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6 Attorney for Plaintiff
7 Gisselle Selvy-Medina

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN DIEGO

10 GISSELLE SELVY-MEDINA, on behalf of	) NO. 37-2023-00041657-CU-OE-CTL
11 herself and all aggrieved employees,	)
12 Plaintiff,	) DECLARATION OF ADAM ROSE IN
13 v.	) SUPPORT OF MOTION TO APPROVE
14 NOTHING BUNDT CAKES,	) PAGA SETTLEMENT
15 ROARK CAPITAL GROUP,	)
16 NOTHING BUNDT CAKES FRANCHISING,	)
LLC, and DOES 1 to 100,	)
Defendants.	)

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

- 20 1. I am one of the attorneys for the plaintiff. I have personal knowledge of the facts in
21 this declaration and if called on to testify 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 original PAGA notice.
- 24 4. Attached as Exhibit C is a true and correct copy of the administration bid.
- 25 5. Attached as Exhibit D is a true and correct copy of the proposed letter to accompany
26 the payments to the aggrieved employees.
- 27 6. Attached as Exhibit E is a true and correct copy of the costs incurred by Frontier
28 Law Center up to this point.

1 7. In anticipation of the mediation with Hon. Amy Hogue (Ret.), in advance of the
2 mediation NBC provided the following information:

- 3 a. 747 aggrieved employees worked 11,065 pay periods from July 4, 2022
4 to January 19, 2024 (the initial PAGA notice was sent on July 10, 2023);
- 5 b. A spreadsheet detailing work locations and job titles;
- 6 c. Exemplar store floor plans;
- 7 d. General employee training material;
- 8 e. Photographs from break rooms; and
- 9 f. Operating locations are El Cajon, Santee, Point Loma, Mission Valley,
10 Carlsbad, Chula Vista, San Marcos, Pacific Highlands, and Carmel Mountain.

11 8. The application explains that the maximum PAGA liability using the \$100 and \$200
12 penalties is \$1,485,200.

13 9. Yet if only initial penalties applied, the maximum liability is $\$100 \times 11,065$ pay
14 periods = \$1,106,500. The PAGA settlement is 9.3% of this maximum number.

15 11. My opinion is the settlement is an excellent result given the inherent risks in
16 proceeding further and that the settlement is fair, reasonable, and adequate.

17 12. For example, the Paragraph 14(A) (of the Wage Order) standard of providing seats
18 might not apply if the nature of the work did not allow for seats, and the paragraph 14(B)
19 standard of providing stools might be satisfied assuming the stools were readily accessible.

20 13. Given the risks about suitable seating as more fully described in the application, a
21 more realistic maximum liability is approximately half the maximum of \$1,106,500, or
22 \$553,250. This is because it could potentially go either way in favor or against the
23 aggrieved employees based on the nature of their work, coupled with the ostensible
24 provision of stools for use during lulls in activity.

25 14. With the more realistic maximum of \$553,250, the PAGA portion of the settlement
26 with the allocation of \$104,000 represents 18.7% of the maximum liability, which is
27 certainly within the range of reasonableness for PAGA settlements.

28 15. Thus, I respectfully request the court to grant the motion.

1 16. Also, I uploaded a copy of this declaration and the motion to the LWDA website at
2 the same time as filing the documents.

3
4 I declare under penalty of perjury under the laws of the State of California that the
5 foregoing is true and correct.

6 Date: August 8, 2024 /s/ Adam Rose

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Exhibit 1

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement ("Agreement") is made by and between plaintiff Giselle Selvy-Medina ("Plaintiff") and defendant Nothing Bundt Franchising, LLC dba Nothing Bundt Cakes ("NBC"). The Agreement refers to Plaintiff and NBC collectively as "Parties," or individually as "Party."

1. DEFINITIONS.

1.1. "Action" means the Plaintiff's PAGA lawsuit alleging suitable seating violations against NBC captioned *Selvy-Medina v. Nothing Bundt Cakes, et al.*, initiated on September 18, 2023, and pending in Superior Court of the State of California, County of San Diego, case number 37-2023-00041657-CU-OE-CTL.

1.2. "Administrator" means Phoenix Class Action Administration Solutions, the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3. "Administration Expenses Payment" means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator's "not to exceed" bid submitted to the Court in connection with approval of this Settlement.

1.4. "Aggrieved Employee" means a nonexempt employee who worked for NBC during the PAGA Period.

1.5. "Aggrieved Employee Data" means Aggrieved Employee identifying information in NBC's possession including the Aggrieved Employee's name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.

1.6. "Aggrieved Employee Address Search" means the Administrator's investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.

1.7. "Court" means the Superior Court of California, County of San Diego.

1.8. "Defense Counsel" means Baker & Hostetler LLP.

1.9. "Effective Date" means the date by when the Court enters a Judgment on its Order Approving the PAGA Settlement.

1.10. "Gross Settlement Amount" means \$137,500 which is the total amount NBC agrees to pay under the Settlement. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, a payment to settle all of Plaintiff's individual claims pursuant to Paragraph 3.2.4 below and a separate Settlement and General Release Agreement, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator's Expenses Payment.

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

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

1.13. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

1.14. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1.15. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.

1.16. "PAGA Counsel" means Frontier Law Center, the attorneys representing the Plaintiff in the Action.

1.17. "PAGA Counsel Fees Payment" and "PAGA Counsel Litigation Expenses Payment" mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.

1.18. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for NBC for at least one day during the PAGA Period.

1.19. "PAGA Period" means the period from July 9, 2022 to the Effective Date.

1.20. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

1.21. "PAGA Notice" means Plaintiff's July 9, 2023 letter to NBC and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.22. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$12,100) and the 75% to LWDA (\$36,300) in settlement of PAGA claims.

1.23. "Plaintiff" means Giselle Selvy-Medina, the named plaintiff in the Action.

1.24. "Approval Order" means the proposed Court Order Granting Approval of PAGA Settlement.

1.25. "Released PAGA Claims" means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.

1.26. "Released Parties" means: Named defendants NBC and Roark Capital Group, Inc. (together, "Defendants") and their affiliated entities and each of their former and present directors, officers, shareholders, owners, members, attorneys, insurers, parents, subsidiaries, predecessors, successors, assigns and affiliates.

1.27. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

1.28. "NBC" means named Defendant Nothing Bundt Franchising, LLC dba Nothing Bundt Cakes.

2. RECITALS.

2.1. On September 18, 2023, Plaintiff commenced this Action by filing a complaint (the "Complaint") alleging causes of action against Defendants for suitable seating violations. NBC denies the allegations in the Complaint and in the PAGA Notice, denies any failure to comply with the laws identified in the Complaint or those identified in the PAGA Notice, and denies any and all liability for the causes of action alleged.

2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to NBC and the LWDA by sending the PAGA Notice.

2.3. On February 2, 2024, the Parties participated in an all-day mediation presided over by Hon. Amy Hogue (Ret.) which led to this Agreement to settle the Action.

2.4. Prior to mediation, the Parties engaged in informal discovery, which included NBC's production of an exemplar employee handbook, photographs of stores, store floor plans, job descriptions, and a list of the Aggrieved Employees with start and end dates (if applicable).

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

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, NBC promises to pay \$137,500 and no more as the Gross Settlement Amount. NBC has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to NBC.

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

3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 35% which is currently estimated to be \$36,400 and PAGA Counsel Litigation Expenses Payment of not more than \$8,700. NBC will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds NBC harmless, and indemnifies NBC, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.2. To the Administrator: An Administrator Expenses Payment not to exceed \$8,500 except for a showing of good cause and as approved by the Court. To the extent the Administration

Expenses are less or the Court approves payment less than \$8,500, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.3. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$48,400 to be paid from the Gross Settlement Amount, with 75% (\$36,300) allocated to the LWDA PAGA Payment and 25% (\$12,100) allocated to the Individual PAGA Payments.

3.2.4. To Plaintiff: \$35,500 to settle all individual claims pursuant to a separate Settlement and General Release Agreement. From the \$33,500 settlement of individual claims, Frontier Law Center will receive \$8,375

3.3. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$12,100) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

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

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Aggrieved Employee Pay Periods. Based on a review of its records to date, NBC estimates there are 747 Aggrieved Employees who worked approximately 11,065 PAGA Pay Periods as of the date of the mediation.

4.2. Aggrieved Employee Data. Within 15 days of settlement approval, NBC will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. NBC has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which NBC must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

4.3. Funding of Gross Settlement Amount. NBC shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 14 days after the Effective Date.

4.4. Payments from the Gross Settlement Amount. Within 14 days after NBC funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Expenses Payment, and Plaintiff's payments Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.

4.4.1. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

4.4.3. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

4.4.4. The payment of Individual PAGA Payments shall not obligate NBC to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS. Effective on the date when NBC fully funds the entire Gross Settlement Amount, Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:

5.1 Plaintiff's Release. Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the PAGA Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained in the Complaint or the PAGA Notice ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the PAGA Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

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

5.2 Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Complaint and the PAGA Notice.

5.3 Release by PAGA Counsel: PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Complaint filed in the Action and the facts stated in the Complaint and the PAGA Notice.

6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT. The Parties agree to jointly prepare and file an application or motion for approval of this Settlement.

6.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)).

6.2 Responsibilities of PAGA Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement no later than 30 days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Approval Order to the Administrator.

6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

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

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

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

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

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

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

9. ADDITIONAL PROVISIONS.

9.1 No Admission of Liability or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by NBC that any of the allegations in the Complaint or the PAGA Notice have merit or that NBC has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that NBC's defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, NBC reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest NBC's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

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

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

9.4 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification

of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

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

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

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

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

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

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

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

9.12 Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by NBC in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from NBC unless, prior to the Administrator's payment of all Settlement Funds, NBC makes a written request to PAGA Counsel for the return, rather than the destructions, of Aggrieved Employee Data.

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

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

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

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

Plaintiff DocuSigned by:



51F04FAFC9F041C
Gisselle Selvy-Medina

Date: 4/29/2024

Nothing Bundt Franchising, LLC

By: DocuSigned by:



0437B7EC52D04A4...

Date: 5/1/2024

Its: Chief Legal Officer

DocuSigned by:



D2C7FC7ADF79459

Counsel For Plaintiff



Counsel For Defendants

Exhibit 2



Adam Rose | Attorney

adam@frontierlawcenter.com
(818) 914-3433
23901 Calabasas Road, Suite 2074
Calabasas, CA 91302



www.frontierlawcenter.com

July 9, 2023

Via Online Filing

<http://www.dir.ca.gov/private-attorneys-general-act/private-attorneys-general-act.html>

Via Certified Mail

Nothing Bundt Cakes
4560 Beltline Rd., #350
Addison, TX 75001

Nothing Bundt Cakes Franchising,
LLC
4560 Beltline Rd., #350
Addison, TX 75001

Roark Capital Group
1180 Peachtree St. NE, #2500
Atlanta, GA 30309

Subject: *Gisselle Selvy-Medina v. Nothing Bundt Cakes, et al.*
Initial PAGA Notice

Dear Representative:

This office represents Gisselle Selvy-Medina ("Employee") in connection with Labor Code violation claims related to employment at with Nothing Bundt Cakes, where she worked in a San Diego location as a cake froster.

During employment with the above-listed Employers, she was subject to at least one of the violations alleged in this letter. Therefore, Employee intends to seek PAGA penalties on behalf of herself and all other non-exempt employees of Employers California who were subject to any of the violations during the PAGA period, also referred to as "Aggrieved Employees." The PAGA period begins one year prior to the date of this letter and, because the violations are ongoing, the PAGA period extends beyond the date of this letter.

Unreimbursed Work Expenses

Labor Code section 2802 requires an employer to "indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties." Employee and the Aggrieved Employees were required to purchase special shirts to work for Employers but were not reimbursed in contravention of Labor Code 2802.

Applicable Civil Penalties

As a result of not reimbursing all work-related expenses, Employer is subject to the civil penalties listed in Labor Code section 2699.

Wage Statement Violations

Labor Code section 226 requires an employer to provide wage statements to its employees which includes the name and address of the legal entity that is the employer. The wage statements intentionally did not list the correct name and address of the legal entity that is the employer in contravention of Labor Code section 226.

Applicable Civil Penalties

As a result of the wage statement violations detailed above, Employer is subject to the civil penalties listed in Labor Code sections 226.3 and 2699.

Suitable Seating Violation

Labor Code section 1198 makes it illegal to employ an employee under conditions that are prohibited by the applicable Wage Order. Specifically, Section 1198 requires that "the standard conditions of labor fixed by the commission shall be the [...] standard conditions of labor for employees. The employment of any employee [...] under conditions of labor prohibited by the order is unlawful."

The applicable Wage Order provides that "all working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats." It further states that "when employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties."

Here, Employer did not provide the Aggrieved Employees with suitable seating as required by the Wage Order. The nature of work reasonably permitted the use of seats and would not interfere with duties. However, no seats were provided to Employee and the Aggrieved Employees in violation of Labor Code section 1198.

Applicable Civil Penalties

As a result of the suitable seating violations detailed above, Employer is subject to the civil penalties listed in Labor Code section 2699.

Thank you,

Adam Rose

Exhibit 3



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

CASE ASSUMPTIONS

Aggrieved Members	747
Opt Out Rate	N/A
Opt Outs Received	
Total Aggrieved Claimants	747
Subtotal Admin Only	\$8,500.00

Not-to-Exceed Total \$8,500.00

For 747 Aggrieved Members

Pricing Good for Scope of Estimate Only

March 12, 2024

Case: Selvy-Medina v. Nothing Bundt Cakes PAGA Administration

Phoenix Contact: Jodey Lawrence

Contact Number: 949.566.1455

Email: Jodey@phoenixclassaction.com

Requesting Attorney: Adam Rose

Firm: Frontier Law Center

Contact Number: (818) 914-3433

Email: adam@frontierlawcenter.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PHX will need to adjust this Estimate accordingly.

Estimate is based on 747 Aggrieved Members. Class data **Must** be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of \$150 per hour will be charged for any additional analysis or programming. Pricing good for 90 days.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)			
Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$125.00	4	\$500.00
Programming Database & Setup	\$125.00	4	\$500.00
Toll Free Setup*	\$100.40	1	\$100.40
Call Center & Long Distance	\$2.00	19	\$37.35
NCOA (USPS)	\$0.30	747	\$224.10
Total			\$1,361.85

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Check & Postage			
Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$125.00	2	\$250.00
Data Merge & Duplication Scrub	\$0.35	747	\$261.45
Notice and Check Packet	\$1.50	747	\$1,120.50
Estimated Postage (up to 1 oz.)*	\$0.64	747	\$478.08
Total			\$2,110.03

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item Estimate
Case Associate	\$55.00	3	\$165.00
Skip Tracing Undeliverables	\$1.50	75	\$112.05
Remail Notice Packets	\$2.00	75	\$149.40
Estimated Postage	\$0.64	75	\$47.81
Programming Undeliverables	\$55.00	3	\$165.00
Total			\$639.26

Database Programming

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Claims Database	\$125.00	2	\$250.00
Case Manager	\$85.00	2	\$170.00
Total			\$420.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Calculations	\$125.00	3	\$375.00
Disbursement Review	\$125.00	3	\$375.00
Programming Manager	\$95.00	3	\$285.00
QSF Bank Account & EIN	\$75.00	1	\$75.00
Check Run Setup & Printing	\$125.00	3	\$375.00
Total			\$1,485.00

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$125.00	5	\$625.00
Remail Undeliverable Checks (Postage Included)	\$2.00	142	\$283.86
Case Associate	\$55.00	5	\$275.00
Reconcile Uncashed Checks	\$85.00	2	\$170.00
Conclusion Reports	\$100.00	2	\$200.00
Case Manager Conclusion	\$125.00	2	\$250.00
Final Reporting & Declarations	\$130.00	1	\$130.00
QSF Annual Tax Reporting * (State Tax Reporting Included)	\$550.00	1	\$550.00
Total			\$2,483.86
* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.			
Estimate Total:			\$8,500.00



TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

Exhibit 4



[Date]

**Re: Payment From Gisselle Selvy-Medina v. Nothing Bundt Cakes, San Diego County
Superior Court Case No. 37-2023-00041657-CU-OE-CTL**

**This settlement does not release any individual claims that you might have against Defendant
outside of PAGA.**

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

Enclosed you will find a check made payable to you. This is your payment from the settlement of the above-titled lawsuit.

The Action was filed against Nothing Bundt Cakes pursuant to the Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* ("PAGA"). The Action was brought on behalf of aggrieved employees of Defendant and the State of California defined as all current and former nonexempt employees employed by Defendant in California at any time between July 4, 2022 to January 19, 2024. You have been identified as one of the employees on whose behalf the case was brought.

The Plaintiffs in the Action claimed that Defendant owed civil penalties recoverable under PAGA for alleged violations of the Labor Code including (1) failure to provide suitable seating under Paragraph 14 of Wage Order 4. 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 alleged 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 the number of pay periods you worked as a non-exempt California employee for Defendant during the period from July 4, 2020 to January 19, 2024.

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 (whose contact information is at the top of this letter), **do not call or write the Court or Office of the Clerk of the Court to ask questions about the settlement.**

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Complaint and the PAGA Notice.

Very Truly Yours,
Phoenix Settlement Administrators

Exhibit 5

Expenses

for Gisselle Sadieh Selvy-Medina - Employment Claim - Nothing Bundt Cakes | Nothing Bundt Cakes Franchising, LLC | Roark Capital Group

Expense entries

Date	Activity	Description	Staff	Quantity	Price	Billable?	Write Off?	Status	Total
7/9/2024		One Legal Credit Card Sale_06178865	Alina Arama	1	\$15.39	True	No	-	\$15.39
6/20/2024		One Legal Credit Card Sale_06117879	Alina Arama	1	\$51.48	True	No	-	\$51.48
6/13/2024		One Legal Credit Card Sale_06117387	Alina Arama	1	\$77.16	True	No	-	\$77.16
5/17/2024		One Legal Credit Card Sale_06016969	Rosemary Flores	1	\$15.39	True	No	-	\$15.39
5/7/2024		One Legal Credit Card Sale_05987283	Rosemary Flores	1	\$15.39	True	No	-	\$15.39
4/4/2024		One Legal Credit Card Sale_05863385	Taylor McCarthy	1	\$15.39	True	No	-	\$15.39
1/10/2024		One Legal Credit Card Sale_05629253	Taylor McCarthy	1	\$25.00	True	No	-	\$25.00
1/2/2024		Inv. No. 55424 check	Taylor McCarthy	1	\$7,950.00	True	No	-	\$7,950.00
9/29/2023		One Legal CC Sale 05359145	Taylor McCarthy	1	\$13.33	True	No	-	\$13.33
9/27/2023		One legal Credit Sale 05352780	Mary Mars	1	\$461.16	True	No	-	\$461.16
7/10/2023		Medina G. PAGA Letter	Yasmin Ruiz	3	\$8.53	True	No	-	\$25.59
7/10/2023		State of California- Department Industrial Relations Inv. ORD-000240289	Yasmin Ruiz	1	\$75.00	True	No	-	\$75.00
6/7/2023		Medina G. Welcome Letter	Yasmin Ruiz	1	\$7.01	True	No	-	\$7.01
6/6/2023		Medina G. Record Request Letter	Yasmin Ruiz	2	\$8.10	True	No	-	\$16.20
Total - Write offs									
Total - Unbillable									
Total - Billable									
Total									\$8,763.49