

1 Adam Rose (210880)
2 adam@frontierlawcenter.com
3 Manny Starr (319778)
4 manny@frontierlawcenter.com
5 Frontier Law Center
23901 Calabasas Road, #2074
6 Calabasas, CA 91302
7 Telephone: (818) 914-3433
8 Facsimile: (818) 914-3433

6 Attorney for Plaintiff
7 Edgar Rangel Rosales

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN MATEO

10 EDGAR RANGEL ROSALES, individually and)
11 on behalf of all similarly situated individuals and)
12 aggrieved employees,)

12 Plaintiff,

13 v.)

14 ALL DAY USA OPERATIONS, LLC, and DOES)
15 1 to 100,)

15 Defendants.)
16

NO. 23-CIV-02945

DECLARATION OF ADAM ROSE IN
SUPPORT OF MOTION TO APPROVE
PAGA SETTLEMENT

Date: September 20, 2024
Time: 2:00 p.m.
Dept: 24

17
18
19 I, Adam Rose, declare the following:

20 1. I am one of the attorneys representing the plaintiff. I have personal knowledge of the facts
21 in this declaration and if called on to testify about the facts I would competently do so.

22 2. Attached as Exhibit A is a true and correct copy of the PAGA settlement agreement.

23 3. Attached as Exhibit B is a true and correct copy of the proposed letter that will accompany
24 payments to the aggrieved employees. memorandum of understanding.

25 4. I uploaded this declaration containing the settlement agreement at the same time as filing
26 the motion to approve the PAGA settlement.

27 5. Also attached is a copy of the proposed letter that will accompany the checks to the
28 aggrieved employees once the settlement is finalized and funded.

1 6. To prepare for mediation, Defendant provided the following informal data: 1) a sampling of
2 time records, 2) a sampling of premium payments for missed meal and rest breaks, 3) a sampling of
3 pay data, and 4) an index of class members with start and applicable end dates.

4 7. The data was used to prepare a damages model; during the mediation issues were discussed
5 that merited dismissing the class action allegations without prejudice and to proceed on a PAGA-
6 only basis.

7 8. Thus, based on the arguments in the motion and the attachments to this declaration, I
8 respectfully request the court to grant the motion to approve the PAGA settlement.

9
10 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
11 and correct.

12 Date: August 6 2024

/s/ Adam Rose

Exhibit A

**PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT AGREEMENT AND RELEASE**

On March 12, 2024, Edgar Rangel Rosales (“Plaintiff” or “PAGA Representative”), for himself and as a representative of the State of California with respect to the Aggrieved Employees (as defined in Section 3(a)(5) below) and All Day USA Operations, LLC (“Defendant”), entered into a Memorandum of Understanding (“MOU”), memorializing their agreement to the principal terms of the settlement discussed herein. The term “Party” as used herein shall refer to Plaintiff or Defendant, and the term “Parties” as used herein shall refer to both Plaintiff and Defendant.

Subject to its terms and conditions and the approval of the Court, based on the terms of the MOU, this Private Attorneys General Act Settlement Agreement and Release (hereinafter the “Settlement,” “Settlement Agreement,” or “Agreement”) is made and entered into by and among the Parties.

1. **Recitals.** This Settlement Agreement is made with reference to the following facts:

(a) Plaintiff is a former employee of Defendant. Plaintiff was employed by Defendant from approximately March 8, 2021 through approximately March 15, 2024;

(b) On or about June 26, 2023, Frontier Law Center (“Plaintiff’s Counsel” or “Representative Counsel”), submitted a letter on behalf of Plaintiff to the California Labor and Workforce Development Agency (“LWDA”) and Defendant, to notify the LWDA and Defendant, pursuant to the Private Attorneys General Act of 2004, Labor Code section 2698, *et seq.* (“PAGA”) of Plaintiff’s intent to seek civil penalties under PAGA for Defendant’s alleged violations of California Labor Code sections 226(a), 226.7, 510, 512(a), 551, 552, 558, 1194, 2699, and Industrial Welfare Commission Wage Orders, including *inter alia*, Wage Orders 4-2001, thereby initiating LWDA Case Number LWDA-CM-964732-23 (the “PAGA Notice”);

(c) On or about June 29, 2023, Plaintiff brought a putative-class action against Defendant in the Superior Court of California, County of San Mateo, entitled *Edgar Rangel Rosales v. All Day USA Operations, LLC*, Case No. 23-CIV-02945 (the “Action”). The initially filed Complaint (the “Original Complaint”) alleges six causes of action: (1) minimum wage violations; (2) overtime violations; (3) meal period violations; (4) rest period violations; (5) wage statement penalties; and (6) violation of the California Unfair Competition Law.

(e) On or about June 29, 2023, Plaintiff amended the Original Complaint add a cause of action under the Private Attorneys General Act of 2004 (“PAGA”) (“Operative Complaint”).

(f) On March 12, 2024, the Parties mediated the Action with Michael J. Leob, and, with the aid of the mediator’s evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety;

(g) There has been no determination on the merits of the Action or the PAGA Notice but, in order to avoid additional cost and the uncertainty of litigation, the Parties desire to resolve the Action and Released Claims (as defined in Section 8(a)below).

2. **No Admission of Wrongdoing.** The Parties agree that neither this Settlement Agreement nor the furnishing of the consideration for this Settlement Agreement shall be deemed or construed at any time for any purpose as an admission by the Released Parties of wrongdoing or evidence of any liability or unlawful conduct of any kind.

3. **Consideration.**

(a) In consideration for Plaintiff signing this Settlement Agreement and complying with its terms, Defendant shall pay the maximum gross sum of Ninety-Eight Thousand Dollars and No Cents (\$98,000.00) (the “Total Settlement Amount”) to resolve the Action and Released Claims (as defined herein), which will be paid as follows:

(1) Attorneys’ fees in the amount of Thirty-Five Percent (35%) of the Total Settlement Amount, which is Thirty-Four Thousand Three Hundred Fifty Dollars and No Cents (\$34,300.00), and reimbursement of litigation costs and expenses in the amount of up to Thirteen Thousand Dollars and No Cents (\$13,000.00) (collectively, “Attorneys’ Fees and Costs”) to Plaintiff’s Counsel, which Defendant will not contest.

(2) An incentive award of up to the amount of Five Thousand Dollars and No Cents (\$5,500.00) (“Incentive Award”) to Plaintiff, which Defendant will not contest.

(3) Costs and expenses of administration of the Settlement up to the amount of Three-Thousand Seven Hundred Fifty Dollars (\$3,750.00) (“Settlement Administration Costs”) to ILYM Claims Administrators, LLC (the “PAGA Settlement Administrator”).

(4) The amounts stated in Sections 3(a)(1) – 3(a)(3) above, once approved by the Court, shall be paid from the Total Settlement Amount. The balance remaining after these deductions is referred to as the “Net Settlement Amount” and is estimated to be at least approximately Forty-One Thousand and Nine Hundred and Fifty Dollars and No Cents (\$41,950.00), subject to increase as provided in Section 3(b).

(5) Seventy-five percent (75%) of the Net Settlement Amount will be distributed to the LWDA, estimated to be approximately Thirty-One Thousand and Four Hundred Sixty Two Dollars and Fifty Cents (\$31,462.50) (“LWDA Payment”); and the remaining twenty-five percent (25%), estimated to be approximately Ten-Thousand and Four Hundred Eighty-Seven Dollars and Fifty Cents (\$10,487.50), will be distributed to the Aggrieved Employees, defined solely for purposes of this Settlement as all persons currently or formerly employed by Defendant as non-exempt, hourly-paid employees within the State of California during the PAGA Period (the “Aggrieved Employees”). The period June 26, 2022 through March 12, 2024 is the “PAGA Period,” subject to Section 3(b). The 25% portion of the Net Settlement Amount payable to Aggrieved Employees is referred to as the “Employees’ Portion.”

(b) The Aggrieved Employees are estimated to consist of approximately two-hundred and five (205) individuals who worked approximately 4,637 PAGA Pay Periods. If the actual number of PAGA Pay Periods during the PAGA Period is more than ten percent (10%), or an additional 464 PAGA Pay Periods worked, the Total Settlement Amount will be increased proportionally by the PAGA Pay Periods in excess of 5,101 PAGA Pay Periods. In the alternative, Defendant may, at its discretion, elect to cut-off the PAGA Period referenced in Section 3(a)(5) on the last date that the Compensable Workweeks do not exceed 4,637 PAGA Pay Periods.

(c) Because this is a settlement of PAGA claims for civil penalties only, no portion of the Settlement is allocated to unpaid wages. One Hundred Percent (100%) of the payments for Attorneys' Fees and Costs, Incentive Award, and the Net Settlement Amount to be paid to the LWDA and Aggrieved Employees as described in Section 3(a) above will be treated and reported for tax purposes as non-wage payments and the PAGA Settlement Administrator will be responsible for issuing IRS Forms 1099 as required.

4. **Court Approval is Required.** Plaintiff understands and agrees that the State of California and Aggrieved Employees, including Plaintiff, would not receive the payments specified in Section 3(a) above, except for Plaintiff's execution of this Settlement Agreement, and the fulfillment of the promises contained herein, as well as Court approval of the Settlement. If this Settlement Agreement is not approved by the Court, it shall be null and void.

5. **Disbursal of Settlement Funds.**

(a) Subject to Section 4 above, Defendant shall remit to the PAGA Settlement Administrator the sums described more fully in Section 3(a) above, after all of the following has occurred: (i) the Settlement Agreement is fully executed by all Parties and their counsel; and (ii) the Court has entered an order approving the Settlement Agreement.

(b) Upon complete distribution of the Total Settlement Amount by the PAGA Settlement Administrator in accordance with this Settlement Agreement, the PAGA Settlement Administrator will notify the Parties of distribution of the entire Total Settlement Amount.

6. **Approval and Implementation of the PAGA Settlement.**

(a) The Parties are aware that some courts have approved a PAGA settlement and entered an order approving the settlement and judgment and thereafter closed the case, while others have approved a PAGA settlement and entered only an order approving the settlement with later instructions to file a request for dismissal of the action. The Parties agree to cooperate and take any and all steps required by the Court in the Action to implement the settlement and terminate the Action, pursuant to settlement (i.e., to terminate the Action by way of judgment or dismissal).

(b) The Parties further agree to cooperate in the drafting and/or filing of any further documents and/or filings reasonably necessary to be prepared and/or filed, and to take all steps that may be requested by the Court in order to obtain approval and implementation of this Settlement Agreement, and the payments described in Section 3(a) above.

(c) Plaintiff shall comply with all statutory requirements necessary to execute and complete the administration of the Settlement, including providing notice and/or other required submissions of documents and/or information to the LWDA in accordance with Labor Code section 2699(l).

(d) The Parties shall seek to obtain Court approval of this Settlement Agreement by way of an unopposed motion to be filed by Plaintiff's Counsel. Plaintiff's Counsel shall provide a draft of all documents to be submitted in connection with the motion to approve this Settlement Agreement to Shannon B. Nakabayashi and Rob Yang of Jackson Lewis P.C. ("Defendant's Counsel") for review; Defendant's Counsel will be given an opportunity to comment on the papers prior to their being filed with the Court, and such comments will be implemented to the extent reasonable.

(e) The Parties expressly acknowledge that the Court's approval of the Settlement Agreement is a condition precedent to any payments described in this Settlement Agreement. Therefore, the Parties further acknowledge that, should the Court not grant approval of this Settlement Agreement and/or should the Court refuse to grant judgment or dismissal of the Action and close the Action based on the Settlement, the entirety of this Settlement Agreement shall be null and void.

(f) Plaintiff agrees to take all necessary actions to dismiss any non-PAGA claims associated with the Action including dismissing without prejudice his putative class action claims by filing a declaration to dismiss the class action allegations without prejudice within seven (7) calendar days of the full execution of this Agreement.

7. **Payment of Total Settlement Amount / Informational Cover Letter to Recipients.**

(a) Subject to Court approval of this Settlement Agreement, payment of the sums described in Section 3(a) above shall be made by Defendant by transmitting the required sums to a qualified settlement account established by the PAGA Settlement Administrator for administration of this Settlement, within thirty (30) calendar days of the Court's order granting approval of this Settlement Agreement. If the date by which payment by Defendant is due falls on a Saturday, Sunday, or legal holiday in the State of California, then the due date shall be extended the next following day which is not a Saturday, Sunday, or legal holiday in the State of California.

(1) Each Aggrieved Employee will be entitled to a pro-rata share of 25% of the Net Settlement Amount (i.e., the Employees' Portion) based upon the number of pay periods they each worked during the PAGA Period ("PAGA Pay Periods"), based on Defendant's payroll records. Specifically, to calculate each Aggrieved Employee's share of the Employees' Portion ("Individual Settlement Share"), the PAGA Settlement Administrator shall: (i) for each Aggrieved Employee, divide the number of PAGA Pay Periods he or she individually worked by the total aggregate number of PAGA Pay Periods worked by all Aggrieved Employees, and then (ii) multiply this amount by the Employees' Portion to arrive at each Aggrieved Employee's Individual Settlement Share.

(2) One Hundred Percent (100%) of all Individual Settlement Shares are to be considered penalties and the PAGA Settlement Administrator will not undertake

any deductions, withholding, or remittances for local, state, or federal taxes. Aggrieved Employees' Individual Settlement Shares will be reported on an IRS Form 1099 as required by the IRS.

(3) The Aggrieved Employees shall be solely and legally responsible for correctly characterizing any payment to them pursuant to this Settlement for tax purposes and for paying any taxes on the amounts received. The Aggrieved Employees agree to indemnify and hold the Released Parties harmless from any claim or liability for taxes, penalties, or interest arising as a result of any payment to them pursuant to this Settlement.

(4) All settlement payments to Aggrieved Employees shall be deemed to be paid to such Aggrieved Employees solely in the year in which such payments actually are received by the Aggrieved Employees. It is expressly understood and agreed that the receipt of such settlement payments will not entitle any Aggrieved Employee to additional compensation or benefit plan or agreement in place during the period covered by the Settlement, nor will it entitle any Aggrieved Employee to any increased retirement, 401K benefits or matching benefits, or deferred compensation benefits. It is the intent of this Settlement that the settlement payments provided for in this Settlement are the sole payments to be made by Defendant to the Aggrieved Employees, and that the Aggrieved Employees are not entitled to any new or additional compensation or benefits as a result of having received the settlement payment (notwithstanding any contrary language or agreement in any benefit or compensation plan document that might have been in effect during the period covered by this Settlement).

(b) The PAGA Settlement Administrator shall distribute each Individual Settlement Share by way of check, along with an informational cover letter ("Cover Letter") agreed to by the Parties and approved by the Court, in substantially the form attached hereto as "Exhibit A", in the following manner:

(1) No later than thirty (30) calendar days after the Court's order granting approval of the Settlement, Defendant shall provide the PAGA Settlement Administrator with a list of all Aggrieved Employees (the "Aggrieved Employees List"), containing the following information for each Aggrieved Employee: (i) first and last name; (ii) last known address; (iii) last known telephone number and/or email address (if available); (iv) Social Security number; (v) dates worked during the PAGA Period; and (vi) PAGA Pay Periods.

(2) The PAGA Settlement Administrator shall conduct one (1) National Change of Address ("NCOA") search for all individuals identified on the Aggrieved Employees List, and update addresses for Aggrieved Employees to the extent updated addresses are located through the NCOA search.

(3) No later than fourteen (14) calendar days after the PAGA Settlement Administrator receives the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement Administrator shall mail the agreed-upon Cover Letter and Individual Settlement Share checks (together, the "PAGA Settlement Package") to all Aggrieved Employees by first-class United States mail. For each PAGA Settlement Package that is returned undeliverable within thirty (30) calendar days of the initial mailing, the PAGA Settlement Administrator shall promptly attempt to locate an alternate, updated address for the Aggrieved Employee at issue, by using a skip-trace search and shall attempt one (1) re-mailing of the PAGA Settlement Package.

(4) The Individual Settlement Share checks issued to Aggrieved Employees shall remain valid for one hundred eighty (180) calendar days, and thereafter, shall be canceled. Funds associated with canceled checks shall be transmitted to the State Controller's Office Unclaimed Property Division in the name of the Aggrieved Employee(s) at issue and in the amount of his or her respective Individual Settlement Share(s).

(c) No later than fourteen (14) calendar days after the PAGA Settlement Administrator receives the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement Administrator shall transmit the LWDA Payment to the LWDA.

(d) No later than fourteen (14) calendar days after the PAGA Settlement Administrator receives the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement Administrator shall transmit the Attorneys' Fees and Costs to Plaintiff's Counsel, unless instructed otherwise by Plaintiff's Counsel. At the request of Plaintiff's Counsel, the PAGA Settlement Administrator may purchase annuities, utilize United States Treasuries and bonds, or utilize any other attorney fee deferral vehicles, and any additional expenses associated with doing so will be paid separately by Plaintiff's Counsel.

(e) No later than fourteen (14) calendar days after the PAGA Settlement Administrator receives the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement Administrator shall transmit the Incentive Award to Plaintiff.

(f) No later than fourteen (14) calendar days after the PAGA Settlement Administrator receives the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement Administrator shall transmit the Settlement Administration Costs to itself, only after the PAGA Settlement Packages have been mailed to all Aggrieved Employees.

8. **Release of PAGA Claims.**

(a) Upon the date the Court has entered an order approving the Settlement Agreement and full funding of the Total Settlement Amount, and except as to the rights and obligations created by this Settlement Agreement, Plaintiff and the State of California with respect to Aggrieved Employees, will be deemed to have knowingly and voluntarily released and forever discharged Defendant and any of its present and former parent companies, subsidiaries, divisions, concepts, related or affiliated companies, and its shareholders, officers, directors, employees, agents, attorneys, insurers and reinsurers, successors and assigns, and any individual or entity that could be liable for any of the Released Claims (collectively, the "Released Parties"), to the full extent permitted by law, of and from the Action and from any and all claims, arising during the PAGA Period, for civil penalties under California Labor Code section 2698, *et seq.* ("PAGA") as well as any interest, fees, and costs available under PAGA, based on the factual allegations in the Operative Complaint and PAGA Notice, including but not limited to, for failure to pay minimum, regular, reporting time, and overtime wages (including and not limited to, failure to pay overtime at the correct regular rate of pay), failure to provide compliant meal periods and associated premiums, failure to provide compliant rest periods and associated premiums, failure to timely pay wages during employment, failure to timely pay wages upon termination, failure to provide compliant and accurate wage statements, failure to maintain complete and accurate payroll records, failure to provide a day of rest, in violation of California Labor Code sections 226(a), 226.7, 510, 512(a), 551, 552, 558, 1194, 2699, and

Industrial Welfare Commission Wage Orders, including *inter alia*, Wage Orders 4-2001 (collectively, the “Released Claims”).

(b) Upon the date the Court has entered an order approving the Settlement Agreement and full funding of the Total Settlement Amount, and except as to the rights and obligations created by this Settlement Agreement, Plaintiff, individually and on behalf of his heirs, executors, administrators, representatives, attorneys, successors and assigns, will be deemed to have knowingly and voluntarily released and forever discharged Released Parties, to the full extent permitted by law, from any and all claims of every nature whatsoever, known or unknown, suspected or unsuspected, which Plaintiff may have now or in the future arising from any act or omission or condition occurring on or prior to the execution of this document (including, without limitation, the future effects of such acts, omissions, or conditions), arising from the allegations in the Operative Complaint, including without limitation, claims arising under federal, state, or local laws for unpaid wages, penalties, liquidated damage, breach of contract, breach of the implied covenant of good faith and fair dealing, infliction of emotional distress, wrongful or retaliatory discharge, harassment, discrimination, defamation, impairment of economic opportunity, and violations of public policy, the Fair Labor Standards Act, the California Labor Code, the California Business and Professions Code, the California Constitution, the Civil Rights Act of 1866, and the Title VII of the Civil Rights Act of 1964. With respect to those claims released by Plaintiff in an individual capacity, Plaintiff acknowledges and waives any and all rights and benefits available under California Civil Code Section 1542, which provides:

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.

Plaintiff understands and agrees that claims or facts in addition to or different from those which are now known or believed by him to exist may hereafter be discovered yet are still released through the above general release of all claims. It is Plaintiff’s intention to, upon the date the Court has entered an order approving the Settlement Agreement and full funding of the Total Settlement Amount, settle fully and release all claims which Plaintiff may have now or in the future arising from any act or omission or condition occurring on or prior to the execution of this document (including, without limitation, the future effects of such acts, omissions, or conditions) against the Released Parties, whether known or unknown, suspected or unsuspected. Notwithstanding the above, the general release by Plaintiff shall not extend to claims for workers’ compensation benefits, claims for unemployment benefits, or other claims that may not be released by law.

9. Governing Law and Interpretation.

(a) This Settlement Agreement shall be governed and conformed in accordance with the laws of the State of California. Should any non-material provision of this Settlement Agreement be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable such provision immediately shall become null and void, leaving the remainder of this Settlement Agreement in full force and effect.

**FIRST AMENDED PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT
AND RELEASE**

(b) In the event of a breach of any provision of this Settlement Agreement, any Party reserves the right to institute an action specifically to enforce any term or terms of this Settlement Agreement or seek damages for breach. In an action to enforce any term or terms of this Settlement Agreement or to seek damages for breach of this Settlement Agreement, the prevailing Party in that action shall be entitled to recover reasonable attorney's fees and costs from the non-prevailing Party.

10. **Amendment.** This Settlement Agreement may not be modified, altered, or changed except in writing and signed by both Parties' counsel, wherein specific reference is made to this Settlement Agreement, subject to approval by the Court.

11. **Miscellaneous.**

(a) Other than Edgar Rangel Rosales, Representative Counsel represents that they are not currently in communication with any current or former employee of Defendant regarding claims against Defendant aside from the Released Claims and that they have no plans to represent anyone in bringing any wage and hour class or PAGA claim against Defendant.

(b) The PAGA Representative and Representative Counsel will keep all terms of this settlement confidential and will not make any public disclosure or social media posting regarding this settlement. The PAGA Representative and Representative Counsel will keep all terms of this settlement confidential and will not make any public disclosure or social media postings of the dispute, the Settlement, or the Confidential Memorandum of Understanding except for what is necessary to obtain approval of this PAGA Settlement from the Court. If comment or information is requested by the media, PAGA Representative and Representative Counsel will provide no information other than direct the media to the public records of the Action on file with the Court. Representative Counsel will take all steps necessary to ensure PAGA Representative is aware of, and will encourage him to adhere to, the restriction against public disclosure and media comment on the Settlement and its terms. Representative Counsel and PAGA Representative agree that this confidentiality term is a material term and that breach of this provision shall be deemed a material breach of this Settlement. The Parties agree that breach of this term shall cause irreparable harm.

(c) The Parties agree to stay all proceedings in the Action, including with respect to California Code of Civil Procedure section 583.310, except such proceedings necessary to implement and complete the Settlement, pending approval of the Settlement.

(d) This Settlement Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which, taken together shall constitute the same instrument. A signature made on a faxed or electronically transmitted copy of the Settlement Agreement or a signature transmitted by facsimile or electronic mail shall have the same effect as the original signature.

(e) The section headings used in this Settlement Agreement are intended solely for convenience of reference and shall not in any manner amplify, limit, modify or otherwise be used in the interpretation of any of the provisions hereof.

(f) This Settlement Agreement was the result of negotiations between the Parties and their respective counsel under the auspices of mediator Michael J. Loeb. In the

**FIRST AMENDED PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT
AND RELEASE**

event of vagueness, ambiguity, or uncertainty, this Settlement Agreement shall not be construed against the Party preparing it but shall be construed as if both Parties prepared it jointly, and the Parties may present their disputes to the mediator to resolve any vagueness, ambiguity, or uncertainty.

(g) If Plaintiff or Defendant fail to enforce this Settlement Agreement or to insist on performance of any term, that failure does not mean a waiver of that term or of the Settlement Agreement. The Settlement Agreement remains in full force and effect anyway.

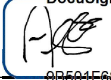
(h) The Court shall retain jurisdiction over the Parties and this matter to enforce terms of the Settlement Agreement under California Code of Civil Procedure 664.6, including after judgment is entered.

(i) The Parties shall provide the PAGA Settlement Administrator with a copy of the Court's order granting approval of the Settlement, and the Settlement Administrator shall post the Court's order granting approval of the Settlement, as well as a copy of the Operative Complaint and an exemplar Cover Letter, on its website for sixty (60) calendar days. No individualized notice of the Court's order granting approval of the Settlement is required to be provided.

HAVING ELECTED TO EXECUTE THIS SETTLEMENT AGREEMENT, TO FULFILL THE PROMISES, AND TO RECEIVE THE CONSIDERATION SET FORTH ABOVE, PLAINTIFF AND DEFENDANT, FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTER INTO THIS SETTLEMENT AGREEMENT.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Settlement Agreement as of the date set forth below:

Date: 6/14/2024, 2024

DocuSigned by:

 0B504F6363D24A6...
 Edgar Rangel Rosales

Individually and On Behalf of
 the State of California and Aggrieved Employees

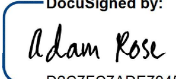
ALL DAY OPERATIONS USA, INC.

Date: 6/14/2024, 2024

Ken Chong
 Ken Chong
 CEO

Approved as to form and content.

Date: 6/14/2024, 2024

FRONTIER LAW CENTER
 DocuSigned by:

 0207F67ADE70450...
 Adam Rose
 Manny Starr

**FIRST AMENDED PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT
 AND RELEASE**

Attorneys for Plaintiff Edgar Rangel Rosales

JACKSON LEWIS P.C.

Date: 6/14/2024, 2024



Shannon B. Nakabayashi

Robert Yang

Attorneys for Defendant

All Day USA Operations, LLC

EXHIBIT A

Exhibit B



[Date]

Re: Payment From *Edgar Rangel Rosales v. All Day USA Operations, LLC*, San Mateo Superior Court Case No. 22-CIV-02945

Dear <<FIRST_NAME>> <<LAST_NAME>>:

Enclosed you will find a check made payable to you. This is your payment from the settlement of the lawsuit entitled *Edgar Rangel Rosales v. All Day USA Operations, LLC* filed in San Mateo Superior Court (the “Action”).

The Action was filed against Defendant pursuant to the Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* (“PAGA”). The Action was brought by a former employee of Defendant on behalf of the State of California and all alleged “aggrieved employees,” defined as all current and former nonexempt employees of Defendant in California between June 26, 2022 and March 12, 2024. You have been identified as one of the employees on whose behalf the case was brought.

The Plaintiff in the Action claimed that Defendant owed civil penalties recoverable under PAGA for alleged violations of the California Labor Code. Defendant denies that it did anything wrong, that it violated the Labor Code or that it owes any civil penalties. The parties agreed to resolve the case. The Court has not ruled on the merits of the Action.

The Court approved the settlement to be paid by Defendant for settlement of the PAGA claim for civil penalties. A portion of that settlement amount goes to the State of California’s Labor and Workforce Development Agency. Another portion of that amount goes to the aggrieved employees. In agreeing to this settlement, Defendant does not admit to any wrongdoing or that it is liable in any way for any civil penalties under PAGA.

Pursuant to the settlement, enclosed is a check for your share of a portion of the civil penalties. The amount is calculated based on a pro rata number of pay periods worked during the PAGA period. You are not a party to this lawsuit, but you and the State of California are bound by the settlement. If you have any questions, you can contact the settlement administrator: Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863, Telephone: (800) 523-5773.

Please do not call or write the Court or Office of the Clerk of the Court to ask questions about the settlement.