

Jonathan M. Genish (State Bar No. 259031)
jgenish@blackstonepc.com
Miriam L. Schimmel (State Bar No. 185089)
mschimmel@blackstonepc.com
Joana Fang (State Bar No. 309623)
jfang@blackstonepc.com
Alexandra Rose (State Bar No. 329407)
arose@blackstonepc.com
BLACKSTONE LAW, APC
8383 Wilshire Boulevard, Suite 745
Beverly Hills, California 90211
Tel: (310) 622-4278 / Fax: (855) 786-6356

Attorneys for Plaintiff Rigoberto Tecaliz

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

RIGOBERTO TECALIZ, individually and on
behalf of others similarly situated and on
behalf of other aggrieved employees,

Plaintiff,

vs.

NATIONAL RESTAURANT INC. DBA
BLACK BEAR DINER, a California
corporation; and DOES 1 through 25,
inclusive,

Defendants.

Case No. 37-2023-00046906-CU-OE-CTL

Honorable Matthew C. Braner
Department C-60

**DECLARATION OF JONATHAN M. GENISH
IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: April 18, 2025
Time: 9:00 a.m.
Dept.: C-60

Complaint Filed: October 27, 2023
FAC Filed: November 27, 2023
Trial Date: Not Set

DECLARATION OF JONATHAN M. GENISH

I, Jonathan M. Genish, declare and state as follows:

1. I am an attorney duly licensed to practice law in all Courts of the State of California. I am a shareholder and the founder of Blackstone Law, APC (“Class Counsel”), attorneys of record for Plaintiff Rigoberto Tecaliz (“Plaintiff”). I have personal knowledge of the facts contained herein, and, if called to testify, I could and would competently do so.

Background and Experience

2. I am fully familiar with the legal and factual issues in this case and have specific experience litigating complex wage and hour actions as class actions, including employment cases as set forth above.

3. I received my law degree from Benjamin N. Cardozo School of Law and was admitted to the California State Bar in 2008. During law school, I clerked at the litigation firm Oved & Oved, LLP and was published several times in various small publications. Upon graduation, I was hired by Freedman & Taitelman, LLP as an associate and remained employed there from September 2008 through August 2015. During my tenure, I managed hundreds (perhaps thousands) of complex litigation cases, ranging from employment, corporate, entertainment, and general business litigation matters, though my primary area of expertise was employment, both single plaintiff and representative actions.

4. On the vast majority of those cases, I was the only or primary attorney managing the case and thus obtained extensive experience. In that capacity, I conducted wage and hour and wrongful termination labor and employment intakes; was the primary contact for all clients; took and defended hundreds (if not thousands) of depositions; propounded and responded to all discovery; prepared and opposed all motions and pleadings, including dispositive and certification motions; strategized on all cases; attended all hearings; attended all mediations; coordinated with class action administrators; prepared and worked with experts; first and second chaired multiple trials and arbitrations; and engaged in all other intricate facets of litigation. During that time, I represented a wide range of clients from sole proprietorships to Fortune 500 companies in state, federal, complex, and appellate courts. Many of the cases I managed were highly publicized, with articles written about them in the Los

1 Angeles Times, Deadline, The Hollywood Reporter, Business Insider, Law360, and others. Super
2 Lawyers has regularly honored me as a Southern California Rising Star since 2012.

3 5. In February 2018, I started the law firm of Blackstone Law, APC, representing
4 plaintiffs in individual and representative employment litigation. The firm has grown exponentially
5 over the past seven-plus years, now maintaining over twenty highly pedigreed attorneys working on
6 almost exclusively labor and employment class actions, California Labor Code Private Attorney
7 General Act of 2004 (“PAGA”) cases, and individual matters, with roughly 15% of the firm focused
8 on other complex general litigation matters.

9 6. I have considerable experience in handling class and representative action lawsuits
10 throughout my career and have been approved as counsel in a number of cases, including, most
11 recently:

- 12 • *Anthony DiRico v. Seek Capital, LLC*, Los Angeles County Superior Court, Case No.
13 BC698076, a wage and hour class action brought on behalf of a class of hourly-paid
14 employees working in the State of California.
- 15 • *Consumer Protection Group, LLC v. A. D. Sutton & Sons, Inc.*, Los Angeles County
16 Superior Court, Case No. 19STCV29979, a private attorney general action for penalties
17 pursuant to Health and Safety Code section 25249.7.
- 18 • *Consumer Protection Group, LLC v. Shaxon Industries, Inc., et al.*, Los Angeles County
19 Superior Court, Case No. 19STCV30306, a private attorney general action for penalties
20 pursuant to Health and Safety Code section 25249.7.
- 21 • *Consumer Protection Group, LLC v. Home Depot U.S.A., Inc.*, Los Angeles County
22 Superior Court, Case No. 19STCV30445, a private attorney general action for penalties
23 pursuant to Health and Safety Code section 25249.7.
- 24 • *Eric Savoy v. Collector’s Universe, Inc., et al.*, Central District Court of California, Case
25 No.: 8:20-cv-00632-DOC-ADS (recently remanded to Orange County Superior Court,
26 Case No. 30-2020-01130892-CU-RI-CXC), a consumer fraud class action.

27 7. Blackstone Law, APC has been counsel of record on several class action and PAGA
28 actions that have since been resolved, the most recent of which are attached hereto as **Exhibit 1**.

8. I am currently the managing partner overseeing roughly 500 labor and employment cases, approximately 80% of which include a wage and hour component. The majority of those cases are wage-and-hour putative class actions or representative PAGA actions seeking relief on behalf of thousands of California employees.

Procedural History of the Action

9. On September 18, 2023, Plaintiff provided written notice to the California Labor and Workforce Development Agency (“LWDA”) by online submission and to Defendant National Restaurant Inc. dba Black Bear Diner (“Defendant”) by U.S. Certified Mail, pursuant to California Labor Code Section 2699.3, of the specified provisions of the California Labor Code alleged to have been violated by Defendant (“PAGA Letter”). A true and correct copy of the PAGA Letter is attached hereto as **Exhibit 2**.

10. On October 27, 2023, Plaintiff filed a Class Action Complaint for Damages in the action entitled *Rigoberto Tecaliz v. National Restaurant Inc. dba Black Bear Diner*, San Diego County Superior Court Case No. 37-2023-00046906-CU-OE-CTL (“Action”), thereby commencing a putative class action against Defendant.

11. On November 27, 2023, Plaintiff filed a First Amended Class Action Complaint for Damages and Enforcement Action Under the Private Attorneys General Act, California Labor Code §§ 2698 Et Seq. (“Operative Complaint”) in the Action. The Operative Complaint alleges ten (10) causes of action for violations of the California Labor Code for failure to pay minimum wages, failure to pay overtime wages, failure to provide compliant meal periods and premium payments in lieu thereof, failure to provide compliant rest periods and premiums payments in lieu thereof, failure to timely pay wages during employment, failure to provide accurate wage statements, failure to timely pay wages upon termination, and failure to reimburse necessary business expenses, for violations of California Business & Professions Code Section 17200, *et seq.* based on the aforementioned California Labor Code violations, and for civil penalties under PAGA based on the aforementioned California Labor Code violations.

///

///

12. On September 26, 2024, Plaintiff and Defendant (together, the “Parties”) participated in a formal mediation conducted by Hon. Carl J. West (Ret.) (“Mediator”), a neutral and respected mediator with extensive experience in complex wage and hour matters, and with the assistance of the Mediator’s evaluations, the Parties were able to reach an agreement to resolve this dispute on a class and representative basis. The Parties then worked diligently to negotiate and memorialize the terms in a long form settlement agreement.

13. On March 25, the Parties executed the Joint Stipulation of Class Action and PAGA Settlement (“Settlement” or “Settlement Agreement”). A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit 3**.

Summary of the Terms of the Settlement Agreement

14. For purposes of settlement only, the Parties have agreed that the Class shall be defined as “all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the Class Period (or if any such person is incompetent, deceased, or unavailable due to military service, the person’s legal representative or successor in interest evidenced by reasonable verification)” (“Class Members” or “Class”). The Class Period is defined as the period from October 27, 2019 through November 25, 2024. Based on information provided by Defendant, it is estimated that there are a total of three hundred and forty (340) Class Members.

15. The Parties have agreed to settle the class and PAGA claims at issue in the Operative Complaint for a non-reversionary Gross Settlement Amount of Six Hundred Thirty-Nine Thousand Dollars and Zero Cents (\$639,000.00), exclusive of employer-side payroll taxes. The Gross Settlement Amount is a common fund and therefore includes all requested costs, fees, and other allocations. The Gross Settlement Amount includes: (1) Class Counsel’s fees in the amount of one-third (1/3) of the Gross Settlement Amount (i.e., \$213,000.00 if the Gross Settlement Amount is \$639,000.00); (2) Class Counsel’s actual litigation costs and expenses, not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00); (3) Settlement Administration Costs, not to exceed Eight Thousand Five Hundred Dollars and Zero Cents (\$8,500.00); (4) Enhancement Payment in the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00); and (5) PAGA Amount in the amount

of Thirty Thousand Dollars and Zero Cents (\$30,000.00). After the above-estimated amounts are deducted from the Gross Settlement Amount, the Net Settlement Amount that will be available for Class Members is currently estimated to be Three Hundred Fifty-Seven Thousand Five Hundred Dollars and Zero Cents (\$357,500.00). Additionally, 25% of the PAGA Amount (“PAGA Employee Amount”), which is \$7,500.00 out of \$30,000.00, will be fully distributed to all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the PAGA Period (or if any such person is incompetent, deceased, or unavailable due to military service, the person’s legal representative or successor in interest evidenced by reasonable verification) (“PAGA Employees”). The “PAGA Period” is defined as the period from September 18, 2022 through November 25, 2024.

16. The Net Settlement Amount will be distributed and paid to all Class Members who do not submit a timely and valid Request for Exclusion (“Settlement Class Members”) on a *pro rata* basis based on the number of weeks each Class Member worked for Defendant as an hourly-paid and/or non-exempt employee in California during the Class Period (“Workweeks”). The *pro rata* share of the Net Settlement Amount that a Class Member may be eligible to receive under the Class Settlement (“Individual Settlement Share”) will be calculated by the Settlement Administrator, in accordance with the Settlement Agreement.

17. The PAGA Employee Amount will be distributed and paid to all PAGA Employees on a *pro rata* basis based on the number of pay periods each PAGA Employee worked for Defendant as an hourly-paid and/or non-exempt employee in California during the PAGA Period (“PAGA Pay Periods”). The *pro rata* share of the PAGA Employee Amount that a PAGA Employee may be eligible to receive under the PAGA Settlement (“Individual PAGA Payment”) will be calculated by the Settlement Administrator, in accordance with the Settlement Agreement.

18. Each Individual Settlement Share will be allocated as twenty percent (20%) wages and eighty percent (80%) penalties, interest, and non-wage damages. The portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated to penalties, interest, and non-wage damages will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator. The Settlement Administrator will withhold the employee’s share of taxes and withholdings with respect

1 to the wages portion of the Individual Settlement Shares, and issue checks to Settlement Class
2 Members for their net payment of their Individual Settlement Share (“Individual Settlement
3 Payment”). The Employer Taxes will be paid separately and in addition to the Gross Settlement
4 Amount. Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties
5 and will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator.

6 19. The Settlement Agreement is a non-reversionary and non-claims made settlement. The
7 Net Settlement Amount will be fully distributed to Settlement Class Members and the PAGA Amount
8 will be fully distributed to the LWDA and PAGA Employees, in accordance with the Settlement
9 Agreement. No money will revert to Defendant.

10 20. Each Individual Settlement Payment and Individual PAGA Payment check will be
11 valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are
12 issued, and thereafter, shall be canceled. Any funds associated with such canceled checks shall be
13 distributed by the Settlement Administrator to the State of California’s Unclaimed Property Division
14 in the name of the Settlement Class Member and/or PAGA Employee.

15 **The Settlement is Reasonable**

16 ***Informed Arms-Length Negotiations***

17 21. The Parties’ settlement negotiations were at all times made at arm’s-length and were
18 adversarial. The Settlement was reached following a full day of mediation with a highly respected
19 mediator with substantial experience mediating wage and hour cases, and Plaintiff engaged in
20 additional negotiations in order to finalize the long-form agreement presently before the Court.

21 22. The Parties engaged in extensive informal discovery prior to reaching a settlement.
22 Prior to mediation, Defendant produced all of the putative class members’ time and pay data. This
23 allowed Class Counsel to conduct an informed assessment and analysis of the strengths and
24 weaknesses of the claims and the potential class-wide damages.

25 23. Based on the information exchanged, the Parties extensively briefed issues regarding
26 class certification and liability and provided their analyses to the Mediator who helped the Parties
27 debate the strengths and weakness of their respective positions.

28 ///

Estimate of Potential Value of Claims

24. My office analyzed all available data and estimated Defendant's maximum potential exposure to be approximately \$2,246,825, assuming the litigation was successful at trial on all claims at issue and every employee had a violation for each claim on every shift worked. This maximum potential analysis was then reduced based on the challenges facing the likelihood of obtaining class certification, prevailing at trial, and other attendant risks. This estimate is based off an estimated maximum liability for all claims at issue and the total aggregate workweeks during the relevant time period, less interest, and based on the analysis of the data which was extrapolated out for all class members across the entire putative class period, which included: \$267,417 for meal period violations; \$740,744 for rest period violations at a 100% violation rate; \$190,832 for unpaid off-the-clock work for 1 hour per workweek of off-the-clock work; \$3,872 for unpaid overtime wages at the required regular rate of pay; \$96,540 for unreimbursed business expenses; \$675,670 for waiting time penalties; and \$271,750 for wage statement penalties. Plaintiff further estimated that Defendant faced an additional exposure of \$299,700 in potential, non-stacked (i.e., one penalty, per employee, per pay period during the PAGA statutory period) PAGA penalties. Together with the PAGA penalties, Defendant's maximum potential exposure totaled \$2,546,525 in damages.

Specific Risks Considered

25. Although the investigation and information discovered supports Plaintiff's contentions, Defendant raised potential defenses and other circumstances that impacted the risk of proceeding on a class-wide basis. Consideration of these risks factored into the negotiations and the decision to enter the Settlement.

26. My colleagues and I were aware of Defendant's defenses and arguments and have also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation, including those involved in class and/or representative adjudication. Plaintiff further recognizes the burdens of proof necessary to establish liability for the claims asserted in the Action, Defendant's defenses, and the difficulties in establishing entitlement to monetary recovery. Plaintiff has also considered the Parties' settlement discussions, as well as the evaluations of the Mediator, who is experienced and well-regarded in complex labor and employment matters.

1 27. Defendant denied and continues to deny any liability and wrongdoing of any kind
2 associated with the claims alleged in the Action, and further denies that class certification is
3 appropriate for any purpose other than the Settlement. Defendant believes that it would ultimately
4 prevail in the Action. Defendant proffered defenses to both certification and to the merits of Plaintiff's
5 claims. Defendant contended that Plaintiff's claims are not suitable for class certification because
6 individual issues would predominate should this case go to trial. As with all class actions, these
7 complex cases raise difficult management and proof issues and, accordingly, there is a significant risk
8 that the Court may deny class certification.

9 28. For example, Plaintiff's meal period claims, which were based on Defendant's alleged
10 failure to provide lawful meal periods, have been increasingly difficult to certify in recent years.
11 Plaintiff's theory of liability for meal period violations was based on allegations that Defendant had
12 failed to implement its policies and that its practices failed to allow Class Members to take meal breaks
13 in the manner required under California law. Defendant contended that its policies and practices at all
14 times during the Class Period were lawful. Indeed, Plaintiff's analysis revealed only a 40% violation
15 rate for purported meal period violations. Defendant further argued that the rate of purported meal
16 period violations reflected in the data would require individualized inquiry and that such inquiry would
17 prohibit a class from being certified. We also had to consider the risk that the Court would find validity
18 in the individualized proof defense to certification of Plaintiff's meal period claim.

19 29. Additionally, a large portion of Defendant's overall liability lies in Plaintiff's rest
20 period allegations. As with the meal period allegations, Defendant contended that it had a lawful rest
21 period practices and policies, provided compliant rest breaks, and relieved Class Members of all duties
22 as required under California law. Additionally, this claim was even more uncertain given the
23 difficulties associated with proving the alleged rest period violations, as Defendant was not required
24 to record these breaks. Given the lack of records demonstrating rest period violations, there were
25 legitimate concerns Plaintiff would not be able to certify these claims or prove substantial damages
26 with requisite certainty, which made the estimated value of this claim subject to much challenge.

27 ///

28 ///

1 30. Plaintiff also faced challenges certifying and proving liability for his minimum wage
2 and overtime claims. These claims were largely based on Defendant's unrecorded, off-the-clock work
3 performed by the Class Members both before and after their shifts and during purported meal periods.
4 However, the individualized nature of why this work was performed and the individualized nature of
5 damages presented substantial concerns regarding the manageability of the case and the risk the Court
6 could find these issues prevented certification, and the estimated damages for this claim were based
7 on an assumption that all Class Members worked off the clock for at least one hour per week.
8 Additionally, Plaintiff argued that Defendant failed to apply the proper weighted average method in
9 its calculation of the regular rate for overtime payments when employees worked at two or more
10 different rates in a workweek, resulting in an underpayment of employees' overtime. However,
11 Defendant argued that it calculated the regular rate properly for overtime. Ultimately, the regular rate
12 claim was considered negligible by the Mediator.

13 31. Plaintiff also contended that Defendant failed to reimburse Plaintiff and the other Class
14 Members for necessary business-related expenses, such as the purchase of uniform shirts with the
15 company's logo for work related purposes. Defendant contended that it provided all uniform shirts
16 for the employees. Defendant further contended that it had a policy and practice of reimbursing
17 employees for necessary business-related expenses. Defendant also contended that, with respect to
18 the alleged expenses for which Plaintiff and the other Class Members never requested reimbursement
19 from Defendant, it did not know and had no reason to know that alleged business-related expenses had
20 been incurred. Defendant further contended that the reason for why a Class Member undertook certain
21 expenses, while not others, and failed to receive reimbursement for certain expenses while not others,
22 would raise individual issues that could not be certified.

23 32. There are also substantial risks associated with Plaintiff's waiting time penalties and
24 wage statement claims. First, these claims were derivative of Plaintiff's claims for unpaid meal period
25 premiums, unpaid rest period premiums, unpaid minimum wages, and unpaid overtime wages, and if
26 certification was denied on those underlying claims, these derivative claims for penalties would also
27 likely fail. Further, even if Plaintiff prevailed on his underlying claims, he would still be required to
28 demonstrate that Defendant's violations of California Labor Code section 203 were *willful* violations.

1 Wage statement claims have also seen varying treatment at the appellate level because such claims
2 have an element of discretion attached to them rather than a pure calculation of damages after liability
3 is proven. Accordingly, these derivative claims, which comprised a substantial portion of Defendant's
4 estimated liability, were therefore uncertain.

5 33. My office also recognized that, even if Plaintiff prevailed at class certification, proving
6 the amount of wages due to each Class Member would be an expensive, time-consuming, and
7 extremely uncertain proposition. In order to prove liability and damages, my office will need to
8 request and analyze thousands of pages of documents, obtain the Class Members' contact information,
9 contact them, and obtain declarations at great expense. Obtaining the cooperation of current
10 employees would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a
11 current employer. On the other hand, Defendant would likely be able to obtain the cooperation of
12 their employees. Moreover, even if Plaintiff prevailed at class certification and trial, possible appeals
13 would substantially delay any recovery by the Class.

14 34. Therefore, taking into account how each of the above risks potentially effected
15 Plaintiff's ability to first obtain class certification, and then prove the underlying violations, plus the
16 cost and delay in recovering the alleged potential damages, Class Counsel discounted Defendant's
17 estimated liability based on the challenges facing his ability to succeed on class certification by 50%
18 to \$1,273,263. The merits-based risk factors further reduced Defendant's estimated liability by an
19 additional 40%. This resulted in an adjusted estimated liability of \$763,958. In light thereof, the
20 settlement amount of \$639,000 is a significant settlement.

21 35. My office also separately contemplated the risks of proceeding with the PAGA claim
22 and potential liability Defendant could face from this claim as part of the global resolution. Existing
23 case law makes PAGA claims subject to the same defenses and risks as Plaintiff's underlying wage
24 claims. We also anticipated that even if successful on the merits at trial, the imposition of cumulative
25 civil penalties based on the alleged wage and hour violations could be considered unjust, arbitrary and
26 oppressive, or confiscatory, and that Defendant would argue that it made a good faith attempt to
27 comply with its legal obligations warranting a reduction in penalties. Class Counsel also anticipated
28 Defendant would argue that it made a good faith attempt to comply with its legal obligations and that

1 the violations per pay period were low, warranting an additional reduction in civil penalties. Finally,
2 we were also mindful of the fact that PAGA is fundamentally not intended to be compensatory in
3 nature but is instead intended to facilitate enforcement of California's labor laws by financing state
4 activities and educating and deterring non-compliance.

5 36. Therefore, after considering this multitude of factors, we concluded that it was in the
6 best interest of the State of California and the PAGA Employees to enter into the Settlement, and to
7 allocate Thirty Thousand Dollars and Zero Cents (\$30,000.00) of the Gross Settlement Amount
8 towards the PAGA claim, which represents approximately 4.69% of the Gross Settlement Amount.
9 This percentage of the settlement is well-within the range of wage and hour settlements regularly
10 approved in both state and federal court for cases that include both a class and PAGA action.
11 Typically, such hybrid cases allocate only 1% of the gross settlement value to resolve PAGA claims,
12 and, indeed, settlements allocations as little as 0.22% of the gross settlement amount have been
13 approved as reasonable by courts. Moreover, the overall relief obtained by the Settlement is
14 significant, not only from a monetary perspective, but also because it fulfills the public policy
15 objectives of PAGA—to promote enforcement of California's labor laws, provide funds to the state,
16 and deter future non-compliance by the employer.

17 37. I therefore submit that the Settlement is fair, reasonable, and adequate. The Settlement
18 is in the best interest of the Class Members, the PAGA Employees, and the State of California and is
19 within the accepted range of recoveries for this type of litigation given the inherent risk of litigation,
20 the risk of obtaining and maintaining class certification, and the costs of further litigation.

21 ***Enhancement Payment***

22 38. As part of the Settlement Agreement, Plaintiff is requesting a reasonable Enhancement
23 Payment of Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff Rigoberto Tecaliz. This
24 Enhancement Payment is eminently reasonable given the time and effort Plaintiff spent on this case,
25 and the benefit to the Class Members as a result of Plaintiff's actions. Notice of the requested
26 Enhancement Payment is disclosed to the Class Members in the Class Notice.

27 ///

28 ///

1 *Attorneys' Fees and Costs*

2 39. The attorneys' fees incurred by Class Counsel are in line with the common fund
3 requested. The Settlement Agreement provides for Class Counsel to apply for attorneys' fees in an
4 amount of up to one-third (1/3) of the Gross Settlement Amount (i.e., \$213,000.00 if the Gross
5 Settlement Amount is \$639,000.00) and actual litigation costs and expenses in an amount not to exceed
6 Twenty Thousand Dollars and Zero Cents (\$20,000.00), which will be paid out of the Gross Settlement
7 Amount, subject to approval by the Court. Class Counsel has borne all of the risks and costs of
8 litigation and will not receive any compensation until recovery is obtained.

9 40. The effectiveness of Blackstone Law, APC's prosecution of this matter has translated
10 into tangible monetary benefits as follows: (1) Class Members, the State of California, and PAGA
11 Employees will obtain monetary recovery over a relatively short period of time, as opposed to waiting
12 additional years for the same, or potentially worse, result; (2) a guaranteed result that compares
13 favorably with other similar class action settlements of this type, given the strengths and weaknesses
14 of the case; and (3) significant savings in Class Counsel's fees and/or costs that would have only
15 increased significantly had the case progress through certification, trial, and/or upon appeal.

16 41. Class Counsel has litigated this matter for over a year and was actively preparing this
17 matter for class certification and trial. The Motion for Final Approval will elaborate on the nature of
18 the legal services provided, the time incurred in performing those services, and Class Counsel's hourly
19 rates. The Motion for Final Approval will also elaborate on the reimbursement costs sought by Class
20 Counsel. Notice of the requested Attorneys' Fees and Costs is disclosed to the Class Members in the
21 Class Notice.

22 *Notice to the Class*

23 42. The Parties have agreed to retain ILYM Group, Inc. ("ILYM" or "Settlement
24 Administrator") to handle the notice and settlement administration process. The Parties respectfully
25 request that the Court appoint ILYM to handle these procedures and to serve as the Settlement
26 Administrator. Defendant will provide ILYM with the Class List and ILYM will calculate each Class
27 Member's estimated Individual Settlement Share and each PAGA Employee's estimated Individual
28 PAGA Payment. ILYM will also receive and process Requests for Exclusion, Notices of Objection,

1 and Disputes; will provide necessary reports and declarations; will calculate, subtract, and transmit
2 necessary taxes and withholdings with respect to the wages portion of the Individual Settlement
3 Shares; will prepare and submit informational and other tax filings and documents; will issue and
4 transmit all payments provided for by the Settlement, including, but not limited to, mailing Individual
5 Settlement Payment checks to the Settlement Class Members and Individual PAGA Payment checks
6 to the PAGA Employees; and perform any other usual and customary duties for administering a class
7 action settlement.

8 43. I am not aware of an alternative method of providing notice to the Class which would
9 result in a higher likelihood of actual notice. The original source of the mailing addresses is from each
10 Class Member, who provided the information to Defendant. As a fail-safe to this highly reliable
11 method, skip tracing will be performed, if necessary.

12 ***Notice of Settlement to the LWDA***

13 44. In accordance with California Labor Code section 2699(1)(2), on March 26, 2025, a
14 copy of the proposed Settlement was submitted to the LWDA via online submission through the
15 LWDA's website. A true and correct copy of the email from the LWDA confirming receipt is attached
16 hereto as **Exhibit 4**.

17 I declare under penalty of perjury under the laws of the State of California that the foregoing
18 is true and correct.

19 Executed on March 26, 2025, at Beverly Hills, California

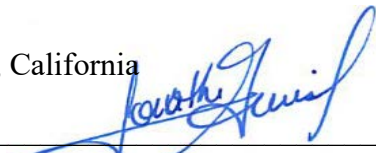
20 
21 _____
Jonathan M. Genish

EXHIBIT 1

- *Jose Luis Galicia v. Virco, Inc., et al.*, Los Angeles County Superior Court, Case No. 23STCV29425, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Rene Umana v. Columbus Technologies*, Los Angeles County Superior Court, Case No. 22STCV16432, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Fernando Solis v. Tuff Shed, Inc.*, Los Angeles County Superior Court, Case No. 24VECV00368, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Vanessa Cortes v. Giti Tire (USA) LTD*, San Bernardino County Superior Court, Case No. CIVSB2332578, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Travis Sanford v. Santa Cruz Seaside Company*, Santa Cruz County Superior Court, Case No. 23CV01762, approved as counsel in final settlement of wage and hour class and PAGA action.
- *Corina Martinez v. Stagnaro Bros. Seafood, Inc.*, Santa Cruz County Superior Court, Case No. 24CV00082, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Alejandra Jimenez v. ClearFreight, Inc.*, Los Angeles County Superior Court, Case No. 23STCV28938, approved as counsel, in association with other counsel, in settlement of representative wage and hour action pursuant to PAGA.
- *Jazzmin Cortez v. Millard Mall Services, Inc.*, Riverside County Superior Court, Case No. CVRI2104010, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Michael Bravo v. Michels Pacific Energy, Inc.*, Santa Clara County Superior Court, Case No. 22CV403427, approved as class counsel in final settlement of wage and hour class and PAGA action.

- *Daniel Rodriguez v. Republique, LLC*, Los Angeles County Superior Court, Case No. 23STCV14521, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Theresa Bendorf, et al. v. Sea World LLC, et al.*, San Diego County Superior Court, Case No. 37-2021-00034922-CU-OE-CTL, approved as class counsel, in association with other counsel, in final settlement of wage and hour class and PAGA action.
- *Victor De La Cruz v. Northwest Pipe Company*, San Bernardino County Superior Court, Case No. CIVSB2211140, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Bobby Birdi v. Lucid USA, Inc.*, Alameda County Superior Court, Case No. 21CV003541, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Jose Trujillo, et al. v. Producers Dairy Foods, Inc.*, Sacramento County Superior Court, Case No. 34-2022-00313753, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *David Williams v. Rancho Nicasio, LLC*, Marin County Superior Court, Case No. CIV2203067, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Alexander Jackson v. Lifecare Assurance Company*, Los Angeles County Superior Court, Case No. 23STCV26579, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Alexis Cardoza v. BHFC Operating LLC*, Los Angeles County Superior Court, Case No. 21STCV34040, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Maria Ayala, et al. v. SDH Services West, LLC*, Kern County Superior Court, Case No. BCV-21-101933, approved as class counsel in final settlement of wage and hour

class action.

- *Alfredo Sanchez v. Greenworld, Inc.*, Riverside County Superior Court, Case No. CVRI2105756, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Oscar Bryant v. Midwest Construction Services, Inc. dba Trillium*, San Bernardino County Superior Court, Case No. CIVSB2121529, approved as class counsel in final settlement of wage and hour class action.
- *Matthew Savattieri v. AMI Expeditionary Healthcare, LLC, et al.*, Los Angeles County Superior Court, Case No. 21STCV33372, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Lexy Barajas, et al. v. H. W. Hunter, Inc.*, Los Angeles County Superior Court, Case No. 22STCV01892, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Alejandro Valdez v. C.H.I. Automart, Inc.*, Los Angeles County Superior Court, Case No. 21STCV40168, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Sheizan Bawa v. Meathead Movers, Inc.*, Orange County Superior Court, Case No. 30-2021-01211895-CU-OE-CXC, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Tanisha Lopez, et al. v. Restorix Health, Inc.*, Los Angeles County Superior Court, Case No. 21STCV33067, approved as class counsel, in association with other counsel, in final settlement of wage and hour class and PAGA action.
- *Perla Soto, et al. v. Nippon Express U.S.A., Inc.*, Los Angeles County Superior Court, Case No. 21STCV24902, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Angel Garcia, et al. v. J&B Investments, Inc., et al.*, San Bernardino County Superior Court, Case No. CIVSB2208601, approved as class counsel, in association with

other counsel, in final settlement of wage and hour class and PAGA action.

- *Sindy Aviles, et al. v. Freeway Insurance Services America, LLC*, Los Angeles County Superior Court, Case No. 21STCV34864, approved as counsel, in association with other counsel, in settlement of representative wage and hour action pursuant to PAGA.
- *Alexander Gnaedig, et al. v. Favorite Healthcare Staffing, Inc.*, Los Angeles County Superior Court, Case No. 21STCV20904, approved as class counsel, in association with other counsel, in final settlement of wage and hour class and PAGA action.
- *Richard Evans v. My Paint Stop, LLC, et al.*, Contra Costa County Superior Court, Case No. MSC21-01812, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Jose Luis Parada George v. Main Electric Supply Company, LLC, et al.*, Orange County Superior Court, Case No. 30-2021-01220136-CU-OE-CXC, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Samia Salazar Yunis v. Sharif Jewelers*, Sacramento County Superior Court, Case No. 34-2020-00290080, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Daniel Analco v. Felix Chevrolet, LP, et al.*, Los Angeles County Superior Court, Case No. 21STCV36654, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Sasha Aiono v. Benefit Cosmetics*, Los Angeles County Superior Court, Case No. 21STCV33719, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.

EXHIBIT 2

September 18, 2023

PAGA Claim Notice Via Online Electronic Submission

California Labor & Workforce Development Agency

800 Capitol Mall, Suite 5000 (MIC-55)

Sacramento, CA 95814

<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

RE: *Rigoberto Tecaliz v. National Restaurant Inc. dba Black Bear Diner*

Dear Representative:

This office represents Rigoberto Tecaliz (“Claimant”) with respect to their claims under the California Labor Code against National Restaurant Inc. dba Black Bear Diner (including any and all affiliates, subsidiaries, parents, directors, and officers thereof) (collectively referred to herein as “Employers”). This letter is being sent simultaneously to Employers by certified mail.

Employers employed Claimant from approximately May 2021 to July 2023 as a non-exempt, hourly-paid employee. During his employment with Employers, Claimant was employed as a Server’s Assisant/Busboy at the Black Bear Diner located at 1025 Fletcher Parkway, El Cajon, CA 92020.

Claimant intends to bring a representative action seeking penalties for violations of the California Labor Code which are recoverable under the Labor Code Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”). Claimant is seeking penalties on behalf of themselves and in a representative capacity on behalf of the State of California and all current and former hourly-paid and/or non-exempt employees who worked for Employers in the State of California during the relevant statutory period (“Aggrieved Employees”). This letter is being sent in compliance with California Labor Code section 2699.3 and shall serve as Claimant’s notice of the provisions of the California Labor Code alleged to have been violated, including the facts and theories in support thereof.

As detailed below, Employers violated several of California’s wage and hour laws during Claimant’s employment, including but not limited to California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, and the Industrial Welfare Commission Wage Orders (“IWC Wage Orders”). The claims made on behalf of Claimant and Aggrieved Employees are based upon the following facts and theories:

1. FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION

Employers have engaged in numerous unlawful practices which resulted in the failure to pay Claimant and other Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation.

California Labor Code sections 1194, 1197, and 1197.1 and IWC Wage Orders require employers to pay at least the legal minimum wage to their employees. California Labor Code sections 510 and 1198 and IWC Wage Orders further require employers to pay no less than one and one-half times the regular rate of pay of the employee for hours worked in excess of eight (8) hours in one workday, for hours worked in excess of forty (40) hours in one workweek, and for the first eight (8) hours worked on the seventh day of work in any one workweek, and to pay no less than twice the regular rate of pay of the employee for hours worked in excess of twelve (12) hours in one workday and for any work in excess of eight (8) hours on any seventh day of a workweek.

Throughout the relevant time period, Employers regularly required Claimant and other Aggrieved Employees to perform work off-the-clock. This off-the-clock work included, amongst other things, requiring Claimant and other Aggrieved Employees to come in early and prior to clocking in to prepare the workspace, clean tables and floors, and obtain task assignment; complete tasks for the morning shift, such as taking out the trash, after clocking out; and work through meal and rest breaks due to being understaffed. Employers failed to compensate Claimant and other Aggrieved Employees for any of this off-the-clock work, in violation of California law. In addition, Employers utilized time rounding practices that resulted in the systematic underpayment of wages (including minimum wages, straight time wages and overtime wages) to Claimant and Aggrieved Employees.

Employers also failed to accurately record the actual time worked by Claimant and Aggrieved Employees. Moreover, the uncompensated work described herein was often performed when Claimant and other Aggrieved Employees had already worked eight (8) hours in a day and/or forty (40) hours in week resulting in a failure to pay overtime compensation. Finally, Employers failed to pay overtime to Claimant and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration, including non-discretionary commissions, non-discretionary bonuses, and non-discretionary performance pay.

As a result of the foregoing practices, Employers have failed to pay Claimant and other Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Accordingly, Employers violated IWC Wage Orders and California Labor Code sections 204, 510, 1194, 1197, 1197.1 and 1198.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to paragraph of the applicable IWC Wage Orders; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; and

attorneys' fees and costs.

2. FAILURE TO PROVIDE MEAL PERIODS AND PAY MEAL PERIOD PREMIUMS

California law requires employers to provide employees with an opportunity to take an uninterrupted meal period of no less than thirty (30) minutes before the end of the fifth hour of work when an employee works more than five (5) hours in a day. Cal. Lab. Code §§ 226.7, 512(a). A second meal period of no less than thirty (30) minutes must be provided before the end of the tenth hour of work when an employee works more than ten (10) hours in a day. Cal. Lab. Code §§ 226.7, 512(a). When an employer fails to provide a meal or rest period, an hour of pay at the employee's regular rate of compensation is owed to the employee. Cal. Lab. Code § 226.7(c).

During the relevant time period, Employers failed to provide Claimant and other Aggrieved Employees with legally-compliant 30-minute meal periods. Claimant and other Aggrieved Employees were required by Employers to work more than five (5) hours per day, but were not provided with uninterrupted 30-minute meal periods. Further, Claimant and other Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employers regularly required Claimant and other Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal periods after their tenth (10th) hour of work. Meal periods, when provided, were oftentimes interrupted or cut short.

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Claimant and other Aggrieved Employees from taking timely, complete and duty-free meal periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded its own purported meal period policies; (2) Employers' management at various levels failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employers failed to adequately inform and train Claimant and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employers failed to adequately inform and train Claimant and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employers failed to ensure that there was adequate staffing to allow Claimant and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employers required Claimant and other Aggrieved Employees to respond to work-related requests at all times, including during meal periods; and (7) Employers' policy and culture prevented Claimant and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on maximizing profits over employees' right to receive timely, uninterrupted, and duty-free meal periods.

Claimant and other Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the meal periods which were not provided to them in compliance with California law. Accordingly, Employers violated the applicable IWC Wage Orders and California

Labor Code sections 226.7, 512(a) and 1198.

Claimants and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to penalties paragraph of the applicable IWC Wage Orders; penalties pursuant to California Labor Code sections 558 and 1199; and attorneys' fees and costs.

3. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS AND PAY REST PERIOD PREMIUMS

California law requires employers to authorize and permit employees to take an uninterrupted rest period of no less than ten (10) minutes rest for every four (4) hours, or major fraction thereof, worked. Cal. Lab. Code § 226.7. When an employer fails to authorize and permit a rest period, an hour of pay at the employee's regular rate of compensation is owed to the employee. Cal. Lab. Code § 226.7(c).

Employers failed to authorize and permit Claimant and other Aggrieved Employees to take legally-compliant 10-minute rest periods. Employers required Claimant and other Aggrieved Employees to work through rest periods. Claimant and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Claimant and other Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day. In the rare event that a rest period was taken, it was frequently interrupted or cut short. Moreover, Claimant and other Aggrieved Employees were not completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016).

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Claimant and other Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employers' management at various levels failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employers failed to adequately inform and train Claimant and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employers failed to adequately inform and train Claimant and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employers failed to ensure that there was adequate staffing to allow Claimant and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employers required Claimant and other Aggrieved Employees to respond to work-related requests at all times, including during rest periods; and (7) Employers' policy and culture prevented Claimant and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing job requirements over employees' right to receive rest periods.

Claimant and other Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the rest periods which were not provided to them in compliance with California law. Accordingly, Employers violated the applicable IWC Wage Orders and California Labor Code sections 226.7, and 1198.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to penalties paragraph of the applicable IWC Wage Orders; Labor Code sections 558 and 1199 penalties; and attorneys' fees and costs.

4. FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, Employers have failed to timely pay all wages earned because Claimant and other Aggrieved Employees were not paid all the wages they were owed including, *inter alia*, overtime compensation, straight time wages, minimum wages, and meal and rest period premiums. Accordingly, Employers violated California Labor Code section 204(a).

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

5. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

California Labor Code section 226(a) requires an employer semimonthly or at the time of each payment of wages to furnish wage statements to its employees setting forth, *inter alia*, (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, and (8) the name and address of the legal entity that is the employer.

As a result of the practices described herein, the wage statements provided to Claimant and other Aggrieved Employees failed to include the actual hours worked (including time spent working off-the-clock), the actual gross wages earned (including wages owed for time spent working off the

clock and meal and rest period premiums), and the correct rates of pay. The wage statements provided to Claimant and other Aggrieved Employees also failed to include the name of the legal entity that employed Claimant and the Aggrieved Employees. Accordingly, Employers violated California Labor Code section 226(a).

Claimant and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code section 226.3; and attorneys' fees and costs.

6. FAILURE TO MAINTAIN ACCURATE RECORDS

California Labor Code section 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, Employers have failed to maintain accurate records relating to Claimant and other Aggrieved Employees' work periods, meal periods, total daily hours worked, and total hours worked per payroll period. Accordingly, Employers violated the applicable IWC Wage Orders and California Labor Code sections 1198.5 and 1174(d).

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to penalties paragraph of the applicable IWC Wage Orders; California Labor Code section 1174.5 penalties; and attorneys' fees and costs.

7. FAILURE TO REIMBURSE NECESSARY EXPENDITURES

California Labor Code sections 2800 and 2802 require an employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. The IWC Wage Orders require employers to provide employees with the tools or equipment necessary for the performance of their job. During the relevant time period, Claimant and Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employers. These costs include but are not limited to the purchase of shirts with the company's logo for work-related purposes.

Accordingly, Employers violated the IWC Orders and California Labor Code sections 2800 and 2802. Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to penalties paragraph of the applicable IWC Wage Orders; and attorneys' fees and costs.

8. FAILURE TO TIMELY PAY ALL WAGES UPON TERMINATION OF EMPLOYMENT

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

During the relevant time period, upon the termination of employment (including but not limited to when they were temporarily laid off, laid off, discharged, and/or resigned), Aggrieved Employees were not paid all wages due to them within twenty-four (24) hours or even within seventy-two (72) hours for those who resigned. Specifically, as a result of Employers' practices of requiring Aggrieved Employees to work off-the-clock without compensation, failing to pay proper overtime compensation, unlawful rounding practices, failure to properly calculate regular rates, and failure to accurately record all hours actually worked, Employers failed to pay Aggrieved Employees for all straight time wage, minimum wages and overtime compensation owed to them upon termination of their employment. Employers also failed to pay Aggrieved Employees for meal period premiums and rest period premiums they were owed, amongst other wages. Accordingly, Employers violated California Labor Code sections 201 and 202.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to California Labor Code sections 203 and 1199; and attorneys' fees and costs.

9. EMPLOYER'S OTHER VIOLATIONS OF THE CALIFORNIA LABOR CODE

Finally, pursuant to *Huff v. Securitas Security Services USA, Inc.* (2018) 25 Cal.App.5th 745 ("*Huff*"), as an Aggrieved Employee, Claimant has standing, and intends, on behalf of LWDA, to pursue civil penalties against Employer for any and all other Labor Code violations committed by Employer. In *Huff*, the California Court of Appeals held that an employee alleging a single violation of the Labor Code under PAGA may also bring PAGA claims against Employer for all other alleged Labor Code violations, even those suffered by other employees of the same employer. According to the *Huff* decision, Claimant, as an "aggrieved" employee affected by at least one Labor Code violation may, and hereby does, pursue penalties on behalf of LWDA for unrelated Labor Code violations by Employer.

Employers are in direct violation of numerous California wage and hour laws including but not limited to said sections stated above. We hereby provide notice under the California Labor Code Private Attorneys General Act of 2004, California Labor Code Sections 2698, et seq., and specifically ask for an investigation, or if the agency does not intend to investigate the alleged violations, a letter confirming the same so that we may allege a cause of action under PAGA against

Employers for the violations discussed in this letter.

This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3. By law, an employee alleging a violation of one of the above referenced sections must notify his or her employer and the Labor and Workforce Development Agency (LWDA) before he or she can invoke the provisions of Sections 2699, et seq., by seeking redress in court. Cal. Lab. Code § 2699.3(a)(1). The LWDA must then notify the employer and the employee within 60 calendar days regarding whether it intends to investigate the alleged violation. Cal. Lab. Code § 2699.3(a)(2)(B). If the LWDA advises it will not investigate, or if no notice is provided within 65 calendar days, the employee may file a lawsuit invoking the provisions under Labor Code § 2699. Cal. Lab. Code § 2699.3(a)(2)(A). It is Claimant's intention to file a civil complaint and to bring the appropriate claims under California Labor Code § 2699 on behalf of themselves, the State of California and all Aggrieved Employees should your office not address Employers' alleged violations within this time.

If you have any questions or require additional information, please do not hesitate to contact my office. Thank you for your attention to this matter.

BLACKSTONE LAW

Miriam Schimmel

Miriam Schimmel, Esq.

cc: By U.S. Certified Mail, Return Receipt Requested

National Restaurant Inc. dba Black Bear Diner
43575 Mission Bl, #707
Fremont, CA 94539

National Restaurant Inc. dba Black Bear Diner
ATTN: Karan Gogri, Agent for Service of Proces
11035 Dutton Dr.
La Mesa, CA 91941

EXHIBIT 3

1 **JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT**

2 This Joint Stipulation of Class Action and PAGA Settlement (“Settlement,” “Agreement,” or
3 “Settlement Agreement”) is made and entered into by and between Plaintiff Rigoberto Tecaliz
4 (“Plaintiff” or “Class Representative”), individually, and on behalf of all others similarly situated and
5 on behalf of the State of California with respect to aggrieved employees, and Defendant National
6 Restaurant Inc. dba Black Bear Diner (“Defendant”) (together, Plaintiff and Defendant are referred to
7 as “Parties” and individually as “Party”).

8 This Settlement Agreement shall be binding on Plaintiff, Settlement Class Members (as
9 defined herein), the State of California as to the employment of PAGA Employees (as defined herein),
10 and Defendant, subject to the terms and conditions hereof and the approval of the Court.

11 **RECITALS**

12 1. On September 18, 2023, Plaintiff provided written notice to the Labor and Workforce
13 Development Agency (“LWDA”) by online submission, pursuant to California Labor Code Section
14 2699.3, of the specific provisions of the California Labor Code alleged to have been violated by
15 Defendant (“PAGA Letter”). On October 27, 2023, Plaintiff filed a Class Action Complaint for
16 Damages in the action entitled *Rigoberto Tecaliz v. National Restaurant Inc. dba Black Bear Diner*,
17 San Diego County Superior Court Case No. 37-2023-00046906-CU-OE-CTL (“Action”), thereby
18 commencing a putative class action against Defendant. On November 27, 2023, Plaintiff filed a First
19 Amended Class Action Complaint for Damages and Enforcement Action Under the Private Attorneys
20 General Act, California Labor Code §§ 2698 Et Seq. (“Operative Complaint”), adding a cause of action
21 under the Private Attorneys General Act of 2004 pursuant to California Labor Code Section 2698, *et*
22 *seq.* (“PAGA”). The Operative Complaint alleges ten (10) causes of action for violations of the
23 California Labor Code for failure to pay minimum wages, failure to pay overtime wages, failure to
24 provide compliant meal periods and premium payments in lieu thereof, failure to provide compliant
25 rest periods and premium payments in lieu thereof, failure to timely pay wages during employment,
26 failure to provide compliant wage statements, failure to timely pay wages upon termination, and failure
27 to reimburse necessary business expenses, for violations of California Business & Professions Code
28 Section 17200, *et seq.* based on the aforementioned California Labor Code violations, and for civil

1 penalties under PAGA based on the aforementioned California Labor Code violations.

2 2. Defendant denies all materials allegations set forth in the Action and has asserted
3 numerous affirmative defenses. Notwithstanding, in the interest of avoiding further litigation,
4 Defendant desires to fully and finally settle the Action and release claims, including the Released Class
5 Claims (as defined herein) and Released PAGA Claims (as defined herein).

6 3. Class Counsel diligently investigated the class and PAGA claims against Defendant,
7 including any and all applicable defenses and the applicable law. The investigation included, *inter*
8 *alia*, the exchange of information, data, and documents, and review of corporate policies and practices.
9 The Parties have engaged in sufficient informal discovery and investigation to assess the relative
10 merits of the claims and contentions of the Parties.

11 4. On September 26, 2024, the Parties participated in mediation with Hon. Carl J. West
12 (Ret.) (the “Mediator”), a respected mediator of complex wage and hour actions, and with the
13 assistance of the Mediator’s evaluations, the Parties reached the settlement that is memorialized herein.
14 The Parties’ settlement discussions were conducted at arms’ length, and the Settlement is the result of
15 an informed and detailed analysis of Defendant’s potential liability and exposure in relation to the
16 costs and risks associated with continued litigation. Based on Class Counsel’s investigation and
17 evaluation, Class Counsel believes that the settlement with Defendant for the consideration and on the
18 terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest
19 of the Class Members, State of California, and PAGA Employees in light of all known facts and
20 circumstances, including the risk of significant delay and uncertainty associated with litigation and
21 various defenses asserted by Defendant.

22 5. The Parties expressly acknowledge that this Settlement Agreement is entered into
23 solely for the purpose of compromising significantly disputed claims and that nothing herein is an
24 admission of liability or wrongdoing by Defendant. If for any reason this Settlement Agreement is
25 not approved, it will be of no force or effect, and the Parties shall be returned to their original respective
26 positions.

27 ///

28 ///

DEFINITIONS

6. The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective.

a. “Attorneys’ Fees and Costs” means attorneys’ fees approved by the Court for Class Counsel’s litigation and resolution of the Action and all actual costs and expenses incurred and to be incurred by Class Counsel in connection with the Action, as set forth in Paragraph 9.

b. “Class” or “Class Member(s)” means all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the Class Period (or if any such person is incompetent, deceased, or unavailable due to military service, the person’s legal representative or successor in interest evidenced by reasonable verification).

c. “Class Counsel” means Jonathan M. Genish, Miriam L. Schimmel, Joana Fang, and Alexandra Rose of Blackstone Law, APC, who will seek to be appointed counsel for the Class.

d. “Class List” means a complete list of all Class Members that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator. The Class List will be formatted in a readable Microsoft Office Excel spreadsheet containing the following information for each Class Member: (1) full name; (2) last known mailing address; (3) Social Security number; (4) dates worked for Defendant during the Class Period; and (8) such other information as is necessary for the Settlement Administrator to calculate Workweeks and PAGA Pay Periods.

e. “Class Notice” means the Notice of Class Action Settlement, substantially in the form attached hereto as “**Exhibit A**.”

f. “Class Period” means the period from October 27, 2019 through November 25, 2024.

g. “Class Settlement” means the settlement and resolution of all Released Class Claims.

h. “Court” means the Superior Court of the State of California for the County of San Diego.

i. “Defendant’s Counsel” means Maurice J. Fitzgerald and Carla Vasques dos Santos-Moore of O’Hagan Meyer LLP.

j. “Dispute” means a letter submitted by a Class Member disputing the number of Workweeks and/or PAGA Pay Periods to which they have been credited, which must: (a) contain the case name and number of the Action; (b) contain the Class Member’s full name, signature, address, telephone number, and the last four (4) digits of the Class Member’s Social Security number; (c) clearly state that the Class Member disputes the number of Workweeks and/or PAGA Pay Periods credited to the Class Member and what the Class Member contends is the correct number; and (d) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.

k. “Effective Date” means the first business day following the last of the following occurrences: (i) if no Settlement Class Member both objects and files either a timely motion to intervene and/or a timely motion to vacate the Final Approval Order and Judgment, then twenty-one (21) calendar days following the date the Court enters the Final Approval Order and Judgment; (ii) if a Settlement Class Member both objects and either files a timely motion to intervene or a timely motion to vacate the Final Approval Order and Judgment, then sixty-one (61) calendar days following the date the Court enters the Final Approval Order and Judgment, assuming no appeal is filed; or (iii) if a Settlement Class Member both objects and files a timely motion to intervene or files a motion to vacate the Final Approval Order and Judgment and also files a timely appeal, then the date of final resolution of that appeal (including any requests for rehearing and/or petitions for certiorari), resulting in final and complete judicial approval of the Settlement in its entirety, with no further challenge to the Settlement being possible.

l. “Employer Taxes” means the employer’s share of payroll taxes payable to any and all government agencies in connection with the wages portion of Individual Settlement Shares, which shall be paid by Defendant in addition to the Gross Settlement Amount.

m. “Enhancement Payment” means the amount to be paid to Plaintiff, in recognition of his effort and work in prosecuting the Action on behalf of Class Members and PAGA Employees, and general release of claims, as set forth in Paragraph 10.

n. “Final Approval” means the determination by the Court that the Settlement is fair, reasonable, and adequate, and entry of the Final Approval Order and Judgment based thereon.

o. “Final Approval Hearing” means the hearing at which the Court will consider and determine whether the Settlement should be granted Final Approval.

p. “Final Approval Order and Judgment” means the order granting final approval of the Settlement and entering judgment thereon, in a form and content mutually agreed to by the Parties, and subject to approval by the Court.

q. “Gross Settlement Amount” means the amount of Six Hundred and Thirty-Nine Thousand Dollars (\$639,000.00) to be paid by Defendant in full satisfaction of the Action, Released Class Claims, and Released PAGA Claims, which includes all Attorneys’ Fees and Costs, Enhancement Payment, PAGA Amount, Settlement Administration Costs, and Net Settlement Amount to be paid to the Settlement Class Members. Defendant shall pay the Employer Taxes separately and in addition to the Gross Settlement Amount. The Gross Settlement Amount is non-reversionary; no portion of the Gross Settlement Payment will return to Defendant. The Gross Settlement Amount is subject to increase, as provided in Paragraph 13.

r. “Individual PAGA Payment” means the *pro rata* share of the PAGA Employee Amount that a PAGA Employee may be eligible to receive under the PAGA Settlement, to be calculated in accordance with Paragraph 15.

s. “Individual Settlement Payment” means the net payment of each Settlement Class Member’s Individual Settlement Share, after reduction for the employee’s share of taxes and withholdings with respect to the wages portion of the Individual Settlement Share, as provided in Paragraph 16.

t. “Individual Settlement Share” means the *pro rata* share of the Net Settlement Amount that a Class Member may be eligible to receive under the Class Settlement, to be calculated in accordance with Paragraph 14.

u. “LWDA Payment” means the amount of Twenty-Two Thousand and Five Hundred Dollars (\$22,500.00), i.e., 75% of the PAGA Amount, that the Parties have agreed to pay to the LWDA under the PAGA Settlement, as set forth in Paragraph 11.

///

///

1 v. “Net Settlement Amount” means the portion of the Gross Settlement Amount
2 that is available for distribution to Settlement Class Members, which is the Gross Settlement Amount
3 less the Court-approved Attorneys’ Fees and Costs, Enhancement Payment, PAGA Amount, and
4 Settlement Administration Costs.

5 w. “Notice of Objection” means a Settlement Class Member’s written objection to
6 the Class Settlement, which must: (a) contain the case name and number of the Action; (b) contain the
7 objector’s full name, signature, address, telephone number, and the last four (4) digits of the objector’s
8 Social Security number; (c) contain a written statement of all grounds for the objection accompanied
9 by any legal support for such objection; (d) contain copies of any papers, briefs, or other documents
10 upon which the objection is based; and (e) be returned by mail to the Settlement Administrator at the
11 specified address, postmarked on or before the Response Deadline.

12 x. “PAGA Amount” means the allocation of Thirty Thousand Dollars
13 (\$30,000.00) from the Gross Settlement Amount for the PAGA Settlement. Seventy-five percent
14 (75%) of the PAGA Amount, or \$22,500.00, will be paid to the LWDA (i.e., the LWDA Payment)
15 and the remaining twenty-five percent (25%), or \$7,500.00, will be distributed to the PAGA
16 Employees (i.e., the PAGA Employee Amount).

17 y. “PAGA Employee(s)” means all current and former hourly-paid and/or non-
18 exempt employees who worked for Defendant in the State of California at any time during the PAGA
19 Period (or if any such person is incompetent, deceased, or unavailable due to military service, the
20 person’s legal representative or successor in interest evidenced by reasonable verification).

21 z. “PAGA Employee Amount” means the amount of Seven Thousand and Five
22 Hundred Dollars (\$7,500.00), i.e., 25% of the PAGA Amount, to be distributed to PAGA Employees
23 on a *pro rata* basis based on their PAGA Pay Periods.

24 aa. “PAGA Period” means the period from September 18, 2022 through November
25 25, 2024.

26 bb. “PAGA Settlement” means the settlement and resolution of all Released PAGA
27 Claims.

28 ///

1 cc. "PAGA Pay Periods means the number of pay periods each PAGA Employee
2 worked for Defendant as an hourly-paid and/or non-exempt employee in California during the PAGA
3 Period. PAGA Pay Periods will be calculated by the Settlement Administrator by counting each pay
4 period during the PAGA Period during which the PAGA Employee worked for Defendant as an
5 hourly-paid and/or non-exempt employee in California and worked at least one shift.

6 dd. "Preliminary Approval" means the date on which the Court enters the
7 Preliminary Approval Order.

8 ee. "Preliminary Approval Order" means the order granting preliminary approval
9 of the Settlement, in a form and content mutually agreed to by the Parties, and subject to approval by
10 the Court.

11 ff. "Released Class Claims" means any and all claims and causes of action which
12 were alleged in the Operative Complaint or which reasonably could have been alleged based on the
13 factual allegations and legal theories in the Operative Complaint, arising during the Class Period,
14 which specifically includes claims for Defendant's alleged failure to pay overtime and minimum
15 wages, provide compliant meal and rest periods and associated premium payments, timely pay wages
16 during employment and upon termination, provide accurate wage statements, and reimburse necessary
17 business-related expenses in violation of California Labor Code §§ 201, 202, 203, 204, 210, 226(a),
18 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802, the applicable Industrial Welfare
19 Commission Wage Order, and California Business and Professions Code sections 17200, *et seq.* By
20 virtue of this release, any claims under the FLSA that are predicated on the Released Class Claims are
21 subject to res judicata pursuant to applicable law including but not limited to *Rangel v. PLS Check*
22 *Cashers of California Inc.*

23 gg. "Released PAGA Claims" means any and all claims and causes of action for
24 civil penalties under the California Private Attorneys General Act of 2004 that were alleged in the
25 Operative Complaint or reasonably could have been alleged based on the facts and legal theories
26 contained in the Operative Complaint and PAGA Letter, arising during the PAGA Period, for civil
27 penalties under the Private Attorneys General Act of 2004, California Labor Code sections 2698 *et*
28 *seq.*, which specifically includes claims for Defendant's alleged failure to pay overtime and minimum

wages, provide compliant meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide complaint wage statements, maintain complete and accurate payroll records, and reimburse necessary business-related expenses in violation of California Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare Commission Wage Order.

- In light of the binding nature of a PAGA judgment on non-party employees pursuant to *Arias v. Sup. Ct. (Angelo Dairy)* (2009) 46 Cal.4th 969 and *Cardenas v. McLane Foodservice, Inc.* (2011) 796 F.Supp.2d 1246, individuals otherwise meeting the definition of a Settlement Class Member who exclude themselves from the Class Settlement shall nonetheless receive a payment for the amount of each such individual's estimated share of the PAGA Employees' portion of the PAGA Amount and shall have released the Released PAGA Claims.

hh. "Released Parties" means Defendant, and its past and present direct and/or indirect officers, directors, members, managers, exempt employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.

ii. "Request for Exclusion" means a letter submitted by a Class Member indicating a request to be excluded from the Class Settlement, which must: (a) contain the case name and number of the Action; (b) contain the Class Member's full name, signature, address, telephone number, and last four (4) digits of the Class Member's Social Security number; (c) clearly state that the Class Member does not wish to be included in the Class Settlement; and (d) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.

jj. "Response Deadline" means the deadline by which Class Members must submit a Request for Exclusion, Notice of Objection, and/or Dispute, which shall be the date that is forty-five (45) calendar days from the initial mailing of the Class Notice by the Settlement Administrator to Class Members, unless the 45th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next day on which the United States Postal service is open. The Response Deadline may also be extended by express agreement between Class Counsel and Defendant's Counsel. Under no circumstances, however, will the Settlement Administrator have the

1 authority to extend the Response Deadline. In the event that a Class Notice is re-mailed to a Class
2 Member, the Response Deadline for that Class Member shall be extended fifteen (15) calendar days
3 from the original Response Deadline.

4 kk. "Settlement Administrator" means ILYM Group, Inc., or any other third-party
5 class action settlement administrator agreed to by the Parties and approved by the Court for purposes
6 of administering the Settlement. The Parties and their counsel each represent that they do not have
7 any financial interest in the Settlement Administrator or otherwise have a relationship with the
8 Settlement Administrator that could create a conflict of interest.

9 ll. "Settlement Administration Costs" means the costs payable from the Gross
10 Settlement Amount to the Settlement Administrator for administering the Settlement, as set forth in
11 Paragraph 12.

12 mm. "Settlement Class" or "Settlement Class Member(s)" means all Class Members
13 who do not submit a timely and valid Request for Exclusion.

14 nn. "Workweeks" means the number of weeks each Class Member worked for
15 Defendant as an hourly-paid and/or non-exempt employee in California during the Class Period.
16 Workweeks will be calculated by the Settlement Administrator by counting each week during the
17 Class Period during which the Class Member worked for Defendant as an hourly-paid and/or non-
18 exempt employee in California and worked at least one shift.

19 **CLASS CERTIFICATION**

20 7. For the purposes of this Settlement only, the Parties stipulate to the certification of the
21 Class.

22 8. The Parties agree that certification for the purpose of settlement is not an admission
23 that certification is proper under Section 382 of the California Code of Civil Procedure. Should, for
24 whatever reason, the Court not grant Final Approval, the Parties' stipulation to class certification as
25 part of the Settlement shall become null and void ab initio and shall have no bearing on, and shall not
26 be admissible in connection with, the issue of whether or not certification would be inappropriate in a
27 non-settlement context.

28 ///

1 **TERMS OF THE AGREEMENT**

2 NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements set
3 forth herein, the Parties agree, subject to the Court's approval, as follows:

4 9. **Attorneys' Fees and Costs.** Defendant agrees not to oppose or impede any application
5 or motion by Class Counsel for attorneys' fees in the amount up to one-third (1/3) of the Gross
6 Settlement Amount (i.e., \$213,000.00 if the Gross Settlement Amount is \$639,000.00) and
7 reimbursement of actual costs and expenses associated with Class Counsel's litigation and settlement
8 of the Action, in an amount not to exceed Twenty Thousand Dollars (\$20,000.00), both of which will
9 be paid from the Gross Settlement Amount. These amounts will cover any and all work performed
10 and any and all costs incurred by Class Counsel in connection with the litigation of the Action,
11 including without limitation all work performed and costs incurred to date, and all work to be
12 performed and all costs to be incurred in connection with obtaining the Court's approval of this
13 Settlement Agreement, including any objections raised and any appeals necessitated by those
14 objections. Class Counsel shall be solely and legally responsible for correctly characterizing this
15 compensation for tax purposes and for paying any taxes on the amounts received. The Settlement
16 Administrator shall issue an IRS Form 1099 to Class Counsel for the Attorneys' Fees and Costs. Any
17 portion of the requested Attorneys' Fees and Costs that is not awarded by the Court to Class Counsel
18 shall be reallocated to the Net Settlement Amount for the benefit of the Settlement Class Members.

19 10. **Enhancement Payment.** Defendant agrees not to oppose or impede any application or
20 motion by Plaintiff for an Enhancement Payment in the amount up to Ten Thousand Dollars
21 (\$10,000.00). The Enhancement Payment, which will be paid from the Gross Settlement Amount,
22 subject to Court approval, will be in addition to his Individual Settlement Payment as a Settlement
23 Class Member and Individual PAGA Payment as a PAGA Employee. Plaintiff shall be solely and
24 legally responsible for correctly characterizing this compensation for tax purposes and for paying any
25 taxes on the amounts received. The Settlement Administrator shall issue an IRS Form 1099 to Plaintiff
26 for the Enhancement Payment. Any portion of the requested Enhancement Payment that is not
27 awarded by the Court to Plaintiff shall be reallocated to the Net Settlement Amount for the benefit of
28 the Settlement Class Members.

1 11. PAGA Amount. Subject to approval by the Court, the Parties agree that the amount of
2 Thirty Thousand Dollars (\$30,000.00) shall be allocated from the Gross Settlement Amount toward
3 penalties under the Private Attorneys General Act, California Labor Code Section 2698, *et seq.* (i.e.,
4 the PAGA Amount), of which seventy-five percent (75%), or \$22,500.00, will be paid to the LWDA
5 (i.e., the LWDA Payment) and twenty-five percent (25%), or \$7,500.00, will be distributed to PAGA
6 Employees (i.e., the PAGA Employee Amount) on a *pro rata* basis, based on the total number of
7 PAGA Pay Periods worked by each PAGA Employee during the PAGA Period (i.e., the Individual
8 PAGA Payments).

9 12. Settlement Administration Costs. The Settlement Administrator will be paid for the
10 reasonable costs of administration of the Settlement and distribution of payments under the Settlement,
11 which are currently not to exceed Eight Thousand and Five Hundred Dollars (\$8,500.00). These costs,
12 which will be paid from the Gross Settlement Amount, subject to Court approval, will include, *inter*
13 *alia*, translating the Class Notice to Spanish, printing, distributing, and tracking Class Notices and
14 other documents for the Settlement, calculating and distributing payments due under the Settlement,
15 issuing of 1099 and W-2 IRS Forms and all required tax reporting, filings, withholdings, and
16 remittances, providing necessary reports and declarations, and other duties and responsibilities set
17 forth herein to process the Settlement, and as requested by the Parties. To the extent the actual
18 Settlement Administrator's costs are greater than the estimated amount stated herein, such excess
19 amount will be deducted from the Gross Settlement Amount, subject to approval by the Court. Any
20 portion of the estimated, designated, and/or awarded Settlement Administration Costs which are not
21 in fact required to fulfill payment to the Settlement Administrator to undertake the required settlement
22 administration duties shall be reallocated to the Net Settlement Amount for the benefit of the
23 Settlement Class Members.

24 13. Escalator Clause. Defendant has represented that the Class Members worked 12,786
25 workweeks during the period October 27, 2019 to September 26, 2024. If it is determined by the
26 Settlement Administrator that the total number of Workweeks worked by the Class Members during
27 the Class Period actually exceeds 12,786 by more than 10% (i.e., if the Workweeks exceed 14,065),
28 then the Gross Settlement Amount will be increased on a *pro rata* basis equal to the percentage

1 increase in the number of Workweeks worked by the Class Members above 10% (i.e., if the number
2 of Workweeks increased by 11%, then the Gross Settlement Amount will increase by 1%).

3 14. Individual Settlement Share Calculations. Individual Settlement Shares will be
4 calculated and apportioned from the Net Settlement Amount based on the Class Members' number of
5 Workweeks, as follows:

6 a. After Preliminary Approval, the Settlement Administrator will divide the Net
7 Settlement Amount by the Workweeks of all Class Members to yield the "Estimated Workweek
8 Value," and multiply each Class Member's individual Workweeks by the Estimated Workweek Value
9 to yield each Class Member's estimated Individual Settlement Share that each Class Member may be
10 entitled to receive under the Class Settlement.

11 b. After Final Approval, the Settlement Administrator will divide the final Net
12 Settlement Amount by the Workweeks of all Settlement Class Members to yield the "Final Workweek
13 Value," and multiply each Settlement Class Member's individual Workweeks by the Final Workweek
14 Value to each Settlement Class Member's final Individual Settlement Share.

15 15. Individual PAGA Payment Calculations. Individual PAGA Payments will be
16 calculated and apportioned from the PAGA Employee Amount based on the PAGA Employees'
17 number of PAGA Pay Periods, as follows: The Settlement Administrator will divide the PAGA
18 Employee Amount, i.e., 25% of the PAGA Amount, by the PAGA Pay Periods of all PAGA
19 Employees to yield the "PAGA Pay Period Value," and multiply each PAGA Employee's individual
20 PAGA Pay Periods by the PAGA Pay Period Value to yield each PAGA Employee's Individual PAGA
21 Payment.

22 16. Tax Treatment of Individual Settlement Shares and Individual PAGA Payments. Each
23 Individual Settlement Share will be allocated as follows: twenty percent (20%) wages and eighty
24 percent (80%) penalties, interest, and non-wage damages. The portion allocated to wages will be
25 reported on an IRS Form W-2 and the portions allocated to penalties, interest, and non-wage damages
26 will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator. The Settlement
27 Administrator will withhold the employee's share of taxes and withholdings with respect to the wages
28 portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their

Individual Settlement Payments (i.e., payment of their Individual Settlement Share net of these taxes and withholdings). The Employer Taxes will be paid separately and in addition to the Gross Settlement Amount. Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator.

17. Administration of Taxes by the Settlement Administrator. The Settlement Administrator will be responsible for issuing to Plaintiff, Settlement Class Members, PAGA Employees, and Class Counsel any tax forms (i.e., IRS Forms W-2, IRS Forms 1099, etc.) as may be required by law for all amounts paid pursuant to this Settlement Agreement. The Settlement Administrator will also be responsible for calculating the Employer Taxes and forwarding all payroll taxes and other legally required withholdings to the appropriate government authorities.

18. Tax Liability. Plaintiff, Class Counsel, Defendant, and Defendant's Counsel do not intend anything contained in this Settlement Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Settlement Agreement be relied on as such. Plaintiff, Settlement Class Members, and PAGA Employees are not relying on any statement, representation, or calculation by Defendant, the Settlement Administrator, or Class Counsel in this regard. Plaintiff, Settlement Class Members, and PAGA Employees understand and agree that Plaintiff, Settlement Class Members, and PAGA Employees will be solely responsible for the payment of any taxes and penalties assessed on the payments described in this Settlement Agreement. Plaintiff, Settlement Class Members, and PAGA Employees should consult with their tax advisors concerning the tax consequences of any payment they receive under the Settlement.

19. Circular 230 Disclaimer. EACH PARTY TO THIS SETTLEMENT AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS SETTLEMENT AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS SETTLEMENT AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE

1 MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART
2 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY
3 UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE
4 (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS SETTLEMENT AGREEMENT, (B)
5 HAS NOT ENTERED INTO THIS SETTLEMENT AGREEMENT BASED UPON THE
6 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY
7 OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR
8 DISCLOSURE BY ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY
9 TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
10 ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
11 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISOR'S TAX
12 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING)
13 UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR
14 TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION
15 CONTEMPLATED BY THIS SETTLEMENT AGREEMENT.

16 20. Settlement Awards Do Not Trigger Additional Benefits. All payments made under the
17 Settlement shall be deemed to be paid to the payee solely in the year in which such payments actually
18 are issued to the payee. It is expressly understood and agreed that payments made under this
19 Settlement shall not in any way entitle Plaintiff, Settlement Class Members, or any PAGA Employee
20 to additional compensation or benefits under any new or additional compensation or benefits, or any
21 bonus, contest, or other compensation or benefit plan or agreement in place during the Class Period,
22 nor will it entitle Plaintiff, Settlement Class Members, or any PAGA Employee to any increased
23 retirement, 401K benefits or matching benefits, or deferred compensation benefits (notwithstanding
24 any contrary language or agreement in any benefit or compensation plan document that might have
25 been in effect during the Class Period).

26 21. Duties of the Parties with Respect to Obtaining Preliminary Approval of the Settlement.
27 Upon execution of this Settlement Agreement, Plaintiff will obtain a hearing date from the Court for
28 Plaintiff's motion for preliminary approval of the Settlement, which Plaintiff and Class Counsel will

1 be responsible for drafting, and submit this Settlement Agreement to the Court in support of said
2 motion. Class Counsel will provide Defendant's Counsel a draft of the preliminary approval motion
3 before filing it with the Court. Defendant agrees not to oppose the motion for preliminary approval
4 of the Settlement consistent with this Settlement Agreement. By way of said motion, Plaintiff will
5 apply for the entry of the Preliminary Approval Order seeking the following:

- 6 a. Conditionally certifying the Class for settlement purposes only;
- 7 b. Granting Preliminary Approval of the Settlement;
- 8 c. Preliminarily appointing Plaintiff as the representative of the Class;
- 9 d. Preliminarily appointing Class Counsel as counsel for the Class;
- 10 e. Approving as to form and content, the mutually-agreed upon and proposed
11 Class Notice and directing its mailing by First Class U.S. Mail;
- 12 f. Approving the manner and method for Class Members to request exclusion
13 from or object to the Class Settlement as contained herein and within the Class Notice; and
- 14 g. Scheduling a Final Approval Hearing at which the Court will determine whether
15 Final Approval of the Settlement should be granted.

16 At the hearing on the motion for preliminary approval, the Parties anticipate that they will
17 jointly appear, support the granting of the motion for preliminary approval, and obtain an order
18 granting preliminary approval, granting approval of the Class Notice, and setting a date for the Final
19 Approval Hearing.

20 22. Notice of Settlement to the LWDA. Pursuant to California Labor Code § 2699(1)(2),
21 Class Counsel shall notify the LWDA of the Settlement.

22 23. Delivery of Class List. Within fourteen (14) calendar days of Preliminary Approval,
23 Defendant will provide the Class List to the Settlement Administrator.

24 24. Notice by First-Class U.S. Mail.

25 a. Within seven (7) calendar days after receiving the Class List from Defendant,
26 the Settlement Administrator will perform a search based on the National Change of Address Database
27 or any other similar services available, such as provided by Experian, for information to update and
28 correct for any known or identifiable address changes, and will mail a Class Notice in English and

Spanish (in the form attached as **Exhibit A** to this Settlement Agreement) to all Class Members via First-Class U.S. Mail, using the most current, known mailing addresses identified by the Settlement Administrator.

b. Any Class Notice returned to the Settlement Administrator as undeliverable on or before the Response Deadline will be sent promptly via First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on the Class Notice. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace or other search, using the name, address, and/or Social Security number of the Class Member, and perform a single re-mailing within five (5) calendar days.

c. Compliance with the procedures described herein above shall constitute due and sufficient notice to Class Members of the Settlement and shall satisfy the requirements of due process. Nothing else shall be required of or done by the Parties, Class Counsel, or Defendant's Counsel to provide notice of the Settlement.

25. Disputes Regarding Workweeks and/or PAGA Pay Periods. Class Members/PAGA Employees will have an opportunity to dispute the number of Workweeks and/or PAGA Pay Periods to which they have been credited, as reflected in their respective Class Notices, by submitting a timely and valid Dispute to the Settlement Administrator, by mail, postmarked on or before the Response Deadline. The date of the postmark on the return mailing envelope will be the exclusive means to determine whether a Dispute has been timely submitted. Absent evidence rebutting the accuracy of Defendant's records and data as they pertain to the number of Workweeks and/or PAGA Pay Periods to be credited to a disputing Class Member/PAGA Employee, Defendant's records will be presumed to be correct and determinative of the dispute. However, if a Class Member/PAGA Employee produces information and/or documents to the contrary, the Settlement Administrator will evaluate the materials submitted by the Class Member/PAGA Employee and the Settlement Administrator will resolve and determine the number of eligible Workweeks and/or PAGA Pay Periods that the disputing Class Member should be credited with under the Settlement. The Settlement Administrator's decision on such disputes will be final and non-appealable.

1 26. Requesting Exclusion from the Class Settlement. Any Class Member wishing to be
2 excluded from the Class Settlement must submit a timely and valid Request for Exclusion to the
3 Settlement Administrator, by mail, postmarked on or before the Response Deadline. The date of the
4 postmark on the return mailing envelope will be the exclusive means to determine whether a Request
5 for Exclusion has been timely submitted. The Settlement Administrator will certify jointly to Class
6 Counsel and Defendant's Counsel the number of timely and valid Requests for Exclusion that are
7 submitted, and also identify the individuals who have submitted a timely and valid Request for
8 Exclusion in a declaration that is to be filed with the Court in advance of the Final Approval Hearing.
9 At no time will any of the Parties or their counsel seek to solicit or otherwise encourage Class Members
10 to request exclusion from the Class Settlement. Any Class Member who submits a Request for
11 Exclusion is prohibited from making any objection to the Class Settlement. Any Class Member who
12 submits a timely and valid Request for Exclusion will not be bound by the Class Settlement and will
13 not be issued an Individual Settlement Payment. Any Class Member who does not affirmatively
14 request exclusion from the Class Settlement by submitting a timely and valid Request for Exclusion
15 will be bound by all of the terms of the Class Settlement, including and not limited to those pertaining
16 to the Released Class Claims, as well as any judgment that may be entered by the Court if it grants
17 Final Approval to the Settlement. Notwithstanding the above, all PAGA Employees will be bound to
18 the PAGA Settlement and will be issued their Individual PAGA Payment, irrespective of whether they
19 submit a Request for Exclusion.

20 27. Objecting to the Class Settlement. To object to the Class Settlement, Settlement Class
21 Members must submit a timely and complete Notice of Objection to the Settlement Administrator, by
22 mail, postmarked on or before the Response Deadline. The date of the postmark on the return mailing
23 envelope will be the exclusive means to determine whether a Notice of Objection has been timely
24 submitted. The Settlement Administrator will certify jointly to Class Counsel and Defendant's
25 Counsel the number of Notices of Objection that are submitted (specifying which ones were timely
26 and complete and which were not), and also attach them to a declaration that is to be filed with the
27 Court in advance of the Final Approval Hearing. At no time will any of the Parties or their counsel
28 seek to solicit or otherwise encourage Settlement Class Members to object to the Class Settlement or

1 appeal from the Final Approval Order and Judgment. Settlement Class Members, individually or
2 through counsel, may also present their objection orally at the Final Approval Hearing, regardless of
3 whether they have submitted a Notice of Objection.

4 28. Reports by the Settlement Administrator. The Settlement Administrator shall provide
5 weekly reports to counsel for the Parties providing: (a) the number of undeliverable and re-mailed
6 Class Notices; (ii) the number of Class Members who have submitted Disputes; (iii) the number of
7 Class Members who have submitted Requests for Exclusion; and (iv) the number of Settlement Class
8 Members who have submitted Notices of Objection. Additionally, the Settlement Administrator will
9 provide to counsel for the Parties any updated reports regarding the administration of the Settlement
10 Agreement as needed or requested, and immediately notify the Parties when it receives a request from
11 an individual or any other entity regarding inclusion in the Class and/or Settlement or regarding a
12 Dispute.

13 29. Defendant's Right to Rescind. If more than ten percent (10%) of the Class Members
14 submit timely and valid Requests for Exclusion, Defendant may elect to rescind the Settlement
15 Agreement. Defendant must exercise this right of rescission in writing that is provided to Class
16 Counsel within fourteen (14) calendar days of the Settlement Administrator notifying the Parties of
17 the number of Class Members who have submitted timely and valid Requests for Exclusion following
18 the Response Deadline. If Defendant exercises this option, Defendant shall pay any costs of settlement
19 administration owed to the Settlement Administrator incurred up to that date.

20 30. Certification of Completion. Upon completion of administration of the Settlement, the
21 Settlement Administrator will provide a written declaration under oath to certify such completion to
22 the Court and counsel for all Parties.

23 31. Duties of the Parties with Respect to Obtaining Final Approval of the Settlement. After
24 the Response Deadline, a Final Approval Hearing will be conducted to determine whether Final
25 Approval of the Settlement should be granted, along with the amounts properly payable for: (a)
26 Individual Settlement Shares; (b) Individual PAGA Payments; (c) LWDA Payment; (d) Attorneys'
27 Fees and Costs; (e) Enhancement Payment; and (f) Settlement Administration Costs. The Final
28 Approval Hearing will not be held earlier than thirty (30) calendar days after the Response Deadline.

1 Plaintiff and Class Counsel will be responsible for drafting the motion seeking Final Approval of the
2 Settlement. Class Counsel will provide Defendant's Counsel a draft of the final approval motion
3 before filing it with the Court. By way of said motion, Plaintiff will apply for the entry of the Final
4 Approval Order and Judgment, which will provide for, in substantial part, the following:

5 a. Approval of the Settlement as fair, reasonable, and adequate, and directing
6 consummation of its terms and provisions;

7 b. Certification of the Settlement Class;

8 c. Approval of the application for Attorneys' Fees and Costs to Class Counsel;

9 d. Approval of the application for Enhancement Payment to Plaintiff;

10 e. Directing Defendant to fund all amounts due under the Settlement Agreement
11 and ordered by the Court; and

12 f. Entering judgment in the Action, while maintaining continuing jurisdiction, in
13 conformity with California Rules of Court 3.769 and the Settlement Agreement.

14 If the Court ultimately does not grant Final Approval of the Settlement or grants Final Approval
15 conditioned on any material change (material change includes changes to the amount of the Gross
16 Settlement Amount, the Class Period, and/or PAGA Period) to the Settlement that is not agreed to by
17 one of the Parties, then any Party will have the right to void the Settlement (this Paragraph does not
18 apply if the Court initially denies Final Approval and/or requires the Parties to submit supplemental
19 briefing regarding the motion for final approval). The Parties agree to meet and confer in good faith
20 regarding any condition of Final Approval that requires a material change to the Settlement to come
21 to an agreement prior to voiding the Settlement. If the Settlement is voided in this manner, the Parties
22 will have no further obligations under the Settlement, including any obligation by Defendant to pay
23 any amounts that otherwise would have been payable under this Settlement, except that the voiding
24 Party will pay the Settlement Administrator's reasonable fees and expenses incurred as of the date that
25 the Party exercises the right to void the Settlement under this Paragraph. An award by the Court of a
26 lesser amount than that sought by Plaintiff and Class Counsel for the Enhancement Payment,
27 Attorneys' Fees and Costs, and/or the Settlement Administration Costs, will not constitute a material
28 change to the Settlement within the meaning of this Paragraph.

1 32. Funding of the Gross Settlement Amount. No later than the Effective Date, Defendant
2 will deposit the Gross Settlement Amount into a Qualified Settlement Fund (“QSF”) within the
3 meaning of Treasury Regulation Section 1.468B-1, *et seq.*, to be established by the Settlement
4 Administrator. Defendant shall provide all information necessary for the Settlement Administrator to
5 calculate necessary payroll taxes including its official name, 8-digit state unemployment insurance tax
6 ID number, and other information requested by the Settlement Administrator, no later than the
7 Effective Date. The occurrence of the Effective Date is a prerequisite to any obligation of Defendant
8 to pay any funds into the QSF.

9 33. Distribution of the Gross Settlement Amount. Within five (5) business days of the
10 funding of the Gross Settlement Amount, the Settlement Administrator will issue the Individual
11 Settlement Payments to Settlement Class Members, Individual PAGA Payments to PAGA Employees,
12 LWDA Payment to the LWDA, Enhancement Payment to Plaintiff, Attorneys’ Fees and Costs to Class
13 Counsel, and Settlement Administration Costs to itself. The Settlement Administrator shall also set
14 aside the Employer Taxes and all employee-side payroll taxes, contributions, and withholding, and
15 timely forward these to the appropriate government authorities.

16 34. Settlement Checks. The Settlement Administrator will be responsible for undertaking
17 appropriate deductions, required tax reporting, and issuing the Individual Settlement Payments by way
18 of check to the Settlement Class Members and the Individual PAGA Payments by way of check to the
19 PAGA Employees in accordance with this Settlement Agreement. When issuing payments, the
20 Settlement Administrator may combine the Individual Settlement Payment and Individual PAGA
21 Payment into one check if the intended recipient for both payments is one individual. Settlement Class
22 Members and PAGA Employees are not required to submit a claim to be issued an Individual
23 Settlement Payment and/or Individual PAGA Payment. Each Individual Settlement Payment and
24 Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180)
25 calendar days from the date the checks are issued, and thereafter, shall be canceled. Any funds
26 associated with such canceled checks shall be distributed by the Settlement Administrator to the State
27 of California’s Unclaimed Property Division in the name of the Settlement Class Member and/or
28 PAGA Employee. The Parties agree that this disposition results in no “unpaid residue” under
California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out to

1 Settlement Class Members, whether or not they cash their settlement checks. Therefore, Defendant
2 will not be required to pay any interest on such amounts. The Settlement Administrator shall undertake
3 amended and/or supplemental tax filings and reporting required under applicable local, state, and
4 federal tax laws that are necessitated due to the cancelation of any Individual Settlement Payment
5 and/or Individual PAGA Payment checks. Settlement Class Members whose Individual Settlement
6 Payment checks are canceled shall, nevertheless, be bound by the Class Settlement, and PAGA
7 Employees whose Individual PAGA Payment checks are canceled shall, nevertheless, be bound by the
8 PAGA Settlement.

9 35. Class Settlement Release. Upon the Effective Date and full funding of the Gross
10 Settlement Amount, Plaintiff and all Settlement Class Members will be deemed to have fully, finally,
11 and forever released, settled, compromised, relinquished, and discharged the Released Parties of all
12 Released Class Claims.

13 36. PAGA Settlement Release. Upon the Effective Date and full funding of the Gross
14 Settlement Amount, Plaintiff, the State of California with respect to all PAGA Employees, and all
15 PAGA Employees will be deemed to have fully, finally, and forever released, settled, compromised,
16 relinquished, and discharged the Released Parties of all Released PAGA Claims.

17 37. Plaintiff's General Release. Upon the Effective Date and full funding of the Gross
18 Settlement Amount, Plaintiff, individually and on his own behalf, will be deemed to have fully, finally,
19 and forever released, settled, compromised, relinquished, and discharged the Released Parties from
20 any and all claims of any kind or nature whatsoever, known or unknown, suspected or unsuspected,
21 asserted or unasserted, which Plaintiff, at any time of execution of this Settlement Agreement, had or
22 claimed to have or may have related to Plaintiff's employment with Defendant. It is agreed that this
23 is a general release and is to be broadly construed as a release of all claims related to Plaintiff's
24 employment with Defendant, provided that, notwithstanding the foregoing, this Paragraph expressly
25 does not include a release of any claims that cannot be released hereunder by law, including claims
26 for unemployment insurance, disability, social security, and workers' compensation (except for claims
27 pursuant to Labor Code Sections 132a and 4553). Plaintiff understands and expressly agrees that this
28 Settlement Agreement extends to claims that he has against Defendant, of whatever nature and kind,

known or unknown, suspected or unsuspected, vested or contingent, past, present, or future, arising from or attributable to an incident or event, occurring in whole or in part, on or before the execution of this Settlement Agreement. Any and all rights granted under any state or federal law or regulation limiting the effect of this Settlement Agreement, including the provisions of Section 1542 of the California Civil Code, ARE HEREBY EXPRESSLY WAIVED. Section 1542 of the California Civil Code reads 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.

38. Final Approval Order and Judgment. The Parties shall provide the Settlement Administrator with a copy of the Final Approval Order and Judgment once it is entered by the Court, and the Settlement Administrator shall post the Final Approval Order and Judgment on its website for sixty (60) calendar days. No individualized notice of the Final Approval Order and Judgment to the Class will be required.

39. Continued Jurisdiction. After entry of the judgment pursuant to the Settlement, the Court will have continuing jurisdiction pursuant to Rule 3.769 of the California Rules of Court and Section 664.6 of the California Code of Civil Procedure, for purposes of addressing: (a) the interpretation and enforcement of the terms of the Settlement, (b) settlement administration matters, and (c) such post-judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement.

40. Effects of Termination or Rescission of Settlement. Termination or rescission of the Settlement Agreement shall have the following effects:

a. The Settlement Agreement shall be void and shall have no force or effect, and no Party shall be bound by any of its terms;

///

///

1 b. In the event the Settlement Agreement is terminated, Defendant shall have no
2 obligation to make any payments to any Party, Class Member, or attorney, except that the terminating
3 Party shall pay the Settlement Administrator for services rendered up to the date the Settlement
4 Administrator is notified that the Settlement has been terminated;

5 c. The Preliminary Approval Order, Final Approval Order and Judgment,
6 including any order certifying the Class, shall be vacated;

7 d. The Settlement Agreement and all negotiations, statements, and proceedings
8 relating thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be
9 restored to their respective positions in the Action prior to the execution of the Settlement Agreement;

10 e. Neither this Settlement Agreement, nor any ancillary documents, actions,
11 statements, or filings in furtherance of the Settlement (including all matters associated with the
12 mediation) shall be admissible or offered into evidence in the Action or any other action for any
13 purpose whatsoever; and

14 f. Any documents generated to bring the Settlement into effect, will be null and
15 void, and any order or judgment entered by the Court in furtherance of this Settlement Agreement will
16 likewise be treated as void from the beginning.

17 41. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
18 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
19 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause
20 of action or right herein released and discharged.

21 42. Exhibits Incorporated by Reference. The terms of this Settlement include the terms set
22 forth in any attached exhibits, which are incorporated by this reference as though fully set forth herein.
23 Any exhibits to this Settlement Agreement are an integral part of the Settlement.

24 43. Entire Agreement. This Settlement Agreement and any attached exhibits constitute the
25 entirety of the Parties' agreement relating to the settlement and transaction completed thereby, and all
26 prior or contemporaneous agreements, understandings, representations, and statements, whether oral
27 or written and whether by a Party or such Party's legal counsel, are merged herein. No other prior or
28 contemporaneous written or oral agreements may be deemed binding on the Parties. The Parties
expressly recognize California Civil Code § 1625 and California Code of Civil Procedure § 1856(a),

1 which provide that a written agreement is to be construed according to its terms and may not be varied
2 or contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written
3 representations or terms will modify, vary, or contradict the terms of this Settlement Agreement.

4 44. Interim Stay of Proceedings. The Parties agree to hold in abeyance all proceedings in
5 the Action (including with respect to California Code of Civil Procedure § 583.310), except such
6 proceedings necessary to implement and complete this Settlement Agreement, pending the Final
7 Approval Hearing to be conducted by the Court.

8 45. Amendment or Modification. Prior to the filing of the motion for preliminary approval
9 of the Settlement, the Parties may not amend or modify any provision of this Settlement Agreement
10 except by written agreement signed by counsel for all Parties. After the filing of the motion for
11 preliminary approval of the Settlement, the Parties may not amend or modify any provision of this
12 Settlement Agreement except by written agreement signed by counsel for all the Parties and subject
13 to Court approval. A waiver or amendment of any provision of this Settlement Agreement will not
14 constitute a waiver of any other provision.

15 46. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
16 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
17 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant
18 to this Settlement Agreement to effectuate its terms and to execute any other documents required to
19 effectuate the terms of this Settlement Agreement. The Parties warrant that they understand and have
20 full authority to enter into this Settlement Agreement, and further intend that this Settlement
21 Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible
22 and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation
23 confidentiality provisions that otherwise might apply under state or federal law.

24 47. Signatories. It is agreed that because the members of the Class are so numerous, it is
25 impossible or impractical to have each Settlement Class Member or PAGA Employee execute this
26 Settlement Agreement. The Class Notice will advise all Class Members of the binding nature of the
27 Class Settlement as to the Settlement Class Members and the binding nature of the PAGA Settlement
28 as to the PAGA Employees, and the releases provided for by this Settlement Agreement shall have
the same force and effect as if this Settlement Agreement were executed by each Settlement Class
Member and PAGA Employee.

1 48. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
2 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

3 49. California Law Governs. All terms of this Settlement Agreement and attached exhibits
4 hereto will be governed by and interpreted according to the laws of the State of California.

5 50. Execution and Counterparts. This Settlement Agreement is subject only to the
6 execution of all Parties. However, this Settlement Agreement may be executed in one or more
7 counterparts. All executed counterparts and each of them, including facsimile, electronic, and scanned
8 copies of the signature page, will be deemed to be one and the same instrument.

9 51. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this
10 Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at
11 this Settlement after arm's length negotiations and in the context of adversarial litigation, taking into
12 account all relevant factors, present and potential. The Parties further acknowledge that they are each
13 represented by competent counsel and that they have had an opportunity to consult with their counsel
14 regarding the fairness and reasonableness of this Settlement Agreement. In addition, if necessary to
15 obtain approval of the Settlement, the Mediator may execute a declaration supporting the Settlement
16 and the reasonableness of the Settlement and the Court may, in its discretion, contact the Mediator to
17 discuss the Settlement and whether or not the Settlement is objectively fair and reasonable.

18 52. Invalidity of Any Provision. Before declaring any provision of this Settlement
19 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
20 possible consistent with applicable precedents so as to define all provisions of this Settlement
21 Agreement valid and enforceable.

22 53. Plaintiff's Cooperation. Plaintiff agrees to sign this Settlement Agreement and, by
23 signing this Settlement Agreement, is hereby bound by the terms herein and agrees to fully cooperate
24 to implement the Settlement.

25 54. Non-Admission of Liability. The Parties enter into this Settlement Agreement to
26 resolve the dispute that has arisen between them and to avoid the burden, expense, and risk of
27 continued litigation. In entering into this Settlement Agreement, Defendant does not admit, and
28 specifically denies, it has violated any federal, state, or local law; violated any regulations or guidelines

1 promulgated pursuant to any statute or any other applicable laws, regulations, or legal requirements;
2 breached any contract; violated or breached any duty; engaged in any misrepresentation or deception;
3 or engaged in any other unlawful conduct with respect to its employees. Neither this Settlement
4 Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be
5 construed as an admission or concession by Defendant of any such violations or failures to comply
6 with any applicable law. Except as necessary in a proceeding to enforce the terms of this Settlement
7 Agreement, this Settlement Agreement and its terms and provisions shall not be offered or received
8 as evidence in any action or proceeding to establish any liability or admission on the part of Defendant
9 or to establish the existence of any condition constituting a violation of, or a non-compliance with,
10 federal, state, local or other applicable law.

11 55. Captions. The captions and paragraph numbers in this Settlement Agreement are
12 inserted for the reader's convenience, and in no way define, limit, construe, or describe the scope or
13 intent of the provisions of this Settlement Agreement.

14 56. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
15 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be
16 construed more strictly against one Party than another merely by virtue of the fact that it may have
17 been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length
18 negotiations between the Parties, all Parties have contributed equally to the preparation of this
19 Settlement Agreement.

20 57. Representation By Counsel. The Parties acknowledge that they have been represented
21 by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and
22 that this Settlement Agreement has been executed with the consent and advice of counsel, and
23 reviewed in full.

24 58. All Terms Subject to Final Court Approval. All amounts and procedures described in
25 this Settlement Agreement herein will be subject to final Court approval.

26 59. Notices. All notices, demands, and other communications to be provided concerning
27 the Settlement Agreement shall be in writing and deemed to have been duly given as of the third
28 business day after mailing by First Class U.S. Mail, or the day sent by email or messenger, addressed

as follows:

To Plaintiff and Class Counsel:

Jonathan M. Genish

jgenish@blackstonepc.com

Miriam L. Schimmel

mschimmel@blackstonepc.com

Joana Fang

jfang@blackstonepc.com

Alexandra Rose

arose@blackstonepc.com

BLACKSTONE LAW, APC

8383 Wilshire Boulevard, Suite 745

Beverly Hills, California 90211

Tel: (310) 622-4278 / Fax: (855) 786-6356

To Defendant:

Maurice J. Fitzgerald

mfitzgerald@ohaganmeyer.com

Carla Vasques dos Santos-Moore

cmoores@ohaganmeyer.com

O'HAGAN MEYER LLP

One Embarcadero Center, Suite 2100

San Francisco, California 94111

Tel: (415) 599-6900 / Fax: (415) 528-7190

60. Cooperation and Execution of Necessary Documents. All Parties and their counsel will cooperate with each other in good faith and use their best efforts to implement the Settlement, including and not limited to, executing all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement Agreement, the Parties may seek the assistance of the Mediator and then the Court to resolve such disagreement.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Action and PAGA Settlement between Plaintiff and Defendant:

IT IS SO AGREED.

PLAINTIFF RIGOBERTO TECALIZ

Dated: 03/25/2025



Rigoberto Tecaliz

**DEFENDANT NATIONAL RESTAURANT
INC. DBA BLACK BEAR DINER**

Dated: _____

Full Name: _____

Title: _____

On behalf of National Restaurant Inc. dba
Black Bear Diner

APPROVED AS TO FORM ONLY:

BLACKSTONE LAW, APC

Dated: March 25, 2025



Jonathan M. Genish
Attorney for Plaintiff Rigoberto Tecaliz
and Proposed Class Counsel

O’HAGAN MEYER LLP

Dated: _____

Maurice J. Fitzgerald
Attorney for Defendant National Restaurant Inc.
dba Black Bear Diner

**DEFENDANT NATIONAL RESTAURANT
INC. DBA BLACK BEAR DINER**

Dated: March 25, 2025


Full Name: Karan Gogri

Title: President
On behalf of National Restaurant Inc. dba
Black Bear Diner

APPROVED AS TO FORM ONLY:

BLACKSTONE LAW, APC

Dated: _____

Jonathan M. Genish
Attorney for Plaintiff Rigoberto Tecaliz
and Proposed Class Counsel

O’HAGAN MEYER LLP

Dated: March 25, 2025



Maurice J. Fitzgerald
Attorney for Defendant National Restaurant Inc.
dba Black Bear Diner

EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT

Rigoberto Tecaliz v. National Restaurant Inc. dba Black Bear Diner

Superior Court of California for the County of San Diego, Case No. 37-2023-00046906-CU-OE-CTL

PLEASE READ THIS CLASS NOTICE CAREFULLY.

You have received this Class Notice because Defendant's records indicate that you may be eligible to take part in the class action settlement reached in the above-referenced case.

You do not need to take any action to receive a settlement payment.

This Class Notice is designed to advise you of your rights and options with respect to the settlement, and how you can request to be excluded from the Class Settlement, object to the Class Settlement, and/or dispute the number of Workweeks and/or PAGA Pay Periods that you are credited with, if you so choose.

YOU ARE NOTIFIED THAT: A class and representative action settlement has been reached between Plaintiff Rigoberto Tecaliz ("Plaintiff") and Defendant National Restaurant Inc. dba Black Bear Diner ("Defendant") (Plaintiff and Defendant are collectively referred to as the "Parties") in the case entitled *Rigoberto Tecaliz v. National Restaurant Inc. dba Black Bear Diner*, San Diego County Superior Court, Case No. 37-2023-00046906-CU-OE-CTL ("Action"), which may affect your legal rights. On [date of Preliminary Approval], the Court granted preliminary approval of the settlement and scheduled a hearing on [hearing date] at [hearing time] ("Final Approval Hearing") to determine whether or not the Court should grant final approval of the settlement.

I. IMPORTANT DEFINITIONS

"Class" or "Class Member(s)" means all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the Class Period (or if any such person is incompetent, deceased, or unavailable due to military service, the person's legal representative or successor in interest evidenced by reasonable verification).

"Class Period" means the period from October 27, 2019 through November 25, 2024.

"Class Settlement" means the settlement and resolution of all Released Class Claims.

"PAGA Employee(s)" means all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the PAGA Period (or if any such person is incompetent, deceased, or unavailable due to military service, the person's legal representative or successor in interest evidenced by reasonable verification).

"PAGA Period" means the period from September 18, 2022 through November 25, 2024.

"PAGA Settlement" means the settlement and resolution of all Released PAGA Claims.

II. BACKGROUND OF THE ACTION

On September 18, 2023, Plaintiff provided written notice to the California Labor and Workforce Development Agency ("LWDA") of the specific provisions of the California Labor Code that Plaintiff contends were violated ("PAGA Letter"). On October 27, 2023, Plaintiff commenced a putative class action lawsuit by filing a Class Action Complaint for Damages in the Action. On November 27, 2023, Plaintiff filed a First Amended Class Action Complaint for Damages and Enforcement Action Under the Private Attorneys General Act, California Labor Code §§ 2698 Et Seq. ("Operative Complaint"), adding a cause of action under the Private Attorneys General Act of 2004 pursuant to California Labor Code Section 2698, *et seq.* ("PAGA").

Plaintiff contends that Defendant failed to properly pay minimum and overtime wages, provide compliant meal and rest breaks and associated premiums, timely pay wages during and upon termination of employment and associated waiting-time penalties, provide accurate wage statements, and reimburse business expenses, and thereby engaged in unfair business practices in violation of the California Business and Professions Code section 17200, *et seq.*, and conduct that gives rise to

penalties under PAGA. Plaintiff seeks, among other things, recovery of unpaid wages and meal and rest period premiums, unreimbursed business expenses, restitution, penalties, interest, and attorneys' fees and costs.

Defendant denies all of the allegations in the Action or that it violated any law.

The Parties participated in mediation with a respected class action mediator, and as a result, the Parties reached a settlement. The Parties have since entered into a Joint Stipulation of Class Action and PAGA Settlement ("Settlement" or "Settlement Agreement").

On [Date of Preliminary Approval], the Court entered an order preliminarily approving the Settlement. The Court has appointed ILYM Group, Inc. as the administrator of the Settlement ("Settlement Administrator"), Plaintiff Rigoberto Tecaliz as representative of the Class ("Class Representative"), and the following Plaintiff's attorneys as counsel for the Class ("Class Counsel"):

Jonathan M. Genish
Miriam L. Schimmel
Joana Fang
Alexandra Rose
Blackstone Law, APC
8383 Wilshire Boulevard, Suite 745
Beverly Hills, California 90211
Tel: (310) 622-4278 / Fax: (855) 786-6356

If you are a Class Member, you need not take any action to receive an Individual Settlement Payment, but you have the opportunity to request exclusion from the Class Settlement (in which case you will not receive an Individual Settlement Payment), object to the Class Settlement, and/or dispute the Workweeks and/or PAGA Pay Periods credited to you, if you so choose, as explained more fully in Sections III and IV below. If you are a PAGA Employee, you do not need to take any action to receive an Individual PAGA Payment; you will not have the opportunity to object or seek exclusion from the PAGA Settlement and all PAGA Employees will be bound to the PAGA Settlement if the Court grants final approval of the Settlement.

The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by Defendant that the claims in the Action have merit or that Defendant has any liability to Plaintiff, Class Members, or PAGA Employees. Plaintiff and Defendant, and their respective counsel, have concluded and agree that, in light of the risks and uncertainties to each side of continued litigation, the Settlement is fair, reasonable, and adequate, and is in the best interests of the Class Members, the State of California, and PAGA Employees.

III. SUMMARY OF THE PROPOSED SETTLEMENT

A. Settlement Formula

The total gross settlement amount is Six Hundred and Thirty-Nine Thousand Dollars (\$639,000.00) (the "Gross Settlement Amount"). The portion of the Gross Settlement Amount that is available for payment to Class Members is referred to as the "Net Settlement Amount." The Net Settlement Amount will be the Gross Settlement Amount less the following payments which are subject to approval by the Court: (1) attorneys' fees, in an amount not to exceed 1/3 of the Gross Settlement Amount (i.e., \$213,000.00 if the Gross Settlement Amount is \$639,000.00), and reimbursement of litigation costs and expenses, in an amount not to exceed Twenty Thousand Dollars (\$20,000.00) to Class Counsel; (2) Enhancement Payment in an amount not to exceed Ten Thousand Dollars (\$10,000.00) to Plaintiff for his services in the Action; (3) the amount of Thirty Thousand Dollars (\$30,000.00) allocated toward civil penalties under the Private Attorneys General Act ("PAGA Amount"), of which the LWDA will be paid 75% (\$22,500.00) ("LWDA Payment") and the remaining 25% (\$7,500.00) will be distributed to PAGA Employees ("PAGA Employee Amount"); and (4) Settlement Administration Costs in an amount not to exceed Eight Thousand and Five Hundred Dollars (\$8,500.00) to the Settlement Administrator.

Class Members are eligible to receive payment under the Class Settlement of their *pro rata* share of the Net Settlement Amount ("Individual Settlement Share") based on the number of weeks each Class Member worked for Defendant as an hourly-paid and/or non-exempt employee in California during the Class Period ("Workweeks"). The Settlement

Administrator has divided the Net Settlement Amount by the Workweeks of all Class Members to yield the “Estimated Workweek Value,” and multiplied each Class Member’s individual Workweeks by the Estimated Workweek Value to yield an estimated Individual Settlement Share that each Class Member may be entitled to receive under the Class Settlement (which is listed in Section III.C below). Class Members who do not submit a timely and valid Request for Exclusion (“Settlement Class Members”) will be issued their final Individual Settlement Payment.

Each Individual Settlement Share will be allocated as twenty percent (20%) as wages, which will be reported on an IRS Form W-2, and eighty percent (80%) as penalties, interest, and non-wage damages, which will be reported on an IRS Form 1099 (if applicable). Each Individual Settlement Share will be subject to reduction for the employee’s share of payroll taxes and withholdings with respect to the wages portion of the Individual Settlement Shares resulting in a net payment to the Settlement Class Member (“Individual Settlement Payment”). The employer’s share of taxes and contributions in connection with the wages portion of Individual Settlement Shares (“Employer Taxes”) will be paid by Defendant separately and in addition to the Gross Settlement Amount.

PAGA Employees are eligible to receive payment under the PAGA Settlement of their *pro rata* share of the PAGA Employee Amount (“Individual PAGA Payment”) based on the number of pay periods each PAGA Employee worked for Defendant as an hourly-paid and/or non-exempt employee in California during the PAGA Period (“PAGA Pay Periods”). The Settlement Administrator had divided the PAGA Employee Amount, i.e., 25% of the PAGA Amount, by the PAGA Pay Periods of all PAGA Employees to yield the “PAGA Pay Period Value,” and multiplied each PAGA Employee’s individual PAGA Pay Periods by the PAGA Pay Period Value to yield each PAGA Employee’s Individual PAGA Payment.

Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties, will not be subject to taxes or withholdings, and will be reported on IRS Form 1099 (if applicable).

If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to Settlement Class Members and Individual PAGA Payments will be mailed to PAGA Employees at the address that is on file with the Settlement Administrator. **If the address to which this Class Notice was mailed is not correct, or if you move after you receive this Class Notice, you must provide your correct mailing address to the Settlement Administrator as soon as possible to ensure you receive any payment that you may be entitled to under the Settlement.**

B. Your Workweeks and PAGA Pay Periods (if applicable) Based on Defendant’s Records

According to Defendant’s records:

- **From October 27, 2019 through November 25, 2024 (i.e., the Class Period), you are credited as having worked [REDACTED] Workweeks.**
- **From September 18, 2022 through November 25, 2024 (i.e., the PAGA Period), you are credited as having worked [REDACTED] PAGA Pay Periods.**

If you wish to dispute the Workweeks and/or PAGA Pay Periods credited to you, you must submit your dispute in writing to the Settlement Administrator (“Dispute”). The Dispute must: (a) contain the case name and number of the Action (*Rigoberto Tecaliz v. National Restaurant Inc. dba Black Bear Diner*, Case No. 37-2023-00046906-CU-OE-CTL); (b) contain your full name, signature, address, telephone number, and the last four (4) digits of your Social Security number; (c) clearly state that you dispute the number of Workweeks and/or PAGA Pay Periods credited to you and what you contend is the correct number; and (d) be returned by mail to the Settlement Administrator at the specified address listed in Section IV.B below, postmarked **on or before [Response Deadline]**.

C. Your Estimated Individual Settlement Share and Individual PAGA Payment (if applicable)

As explained above, your estimated Individual Settlement Share and Individual PAGA Payment (if applicable) is based on the number of Workweeks and PAGA Pay Periods (if applicable) credited to you.

Under the terms of the Settlement, your Individual Settlement Share is estimated to be \$ [REDACTED]. The Individual Settlement Share is subject to reduction for the employee’s share of taxes and withholdings with respect to the wages portion of the Individual Settlement Share and will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.

Under the terms of the Settlement, your Individual PAGA Payment is estimated to be \$ [REDACTED] and

will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.

The settlement approval process may take multiple months. Your Individual Settlement Share and Individual PAGA Payment (if applicable) reflected in this Class Notice is only an estimate. Your actual Individual Settlement Payment and Individual PAGA Payment (if applicable) may be higher or lower.

D. Release of Claims

Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiff and all Settlement Class Members will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Class Claims.

Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiff, the State of California with respect to all PAGA Employees, and all PAGA Employees will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released PAGA Claims.

“Released Class Claims” means any and all claims and causes of action which were alleged in the Operative Complaint or which reasonably could have been alleged based on the factual allegations and legal theories in the Operative Complaint, arising during the Class Period, which specifically includes claims for Defendant’s alleged failure to pay overtime and minimum wages, provide compliant meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide accurate wage statements, and reimburse necessary business-related expenses in violation of California Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802, the applicable Industrial Welfare Commission Wage Order, and California Business and Professions Code sections 17200, *et seq.* By virtue of this release, any claims under the FLSA that are predicated on the Released Class Claims are subject to res judicata pursuant to applicable law including but not limited to *Rangel v. PLS Check Cashers of California Inc.*

“Released PAGA Claims” means any and all claims and causes of action for civil penalties under the California Private Attorneys General Act of 2004 that were alleged in the Operative Complaint or reasonably could have been alleged based on the facts and legal theories contained in the Operative Complaint and PAGA Letter, arising during the PAGA Period, for civil penalties under the Private Attorneys General Act of 2004, California Labor Code sections 2698 *et seq.*, which specifically includes claims for Defendant’s alleged failure to pay overtime and minimum wages, provide compliant meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide complaint wage statements, maintain complete and accurate payroll records, and reimburse necessary business-related expenses in violation of California Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare Commission Wage Order.

- In light of the binding nature of a PAGA judgment on non-party employees pursuant to *Arias v. Sup. Ct.* (Angelo Dairy) (2009) 46 Cal.4th 969 and *Cardenas v. McLane Foodservice, Inc.* (2011) 796 F.Supp.2d 1246, individuals otherwise meeting the definition of a Settlement Class Member who exclude themselves from the Class Settlement shall nonetheless receive a payment for the amount of each such individual’s estimated share of the PAGA Employees’ portion of the PAGA Amount and shall have released the Released PAGA Claims.

“Released Parties” means Defendant, and its past and present direct and/or indirect officers, directors, members, managers, exempt employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.

E. Attorneys’ Fees and Costs to Class Counsel

Class Counsel will seek attorneys’ fees in an amount not to exceed one-third (1/3) of the Gross Settlement Amount (i.e., \$213,000.00 if the Gross Settlement Amount is \$639,000.00) and reimbursement of litigation costs and expenses in an amount not to exceed Twenty Thousand Dollars (\$20,000.00) (collectively, “Attorneys’ Fees and Costs”), subject to approval by the Court. The Attorneys’ Fees and Costs granted by the Court will be paid from the Gross Settlement Amount. Class Counsel has been prosecuting the Action on behalf of Plaintiff, Class Members, and PAGA Employees on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses.

F. Enhancement Payment to Plaintiff

Plaintiff will seek the amount of Ten Thousand Dollars (\$10,000.00) (“Enhancement Payment”), in recognition of his services in connection with the Action. The Enhancement Payment will be paid from the Gross Settlement Amount, subject to approval by the Court, and if awarded, it will be paid to Plaintiff in addition to his Individual Settlement Payment and Individual PAGA Payment that he is entitled to under the Settlement.

G. Settlement Administration Costs to Settlement Administrator

Payment to the Settlement Administrator is estimated not to exceed Eight Thousand and Five Hundred Dollars (\$8,500.00) (“Settlement Administration Costs”) for the costs of the notice and settlement administration process, including and not limited to, the expense of notifying the Class Members of the Settlement, processing Requests for Exclusion, Notices of Objection, and Disputes, calculating Individual Settlement Shares, Individual Settlement Payments, and Individual PAGA Payments, and distributing payments and tax forms under the Settlement, and shall be paid from the Gross Settlement Amount, subject to approval by the Court.

IV. WHAT ARE YOUR RIGHTS AND OPTIONS AS A CLASS MEMBER?

A. Participate in the Settlement

If you want to participate in the Class Settlement and receive money from the Class Settlement, you do not have to do anything. You will automatically be included in the Class Settlement and issued your Individual Settlement Payment unless you decide to exclude yourself from the Class Settlement.

Unless you elect to exclude yourself from the Class Settlement and if the Court grants final approval of the Settlement, you will be bound by the terms of the Class Settlement and any judgment that may be entered by the Court based thereon, and you will release the Released Class Claims against the Released Parties as described in Section III.D above.

If you are a PAGA Employee and the Court grants final approval of the Settlement, you will automatically be included in the PAGA Settlement and issued your Individual PAGA Payment. This means you will be bound by the terms of the PAGA Settlement and any judgment that may be entered by the Court based thereon, and you will release the Released PAGA Claims against the Released Parties as described in Section III.D above.

As a Class Member and PAGA Employee (if applicable), you will not be separately responsible for the payment of attorney’s fees or litigation costs and expenses, unless you retain your own counsel, in which event you will be responsible for your own attorney’s fees and expenses.

B. Request Exclusion from the Class Settlement

Class Members may request to be excluded from the Class Settlement by submitting a letter (“Request for Exclusion”) to the Settlement Administrator, at the following address:

[Settlement Administrator]
[Mailing Address]

A Request for Exclusion must: (a) contain the case name and number of the Action (*Rigoberto Tecaliz v. National Restaurant Inc. dba Black Bear Diner*, Case No. 37-2023-00046906-CU-OE-CTL); (b) contain your full name, signature, address, telephone number, and last four (4) digits of your Social Security number; (c) clearly state that you do not wish to be included in the Class Settlement; and (d) be returned by mail to the Settlement Administrator at the specified address above, postmarked **on or before** [Response Deadline].

If the Court grants final approval of the Settlement, any Class Member who submits a timely and valid Request for Exclusion will not be issued an Individual Settlement Payment, will not be bound by the Class Settlement (and the release of Released Class Claims described in Section III.D above), and will not have any right to object to, appeal, or comment on the Class Settlement. Class Members who do not submit a timely and valid Request for Exclusion will be deemed Settlement Class Members and will be bound by all terms of the Class Settlement, including those pertaining to the release of claims described in Section III.D above, as well as any judgment that may be entered by the Court based thereon. PAGA Employees will be bound to the PAGA Settlement (and the release of Released PAGA Claims described in Section III.D above) and will still be issued an Individual PAGA Payment, irrespective of whether they submit a Request for Exclusion.

C. Object to the Class Settlement

You can object to the Class Settlement as long as you have not submitted a Request for Exclusion by submitting a written objection (“Notice of Objection”) to the Settlement Administrator.

The Notice of Objection must: (a) contain the case name and number of the Action *Rigoberto Tecaliz v. National Restaurant Inc. dba Black Bear Diner*, Case No. 37-2023-00046906-CU-OE-CTL); (b) contain your full name, signature, address, telephone number, and the last four (4) digits of your Social Security number; (c) contain a written statement of all grounds for the objection accompanied by any legal support for such objection; (d) contain copies of any papers, briefs, or other documents upon which the objection is based; and (e) be returned by mail to the Settlement Administrator at the specified address listed in Section IV.B above, postmarked **on or before [Response Deadline]**.

You may also appear at the Final Approval Hearing and present your objection orally, regardless of whether you have submitted a Notice of Objection.

V. FINAL APPROVAL HEARING

The Court will hold a Final Approval Hearing in Department C-60 of the San Diego County Superior Court, located at Hall of Justice, 330 W Broadway, San Diego, California 92101, on **[date]**, at **[time]**, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court also will be asked to approve and grant the Attorneys’ Fees and Costs to Class Counsel, Enhancement Payment to Plaintiff, and Settlement Administration Costs to the Settlement Administrator.

The Final Approval Hearing may be continued without further notice to the Class Members and PAGA Employees. It is not necessary for you to appear at the Final Approval Hearing, although you may appear if you wish to.

You can attend the Final Approval Hearing (or hire a lawyer to attend) either personally or virtually via Microsoft Teams (<https://www.sdcourt.ca.gov/sdcourt/civil2/civilvirtualhearings>). Check the Court’s website for the most current information.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement Agreement, you should review the detailed Settlement Agreement and other papers, which are on file with the Court.

You may view the Settlement Agreement and other documents filed in the Action for a fee by going to the San Diego County Superior Court’s Register of Actions online webpage at <https://odyroa.sdcourt.ca.gov/> and entering case number ‘37-2023-00046906-CU-OE-CTL’.

You may also visit the Settlement Administrator’s website at **[redacted]** for more information and documents relating to the Settlement.

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT.

IF YOU HAVE ANY QUESTIONS, YOU MAY CALL THE SETTLEMENT ADMINISTRATOR AT THE FOLLOWING TOLL-FREE NUMBER: **[INSERT], OR YOU MAY ALSO CONTACT CLASS COUNSEL.**

EXHIBIT 4

Thank you for your Proposed Settlement Submission

Desde DIR PAGA Unit <no-reply@formassembly.com>

Fecha Mié 26 Mar 2025 09:58

Para Karina Hernandez <khernandez@blackstonepc.com>

[External Email].

03/26/2025 08:57:56 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: [http://labor.ca.gov/Private Attorneys General Act.htm](http://labor.ca.gov/Private_Attorneys_General_Act.htm)