shall be paid from the Gross Settlement Amount. This Settlement is not conditioned on approval of the Service Award; in other words, this Settlement shall remain in full force and effect if the Court awards less than the requested \$5,000. If less than \$5,000 is awarded to Plaintiff, the difference shall return to the Net Settlement Amount.

**B. Factual and Procedural Background of the Action**

1. On May 12, 2023, Plaintiff gave written notice to the LWDA and Defendant Bailey Food and Beverage Group of several provisions of the California Labor Code and IWC wage order alleged to have been violated (“LWDA Notice One”). Subsequently, on July 18, 2019, Plaintiff gave amended written notice to the LWDA, Bailey Food and Beverage Group and Defendants Bob Martin, Inc. and CBDM Redlands, LLC (“LWDA Notice Two”). For purposes of this Settlement Agreement, PAGA Notice One and PAGA Notice Two are collectively referred to as the “LWDA Notices.”

2. On July 19, 2023, Plaintiff filed the Action in the San Bernardino Superior Court, pursuant to the PAGA, alleging failure to provide required meal periods, failure to provide required rest breaks, failure to pay overtime and minimum wages, failure to pay all wages due to discharged and quitting employees, failure to furnish accurate itemized statements, failure to maintain required records, failure to provide supplemental COVID-19 sick leave, failure to provide suitable seating, failure to indemnify employees for necessary expenditures incurred in discharge of duties, failure to provide suitable resting facilities and changing rooms, and the failure to provide wage theft information and the time of hiring.

3. The Parties have conducted a thorough investigation into the facts of the Action and have informally exchanged extensive data and information, as well as pertinent documents, relating to the underlying alleged violations. After attending a full-day mediation with Michael Mandel, Esq., the Parties reached the Settlement, which each Party believes is fair, reasonable, and adequate. The Parties understand, acknowledge, and agree that this Settlement Agreement constitutes a compromise of Representative Plaintiff’s and the Aggrieved Employees’ PAGA Representative Claims, and that it is the desire and intention of the Parties to effect a final and complete resolution of the PAGA Claim that the Representative Plaintiff and the Aggrieved Employees have against Defendants or any persons or companies affiliated with Defendants.

4. Defendants deny all of the allegations and claims asserted in the Lawsuit and deny that they have committed any misconduct, statutory or regulatory violation, wrongdoing, or any other actionable conduct of any kind.

5. The Parties have conducted a thorough investigation into the facts of the Action. This included, *inter alia*, conducting extensive informal discovery that involved the exchange of information and documents relating to the PAGA Representative Claims. Defendants produced documents consisting of employee handbooks and policy documents, etc. Defendants also produced a random and statistically significant sample of the electronic time and payroll records for Aggrieved Employees. Based on the foregoing data and on their own independent investigation and evaluation, Plaintiff’s Counsel is of the opinion that the settlement with Defendants for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the LWDA and PAGA Employees in light of all known facts and circumstances, including the risk of significant expense, delay, and uncertainty associated with litigation, various defenses asserted by Defendants, and potential appellate issues. Defendants and counsel for Defendants also agree that the settlement is fair.

6. The Parties understand, acknowledge, and agree that this Agreement constitutes a compromise of Plaintiff’s PAGA Representative Claims and that it is the desire and intention of the Parties to affect a final and complete resolution of the Action, including the PAGA Representative Claims, against

Defendants. The Parties further acknowledge that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission of liability by Defendants.

7. Under California Law, the State may assess and collect civil penalties from employers for violations of certain provisions of the California Labor Code. (*See* Cal. Lab. Code §§ 2698 *et seq.*) Under PAGA, however, if an “aggrieved employee” “give[s] written notice by certified mail to the [State] and the employer of the specific provision of the [Labor Code] alleged to have been violated,” and the State thereafter decides not to investigate, as was the case here, or does investigate and determines that a citation against the employer should not be issued, the employee may, “as an alternative” to enforcement by the State, act as a proxy or agent of the state’s labor law enforcement agencies and bring a civil action under PAGA to recover civil penalties “on behalf of himself or herself and other current or former employees.” *Id.* “[C]ivil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the state and 25 percent to the aggrieved employees.” *Id.*

8. California Labor Code § 2699(1)(2) provides that the trial court shall “review and approve any settlement of any civil action filed pursuant to this part.” Plaintiff will submit this Settlement Agreement to the LWDA concurrently with the filing of a Motion for Approval of the settlement with the Court.

9. In consideration of the promises and agreements contained herein, the Parties agree and covenant as follows:

### **C. Terms of Settlement**

1. Subject to the Court’s approval of the Settlement pursuant to California Labor Code § 2699(1)(2), which counsel and the Parties agree to recommend in good faith to the Court, the Parties agree to the following binding settlement of the Action.

2. The Gross Settlement Amount shall constitute adequate consideration for the Settlement and will be made in full and final settlement of the: (a) Released Claims; (b) Settlement Administration Costs, (c) Attorneys’ Fees and Costs; (d) Service Awards to Plaintiff (if any); (e) LWDA Settlement Payment; and (f) Individual Settlement Payments to PAGA Employees, and any other obligation of Defendants under this Agreement will be distributed in the following manner:

- a. **Settlement Administration Costs:** The costs and expenses associated with settlement administration, including but not limited to: (a) formatting, translating, and mailing the Settlement Letters and Individual Settlement Payments; (b) performing a National Change of Address database search to update PAGA Employees addresses prior to the mailing; (c) performing skip-traces to locate and update PAGA Employees’ addresses; (d) calculating and distributing Individual Settlement Payments; and (e) performing other tasks requested by the Parties or the Court, among other tasks as reflected within this Agreement, will be paid through the Gross Settlement Amount) shall be paid from the Gross Settlement Amount and shall not exceed \$4,750. The Parties agree to use Phoenix Settlement Administrators as the Settlement Administrator. The Parties and their counsel represent that they do not have any involvement in the governance or work of the Settlement Administrator.

- b. **Attorneys' Fees and Costs:** The Parties agree that, subject to the Court's review and approval, Plaintiff's Counsel will be paid one-third of the Gross Settlement Amount as attorneys' fees in the amount of Twenty-Two Thousand and Five Hundred Dollars (\$22,500), payable to The Wheeler Law Firm, APC, plus reasonable litigation costs not to exceed Sixteen Thousand Dollars \$16,000, incurred in connection with work performed to litigate the Action and obtain Court approval of the Settlement, which will be paid from the Settlement Amount. As a condition of this Settlement, PAGA Counsel has agreed to pursue fees and costs only in the manner reflected by this Agreement. Any Attorneys' Fees and Costs awarded by the Court shall be paid from the Gross Settlement Amount. If the PAGA Counsel voluntarily reduces the request for Attorneys' Fees and Costs or the Court awards less than as set forth above, the difference shall remain with the Net Settlement Amount. The Attorneys' Fees and Costs shall be treated as IRS Form 1099 income. Accordingly, the Settlement Administrator shall issue an IRS Form 1099 to PAGA Counsel in connection with its Attorneys' Fees and Costs.

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

- c. **Service Award to Plaintiff:** The Parties agree that, subject to the Court's review and approval, Plaintiff will be paid a service award of up to \$5,000, which will be paid from the Gross Settlement Amount.
- d. **Net Settlement Amount:** After deducting Settlement Administration Costs, Attorneys' Fees and Costs, and the Service Award from the Gross Settlement Amount, the remainder forms the Net Settlement Amount (which totals \$\_\_\_\_\_ if the amounts set forth above are approved by the Court). The Net Settlement Amount shall be allocated seventy-five percent (75%) to the LWDA Settlement Payment, which is estimated to total approximately \$\_\_\_\_\_. The remaining twenty-five percent (25%) of the Net Settlement Amount, which is estimated to total approximately \$\_\_\_\_\_, shall be paid to the PAGA Employees on a *pro rata* basis ("PAGA Employees Settlement Proceeds Fund"), which shall be determined based on the number of Eligible Pay Periods that he or she worked for Defendants during the PAGA Release Period and shall be calculated as follows:
- i. The PAGA Employees Settlement Proceeds Fund will be divided by the total number of Eligible Pay Periods worked by all PAGA Employees during the PAGA Release Period, and the resulting figure will be referred to as the "Multiplier." Each PAGA Employee's *pro rata* share of the PAGA Employees Settlement Proceeds Fund will be determined by multiplying the Eligible Pay Periods that the PAGA Employee worked by the Multiplier. That amount shall be referred to as the PAGA

Employee's "Individual Share."

- ii. **Taxes and Reporting:** The PAGA Employees' Individual Share will be treated as non-wage income and reported by the Settlement Administrator on IRS Form 1099 (if applicable) to the respective PAGA Employee and applicable governmental authorities. Thus, an IRS Form 1099 will be issued to each PAGA Employee in connection with his or her Individual Settlement Payment if it is \$600 or more.
- iii. **No Effect on Employee Benefits:** Neither the Settlement nor any amounts paid under the Settlement will modify any previously credited hours, days, or weeks or service under any employee benefit plan, policy or bonus program sponsored by Defendants (or their affiliates, parents, or successors). Such amounts will not form the basis for additional contributions to, benefit under, or any other monetary entitlement under Defendants' sponsored benefit plans, policies, or bonus programs, if any. The payments made under the terms of this Settlement shall not be applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other form of compensation for the purposes of any of Defendants' benefit plans, policies, or bonus programs, if any. Defendants retain the right to modify the language of their benefits plans, policies and bonus programs to effect this intent and to make clear that any amounts paid pursuant to this Agreement are not for "weeks worked," "weeks paid," "weeks of service," or any similar measuring term as defined by applicable plans, policies and bonus programs for purpose of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Agreement. Defendants do not consider the Individual Settlement Payments "compensation" for purposes of determining eligibility for, or benefit accrual within, any benefits plan, policy, or bonus program, or any other plan or program sponsored by Defendants (or their affiliates, parents, or successors), if any.

**D. Release as to the PAGA Representative Claims**

1. Plaintiff, as the representative for the State of California, and on behalf of all PAGA Employees, will forever completely release and discharge the Released Parties with respect to any claim for the recovery of civil penalties under the California Private Attorneys General Act, California Labor Code § 2698, *et. seq.* only. It is expressly understood and agreed that this settlement includes a release of all the PAGA Representative Claims, from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action contingent or accrued during the time period from May 13, 2022, through December 31, 2022, arising out of or reasonably related to the PAGA claim and factual allegations asserted in the operative complaint and/or the LWDA letters, including, but not limited to, the following claims: 1) failure to provide, maintain records and give notice of supplemental COVID-19 sick leave, 2) provide suitable resting facilities and changing rooms, 3) suitable seating; and 4) reasonable temperatures in the workplace. This release shall include a release for PAGA claims under California Labor Code Sections 226, 247.5, 248.6, 1174.5, and IWC Wage Order 5-2001, Sections 13, 14 and 15, only.

2. The release shall be effective as of the Effective Date, and it shall apply to claims within the above scope impacting PAGA Employees arising within the PAGA Release Period.

3. In accordance with California law as stated in *inter alia* *Arias v. Superior Court* (2009) 46 Cal.4th 969, 985, a judgment in “a representative action brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004 . . . is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding,” which the Final Order shall so reflect. Accordingly, the Final Order and Judgment shall be binding on all PAGA Employees (including all nonparty aggrieved employees) as to all the PAGA Representative Claims. A statement to this effect shall be included in the Notice sent to the PAGA Employees. The Final Order shall not bind nor release the PAGA Employees of any individual wage claims (or other individual claims), unless such claim is subject to res judicata, issue preclusion, or collateral estoppel.

**E. Release by Named Plaintiff Only**

**1. Release and Covenant Not to Sue:**

- a. In consideration for the terms and provisions of the Agreement, Plaintiff, for himself, and for his heirs, assigns, partners, executors, conservators, administrators, agents, employees, attorneys, past and present (collectively, “Plaintiff Affiliates”), hereby fully and without limitation releases, covenants not to sue, and forever discharges the Released Parties, their respective subsidiaries, divisions, affiliated companies, affiliated partnerships, trustees, directors, officers, supervisors, shareholders, partners, agents, designees, employees, legal and equitable owners, members, associates, representatives, consultants, insurers, reinsurers, attorneys, heirs, assigns, executors, beneficiaries, and administrators, predecessors and successors, past and present, (collectively “Defendants Releasees”), both individually and collectively, from any and all rights, claims, contracts, agreements, debts, demands, liabilities, actions, and causes of action, whether in law or in equity, suits, damages, liabilities, losses, attorneys’ fees, costs, and expenses, of whatever nature whatsoever, known or unknown, fixed or contingent, suspected or unsuspected (“Claims”), that Plaintiff or the Plaintiff Affiliates now have, or may ever have, against Defendants, or any of Defendants Releasees, for any matter, occurring on or before the Effective Date of this Agreement.
- b. Without limiting the generality of the foregoing, Plaintiff acknowledges that the foregoing general release applies to any and all claims he or the Plaintiff Affiliates now have, or may ever have, against Defendants, or any of Defendants Releasees, that arise out of or are in any way related to any alleged violation of any federal or state law that regulates any aspect of the employer-employee relationship, including any claims for any alleged violations of any federal or state employment discrimination, harassment, and retaliation laws, including the California Fair Employment and Housing Act (which prohibits discrimination, harassment, and retaliation based upon one’s actual or perceived ancestry, race, religion, sex, sexual orientation, gender, gender identity, gender expression, age, color, national origin, disability, medical condition, military or veteran status and marital status), the Unruh Civil Rights Act, the California Family Rights Act, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, and the Family Medical Leave Act, as well

as the Equal Pay Act, the California Fair Pay Act, the Fair Labor Standards Act, the Worker Adjustment and Retraining Notification Act, the Employee Retirement Income Security Act of 1974, the California Business and Professions Code, the California Labor Code, and the California wage orders; the United States and California Constitutions, State or Federal wage and hour laws, State, Federal or local statutes or laws, Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, as well as any claims for any alleged violation of public policy or retaliation; any claims for wages, hours, unpaid overtime, failure to pay minimum wage, failure to pay for downtime or waiting time, failure to provide meal or rest breaks or pay one hour's wages in lieu thereof, failure to indemnify for all work related expenditures and losses, and all related statutory claims, including but not limited to, alleged violation of California Labor Code sections 201, 202, 203, 204, 210, 221, 226, 226.2, 226.3, 226.7, 247.5, 248, 248.1, 248.2, 248.6, 300, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1199, 2802, 2926, and 2927, California Business and Professions Code sections 17000 and 17200 et. seq., the relevant Wage Orders issued by the Industrial Welfare Commission, Civil Code sections 52 and 52.1, or any other claim for any statutory penalty that could have been asserted under California law that arise from the allegations as described, any claims concerning or related to meal and/or rest breaks, inaccurate wage statements, any other employment-related claims under any federal, state, or local law, statute, regulation, or ordinance; and any and all common-law causes of action, including breach of contract, breach of implied contract, breach of the covenant of good faith and fair dealing, fraud, misrepresentation, unfair competition, unfair business practices, false advertising, negligence, defamation, infliction of emotional distress, invasion of privacy, and wrongful termination, which arise from any and all events occurring on or before the Effective Date of this Agreement, including without limitation, all claims arising from action or inaction by Defendants, or any of Defendants Releasees.

- c. **Promise Not to Prosecute:** Plaintiff agrees that neither he nor any of his agents or representatives shall, at any time hereafter, commence, maintain or prosecute any action, suit, proceeding, investigation, complaint, claim, grievance, or charge with any court, arbitrator, or any other body or person, whether Federal, State, contractual or otherwise, on his behalf, except in response to governmental agency or court inquiries or as compelled by legal process, against Defendants or any Defendants Releasees, based in whole or in part upon, or arising out of or in any way connected with, any of the Released Claims. Plaintiff further agrees that neither he nor any of his agents or representatives, including any of his attorneys, shall, at any time hereafter, aid, represent, or otherwise assist others in prosecuting such action, suit, proceeding, investigation, complaint, claim, grievance, or charge on his behalf, except for the PAGA claim, and except in response to governmental agency or court inquiries or as compelled by legal process, against Defendants or the Defendants Releasees, based in whole or in part upon, or arising out of or in any way connected with, any of the Released Claims, including, but not limited to, serving as a class representative or participating in a class action against Defendants under the California Labor Code. Plaintiff further agrees to indemnify and hold Defendants and Defendants Releasees harmless from and against any and all claims, demands, causes of action, damages or liability of any kind, including the cost of defense and reasonable attorneys' fees arising out of or in connection with, any action, suit, proceeding, investigation,

complaint, claim, grievance, or charge commenced, maintained, or prosecuted by him contrary to the terms of this Agreement.

- d. Notwithstanding the generality of the foregoing, Plaintiff also understands and agrees that he is not waiving any right or claim that cannot be waived as a matter of law, such as the right to file a charge with or participate in an investigation by a governmental administrative agency.

2. **General Release:** In addition to the Release of the PAGA Representative Claims, Plaintiff agrees to release all known and unknown claims, including a release under Civil Code Section 1542. To effect a full and complete general release as described above, Plaintiff expressly waives and relinquishes all rights and benefits of section 1542 of the Civil Code of the State of California and does so understanding and acknowledging the significance and consequence of specifically waiving section 1542. Section 1542 of the Civil Code of the State of California states as follows:

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

Thus, notwithstanding the provisions of section 1542, and to implement a full and complete release and discharge of the Released Parties, Plaintiff expressly acknowledges this release is intended to include in its effect, without limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff's favor at the time of signing this Agreement, and Plaintiff expressly acknowledges that this Agreement contemplates the extinguishment of any such claims. Plaintiff warrants Plaintiff has read this Agreement, including this waiver of California Civil Code section 1542, and that Plaintiff has consulted with or had the opportunity to consult with counsel of Plaintiff's choosing about this Agreement and specifically about the waiver of section 1542, and Plaintiff warrants that Plaintiff understands this Agreement and the section 1542 waiver, and Plaintiff freely and knowingly enters into this Agreement. Plaintiff further acknowledges that Plaintiff later may discover facts different from or in addition to those Plaintiff now knows or believes to be true regarding the matters released or described in this Agreement, and even so Plaintiff agrees that the release contained in this Agreement shall remain effective in all respects notwithstanding any later discovery of any different or additional facts. Plaintiff expressly assumes any and all risk of any mistake in connection with the true facts involved in the matters, disputes or controversies released or described in this Agreement or with regard to any facts now unknown to Plaintiff relating thereto.

Plaintiff's general release shall become effective on the Effective Date.

The general release set forth in Paragraph E of this Agreement applies only to Plaintiff. It does not apply to any PAGA Employees.

#### **F. Settlement Approval and Implementation Procedures**

1. Pursuant to California Labor Code § 2699(l)(2), or otherwise for the purposes of obtaining court approval of the Settlement, Plaintiff will file a Stipulation for Approval, separate declaration(s) advocating that the Settlement is fair, adequate, and reasonable, and any other documents in support of

approval of the Settlement. Defendants shall not oppose the filing of any of these documents. Defendants shall also reasonably cooperate with any efforts to obtain approval of this Settlement.

2. No later than thirty (30) calendar days after the Final Approval Date, Defendants shall send to the Settlement Administrator the PAGA List. This information shall be treated as and remain confidential and shall be used solely to manage the notice and payment process described herein, and it shall not be disclosed to anyone other than the Settlement Administrator, except to applicable taxing authorities, or pursuant to express written authorization of Defendants, the individual in question, or by order of the Court.

3. No later than thirty (30) calendar days after the Court approves this Settlement, Defendants shall fully fund the Gross Settlement Amount.

4. The Settlement Administrator will perform all settlement administration duties, including (a) performing a National Change of Address ("NCOA") search to update the addresses of the PAGA Employees, (b) issuing the Notice and payments to the PAGA Employees, (c) issuing any required IRS forms, and (d) issuing payment to the LWDA and Plaintiff's Counsel. The Settlement Administrator shall issue the Notice and payments to the PAGA Employees along with required IRS forms and issue payment to the LWDA for PAGA penalties, a Service Award to Plaintiff, and Attorneys' Fees and Costs to Plaintiff's Counsel, no later than ten (10) calendar days after it receives the full Gross Settlement Amount from Defendants. The Settlement Administrator will skip trace and re-mail all returned, undelivered mail within ten (10) calendar days of receiving notice that a notice was undeliverable.

5. The Settlement Administrator shall distribute the Gross Settlement Amount consistent with the terms of Settlement within twenty (20) calendar days. The Settlement Administrator will pay on a pro-rata basis: (a) Individual Settlement Payments to PAGA Employees via first-class regular U.S. Mail; (b) Court-awarded Attorneys' Fees and Costs to PAGA Counsel; (c) Court-approved LWDA Payment to the LWDA; (d) Court-approved Service Award to Plaintiff (if any); and (e) Court-awarded Administration Costs to the Settlement Administrator.

6. PAGA Employees shall have one hundred and eighty (180) calendar days after the mailing to cash or deposit their settlement checks. If any PAGA Employee's check is not cashed or deposited within that period, the check will be voided and a stop-payment will be issued. Any funds in the Settlement Administrator's account as a result of a failure to timely cash a settlement check shall be paid to the State of California Controller's Unclaimed Property division. Neither Defendants, Defendants' Counsel, Plaintiff's Counsel nor Plaintiff will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, unauthorized negotiation of settlement checks or failure to timely cash a settlement check within the 180-day period.

7. Upon the Effective Date, the Parties will: (a) be bound by the terms and conditions of this Agreement, and the releases set forth therein; and (b) be deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy of the settlement and the Court's Final Order and Judgment.

## **G. Miscellaneous Provisions.**

1. **Dismissal** In addition to the releases and covenants above, within 5 days of the Court granting approval of the Settlement, Plaintiff's Counsel will dismiss the remainder of Claims without prejudice and will promptly provide Defendants' Counsel notice of having done so.

2. **Escalator Clause (Additional Eligible Pay Periods):** It is currently estimated that PAGA Employees worked approximately 4,800 pay periods between May 13, 2022, and December 31, 2022. Plaintiff will provide Defendants with ten (10) days notice by email of his intent to file a Motion for Approval of the PAGA Settlement. The PAGA settlement amount will increase proportionally if the number of Eligible Pay Periods between May 13, 2022 and December 31, 2022, is 7.5%, i.e., if the total number of PAGA Eligible Pay Periods is more than 5,160.

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

4. **Publicity:** Plaintiff and his counsel agree that they have not and will not publish the Action or the Settlement until Plaintiff has filed his motion for approval of the Settlement. Until Plaintiff has filed his motion for approval of the Settlement, Plaintiff's counsel shall not report the Action or the Settlement in any medium or in any publication, shall not post or report anything regarding the claims of Plaintiff or the PAGA Employees, or the Settlement on their websites, and shall not contact any reporters or media regarding the Settlement. Nothing herein will restrict Plaintiff's Counsel from including publicly available information regarding this settlement in future judicial submissions regarding Plaintiff's Counsel's qualifications and experience.

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

6. **Voiding the Agreement:** The Settlement Agreement shall be voidable and unenforceable as to all Parties herein at the option of either Party if (a) the Court should for any reason fail to approve this Settlement in the form agreed to by the Parties, or (b) the Court should for any reason fail to enter a judgment, or (c) the approval of the Settlement and judgment is reversed, modified or declared or rendered void. In that event, then neither the Settlement nor any of the related negotiations or proceedings shall be of any force or effect, and all parties to the Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court. If the Court awards less than the requested amounts for Attorneys' Fees and Costs, Service Awards to Plaintiff (if any), Administration Costs, or LWDA Payment, the difference shall become part of the Net Settlement Amount. Any fees already incurred by the Settlement Administrator shall be paid by Defendants. Notwithstanding the foregoing, the Parties shall attempt in good faith to cure any perceived defects in the Settlement to facilitate approval.

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

8. **Waiver:** The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

9. **Parties' Authority:** The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

10. **Mutual Full Cooperation:** The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Plaintiff's Counsel shall, with the assistance and cooperation of Defendants and Defendants' counsel, take all necessary steps to secure the Court's approval of the settlement, and the Final Order.

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

12. **No Objection:** Plaintiff's Counsel agrees not to object to other otherwise seek to disrupt the settlement in the civil action titled *Adrianna Torcivia v. Bailey Food And Beverage Group, LLC, dba The Library Gentlemen's Club, et al.*, Superior Court of the State of California for the County of Orange, Case No.: 30-2022-01290665-CU-OE-CXC.

13. **No Prior Assignments:** The Parties hereto represent, covenant, and warrant that they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights released and discharged by this Settlement Agreement.

14. **No Admission:** Nothing herein shall constitute any admission by Defendants of any wrongdoing or liability to Plaintiff and/or the PAGA Employees in this Lawsuit, as to any and all causes of action that were asserted or that might have been asserted in this Action. Nothing herein shall constitute an admission by Defendants that the Action was properly brought as a representative action other than for settlement purposes. To the contrary, Defendants have denied and continue to deny each and every material factual allegation and all Claims. Nonetheless, Defendants desire to settle and compromise the matters at issue in the Operative Complaint to avoid further substantial expense and the inconvenience and distraction of protracted and burdensome litigation. Defendants also have taken into account the uncertainty and risks inherent in litigation and, without conceding any infirmity in the defenses that it has asserted or could assert against Plaintiff and the PAGA Employees, have determined that it is desirable

and beneficial that Plaintiff's and the PAGA Employees' claims be settled in the manner and upon the terms and conditions set forth in this Agreement.

The Parties agree that Plaintiff's motion for approval of the Settlement and Defendants' agreement thereto is for purposes of the Settlement only. If, for any reason, the Settlement is not approved, this Agreement will not be admissible in this or any other proceeding as evidence that: (a) the Action should proceed forward; or (b) Defendants are liable to Plaintiff or the PAGA Employees as Plaintiff alleged. If this Agreement is not approved by the Court or any appellate court, is terminated, or otherwise fails to be enforceable, Defendants will not be deemed to have waived, limited, or affected in any way any of their objections or defenses in the Action, including, but not limited to, their ability to move to compel arbitration, raise defenses in opposition to the Action, contest the merits of the claims and theories alleged, etc.

15. **Binding Settlement:** Nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendants or any of the other Released Parties. Each of the Parties hereto has entered into this Settlement Agreement with the intention of avoiding further disputes and litigation with the attendant inconvenience and expenses. This Settlement Agreement is a settlement document and shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement.

16. **Enforcement Actions:** Except as otherwise provided in this Settlement Agreement, in the event that one or more of the Parties to this Settlement Agreement institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this Settlement Agreement, the successful Party or Parties shall be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs incurred in connection with any enforcement actions.

17. **Notices:** All notices shall be provided by United States mail and electronic mail. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third calendar day after mailing by United States mail and electronic mail, addressed as follows:

To Plaintiff:

Scott Ernest Wheeler  
Justin A. Wheeler  
The Wheeler Law Firm, APC  
250 West First Street, Suite 216  
Claremont, California 91711  
Telephone: (909) 621-4988  
E-mail: sew@scottwheelerlawoffice.com  
jaw@scottwheelerlawoffice.com

To Defendants:

Jeffrey A. Dinkin  
Jdinkin@Stradlinglaw.com  
Jared W. Speier  
Jspeier@Stradlinglaw.com  
Cory Baker  
Cbaker@Stradlinglaw.com  
Stradling Yocca Carlson & Rauth LLP  
800 Anacapa Street, Suite A  
Santa Barbara. CA 93101  
Telephone: (805) 730-6800

18. **Construction:** The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his or its counsel participated in the drafting of this Settlement Agreement.

19. **Captions and Interpretations:** Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

20. **Modification:** This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto.

21. **Choice of Law:** This Settlement Agreement shall be governed by and construed, enforced and administered in accordance with the laws of the State of California, without regard to its conflicts-of-law rules, in all respects, including execution, interpretation, performance, and enforcement.

22. **Integration Clause:** This Settlement Agreement contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

23. **Binding On Successors and Assigns:** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

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

25. **Counterparts:** This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully-signed Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic delivery shall be deemed an original.

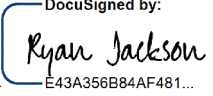
26. **Entire Agreement:** This Agreement sets forth the entire agreement between the Parties hereto and fully supersedes any and all prior and/or supplemental understandings, whether written or oral, between the Parties concerning the subject matter of this Agreement. Any modification to this Agreement must be in writing and signed by the Parties.

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

IN WITNESS WHEREOF, the Parties knowingly and voluntarily executed this Settlement Agreement and Release as of the date set forth below. The date of the Agreement shall be the date of the latest signature.

*[Signatures to Follow]*

Dated: 11/7/2024

By:   
Ryan Jackson

**Bailey Food and Beverage Group, LLC**

Dated: \_\_\_\_\_

By: David Bailey  
Its: Managing Member

**Bob Martin, Inc.**

Dated: \_\_\_\_\_

By: David Bailey  
Its: President

**CBDM Redlands, LLC**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
By: David Bailey  
Its: Managing Member

**APPROVED AS TO FORM:**

**THE WHEELER LAW FIRM, APC**

Dated: November 8, 2024

By:   
Scott E. Wheeler  
Justin A. Wheeler  
Counsel for Plaintiff, Ryan Jackson

**STRADLING YOCCA CARLSON & RAUTH LLP**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Jeffrey A. Dinkin  
Jared W. Speier  
Cory Baker  
Counsel for Defendants, Bailey Food and Beverage  
Group, LLC, Bob Martin, Inc., CBDM Redlands,  
LLC

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Ryan Jackson

**Bailey Food and Beverage Group, LLC**

Dated: October 28, 2024

*David Bailey*

By: David Bailey  
Its: Managing Member

**Bob Martin, Inc.**

Dated: October 28, 2024

*David Bailey*

By: David Bailey  
Its: President

**CBDM Redlands, LLC**

Dated: October 28, 2024

By: *David Bailey*

By: David Bailey  
Its: Managing Member

**APPROVED AS TO FORM:**

**THE WHEELER LAW FIRM, APC**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Scott E. Wheeler  
Justin A. Wheeler  
Counsel for Plaintiff, Ryan Jackson

**STRADLING YOCCA CARLSON & RAUTH LLP**

Dated: November 8, 2024

By:  \_\_\_\_\_  
Jeffrey A. Dinkin  
Jared W. Speier  
Cory Baker  
Counsel for Defendants, Bailey Food and Beverage  
Group, LLC, Bob Martin, Inc., CBDM Redlands,  
LLC

# EXHIBIT 1

**THE WHEELER LAW FIRM, APC**

Scott E. Wheeler (SBN 187998)

Justin A. Wheeler (SBN 342226)

250 West First Street, Suite 216

Claremont, California 91711

Telephone: (909) 621-4988

Facsimile: (909) 621-4622

Email: sew@scottwheelerlawoffice.com

jaw@scottwheelerlawoffice.com

*Attorney for Plaintiff and the other Aggrieved Employees*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF SAN BERNARDINO**

**SAN BERNARDINO JUSTICE CENTER**

RYAN JACKSON, individually, and on  
behalf of all other aggrieved employees,

Plaintiff,

v.

BAILEY FOOD AND BEVERAGE  
GROUP, LLC, doing business as THE  
LIBRARY GENTLEMEN'S CLUB; BOB  
MARTIN, INC.; CBDM RELANDS, LLC;  
and DOES 1 through 50, inclusive,

Defendants.

Case No.: CIVSB2316631

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

**[PROPOSED] ORDER AND JUDGMENT**

The Court has before it the Motion for Approval of PAGA Settlement, submitted by Plaintiff Ryan Jackson, individually, and on behalf of all other aggrieved employees (“Plaintiff”) on \_\_\_\_\_.

On \_\_\_\_\_, 2024, Plaintiff and Defendants Bailey Food and Beverage Group, LLC doing business as The Library Gentlemen’s Club , Bob Martin, Inc., and CBDM Redlands, LLC (“Defendants”) (collectively, the “Parties”) executed the Settlement Agreement and Release of PAGA Claim (“Settlement Agreement”) resolving this matter in its entirety.

Having received and considered the Settlement Agreement, the supporting papers filed by Plaintiff <sup>1</sup>, and good cause appearing, the Court grants approval of the Settlement and **HEREBY ORDERS AND MAKES THE FOLLOWING DETERMINATIONS:**

1. Except as otherwise defined in this Order and Judgment (“Order”), all capitalized terms have the same meaning as defined in the Settlement Agreement.

2. The Court finds that Plaintiff has satisfied the prerequisites under the California Private Attorneys General Act (Cal. Labor Code § 2698, et seq.) (“PAGA”), including, and not limited to, providing the California Labor Workforce and Development Agency (“LWDA”) and Defendants with notice of the specific provisions of the California Labor Code alleged to have been violated, including, and not limited to, the facts and theories to support the alleged violations, in conformity with California Labor Code § 2699.3(a).

3. The Court also finds that the Settlement Agreement has been submitted to the LWDA in accordance with PAGA, California Labor Code § 2699(1)(2), (1)(4) and that the LWDA has not sought to intervene or appear in the above-captions action (“Action”). In particular, on the date Plaintiff filed his motion seeking approval of the Settlement with the Court, she submitted to the LWDA a notice of the Settlement enclosing a copy of the Settlement Agreement. Plaintiff’s notice of the Settlement to the LWDA complied with the notice requirements of PAGA.

<sup>1</sup> The Court has also reviewed and considered the records and files of this case, as well as all documents submitted in connection with Plaintiff’s Motion for Approval of the PAGA Settlement, including the Declaration of Scott Ernest Wheeler.

4. The “Aggrieved Employees” covered under the Settlement Agreement (referred to therein as “PAGA Employees”) consists of the following individuals: all current and former hourly-paid or non-exempt, W-2 employees who were employed by Defendants at anytime in the State of California, during the period of time from May 13, 2022 through December 31, 2022.

5. The Court finds that the Parties reached the Settlement Agreement as a result of arm’s length negotiations.

6. The Court has jurisdiction over the subject matter of this Action, over all Aggrieved Employees, and over those persons undertaking affirmative obligations under the Settlement.

7. The Settlement is approved under Labor Code § 2699(1)(2) and the Court determines that the sum allocated for payment of penalties under PAGA is fair, just, reasonable, and adequate. The Court hereby approves the Gross Settlement Amount of \$67,500.

8. The Settlement Notice to Aggrieved Employees, fairly and adequately describes the Action, the approved Settlement, and is the best notice practicable under the circumstances.

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

10. The Gross Settlement Amount and the methodology used to calculate the LWDA Settlement Payment and the Individual Settlement Payments set forth in the Settlement Agreement are approved.

11. The Court approves the Service Award to Plaintiff in the amount of \$5,000. The Court authorizes the Settlement Administrator to make this payment, in accordance with the terms of the Settlement Agreement. This amount shall be paid from the Gross Settlement Amount and shall be disbursed in accordance with this Order.

12. The Court approves and designates Phoenix Settlement Administrators to act as the Settlement Administrator. The Court approves payment to the Settlement Administrator in this Action its actual fees and costs in accordance with the terms of the Settlement Agreement, not to exceed \$4,750. This amount shall be paid from the Gross Settlement Amount and shall be disbursed in accordance with this Order.

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

14. The Court approves payment to PAGA Counsel for attorneys' fees in the amount of \$22,500 and costs in the amount of \$\_\_\_\_\_, which the Court finds to be fair and reasonable. The Court authorizes the Settlement Administrator to make these payments, in accordance with the terms of the Settlement Agreement. This amount shall be paid from the Gross Settlement Amount and shall be disbursed in accordance with this Order.

15. The Court authorizes the Settlement Administrator to calculate the LWDA Settlement Payment and the PAGA Employees Settlement Proceeds Fund(which is comprised of the Individual Settlement Payments), in accordance with the terms of the Settlement Agreement.

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

17. The Court finds that payment to the Aggrieved Employees of 25% of the Net Settlement Amount as the Aggrieved Employees' share of the settlement of civil penalties is fair and reasonable. The Court authorizes the Settlement Administrator to pay the PAGA Employees Settlement Proceeds Fund, in accordance with the terms of the Settlement Agreement.

18. The Court has considered the settlement, and the monetary allocations provided thereby, and finds that they are fair, just, reasonable, and adequate. The Court hereby directs the Settlement Administrator to administer the settlement and to make the payments as provided for by, and consistent with, this Order.

19. The Court approves the Notice of Settlement that must be delivered to the Aggrieved Employees along with their Individual Settlement Payment checks, substantially in the form attached hereto as Exhibit 1.

20. Within thirty (30) calendar days of this Order, Defendants shall fully fund the Gross Settlement Amount.

21. The Settlement Administrator shall distribute the Gross Settlement Amount

consistent with the terms of Settlement within twenty (20) calendar days after Defendants fully fund the Gross Settlement Amount. The Settlement Administrator will pay on a pro-rate basis: (a) Individual Settlement Payments to PAGA Employees via first-class regular U.S. Mail; (b) Court-awarded Attorneys' Fees and Costs to PAGA Counsel; (c) Court-approved LWDA Payment to the LWDA; (d) Court-approved Service Award to Plaintiff (if any); and (e) Court-awarded Administration Costs to the Settlement Administrator.

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

23. The Parties and are directed to perform in accordance with the terms set forth in this Order and Judgment and the Settlement Agreement.

24. The "Released Parties" are Defendants including any of their officers, directors, executives, partners, managers, owners, shareholders, members, employees, agents, attorneys, any of their former and present parents, subsidiaries, successors, assigns and affiliates and related entities, and their officers, directors, managers, owners, executives, partners, employees, shareholders, agents, attorneys, and any other successors, assigns, or legal representatives.

25. The "Released Claims" are all claims and theories that were set forth, or that could have been set forth based on the facts alleged in the Action during the PAGA Release Period, pursuant to *Huff v. Securitas Services USA, Inc.* (2018) 25 Cal.App.5th 745, including, but not limited to the PAGA Representative Claims.

26. The "PAGA Representative Claims" are any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action contingent or accrued during the time period from May 13, 2022 through December 31, 2022, arising out of or reasonably related to the PAGA claim and factual allegations asserted in the operative complaint and/or the LWDA Notices, including, but not limited to, the following claims:

1) failure to provide, maintain records and give notice of COVID-19 Supplemental Paid Sick Leave, 2) failure to provide suitable resting facilities and changing rooms, 3) failure to provide suitable seating; and 4) failure to maintain reasonable temperatures in the workplace. This release shall include a release for PAGA claims under California Labor Code Sections 226, 247.5, 248.6, 1174.5, and IWC Wage Order 5-2001, Sections 13, 14 and 15, only.

27. Within five (5) calendar days of this Order, Plaintiff shall submit a request for dismissal of the remainder of the Claims in this Action without prejudice subject to the Court retaining jurisdiction under Code of Civil Procedure Section 664.6 pursuant to the terms of the Settlement Agreement.

28. This Court shall retain jurisdiction with respect to all matters related to the administration and consummation of the Settlement Agreement, to enforce the terms of the judgment, and any and all claims, asserted in, arising out of, or related to the subject matter of the lawsuit, including but not limited to all matters related to the Settlement and the determination of all controversies relating thereto.

17. A Hearing Re: Distribution with the terms of the Settlement is set for \_\_\_\_\_ at \_\_\_\_\_ a.m. / p.m. in Department S-23. A report from Phoenix Settlement Administrators Re: Distribution of the Settlement funds shall be filed ten (10) court days before the scheduled Hearing Re: Distribution.

18. Plaintiff's Motion for Approval of the PAGA Settlement is hereby granted and the Court directs that a judgment shall be entered in accordance with the terms of this Order.

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

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

**IT IS SO ORDERED:**

DATED: \_\_\_\_\_, 2024

HONORABLE DONALD ALVAREZ  
JUDGE OF THE SUPERIOR COURT

# EXHIBIT 2

***NOTICE OF SETTLEMENT OF PAGA REPRESENTATIVE ACTION***

*Ryan Jackson v. Bailey Food And Beverage Group, LLC, dba The Library Gentlemen's Club, et al.*, Superior Court of the State of California for the County of San Bernardino, Case No.: CIVSB2316631

Aggrieved Employee

Address

Address

Enclosed is a check in the amount of \$\_\_\_\_, which is your settlement payment for a portion of the civil penalties agreed to be paid in the settlement of a lawsuit entitled *Ryan Jackson v. Bailey Food And Beverage Group, LLC, dba The Library Gentlemen's Club, et al.*, Superior Court of the State of California for the County of San Bernardino, Case No.: CIVSB2316631 (the "Action"). The settlement check shall remain valid for one hundred eighty (180) calendar days from the date the check is mailed. If your check remains uncashed after that time, it shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property laws in your name.

You are receiving this check in connection with a Court-approved settlement (the "Settlement") in the Action brought on a representative basis under the California Labor Code Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.* ("PAGA"). The Settlement provides for of the settlement of claims for civil penalties only for purported violations of the California Labor Code on behalf of all current and former non-exempt, employees who were employed by Bailey Food and Beverage Group, LLC doing business as The Library Gentlemen's Club, Bob Martin, Inc., and/or CBDM Redlands, LLC ("Defendants") at any time during the period of time from May 13, 2022 through December 31, 2022 ("PAGA Period") ("Eligible Employees").

According to the Defendants' records, you are an Eligible Employee and are therefore entitled to a share of the Settlement based upon the Court-approved allocation. The PAGA statute provides that 75% of any recovery pursuant to the Settlement be paid to the State of California and 25% of any recovery be paid to the allegedly "aggrieved employee" group, which in this case is the group of Eligible Employees. Each Eligible Employee's share from the 25% portion of the settlement allocated to the "aggrieved employee" group is based on a formula that takes into account the number of pay periods in which an Eligible Employee was employed by the Defendants during the PAGA Period.

The Court has not made a determination about Plaintiff's allegations. This Notice is not to be understood as an expression of any opinion by the Court as to the merits of the claim. The Defendants deny all claims and allegations in the Action, deny they owe any penalties, and maintain that they have fully complied with all applicable California Labor Code and/or Industrial Wage Order provisions. Nevertheless, to avoid further costs and time in defending the Action, the Defendants have settled the Action.

The Settlement resolves all claims for civil penalties and extinguishes your right to bring, or to be represented by another person in, a PAGA lawsuit against the Defendants that are predicated on the facts and legal theories that were alleged or could have been reasonably alleged in the Action, or the letters submitted to the California Labor and Workforce Development Agency by the Plaintiff in the Action, during the PAGA Period, any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action contingent or accrued during the time period from May 13, 2022 through December 31, 2022, arising out of or reasonably related to the PAGA claim and factual allegations asserted in the operative complaint and/or the LWDA Notices, including, but not limited to, the following claims: 1) failure to provide, maintain records and give notice of COVID-19 Supplemental Paid Sick Leave, 2) failure to provide suitable resting facilities and changing rooms, 3) failure to provide suitable seating; and 4) failure to maintain reasonable temperatures in the workplace. This release shall include a release for PAGA claims under

California Labor Code Sections 226, 247.5, 248.6, 1174.5, and IWC Wage Order 5-2001, Sections 13, 14 and 15, only (the “Released PAGA Claims”). This release applies to you, regardless of whether you cash your check, and regardless of whether this letter can be delivered to you. The Settlement does not affect the ability of an Eligible Employee to bring any other claims.

By an Order dated [Approval Date], the San Bernardino County Superior Court approved the Settlement of the Released PAGA claims. By approving the Settlement, the Court did not decide in favor of either Plaintiff or the Company.

**PLEASE DO NOT CALL OR WRITE THE COURT OR OFFICE OF THE CLERK TO ASK QUESTIONS ABOUT THE SETTLEMENT. IF YOU HAVE ANY QUESTIONS, YOU MAY CALL OR WRITE TO THE SETTLEMENT ADMINISTRATOR AT:**

**[ADMIN NAME]**

**[ADDRESS]**

**[ADDRESS]**

**[ADDRESS]**