

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Branden Kaai (“Plaintiff”) and Emerald Cascade Restaurant Systems, Inc. (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s lawsuit against Defendant captioned *Kaai v. Emerald Cascade Restaurant Systems, Inc. et. al.*, Case No. 23CV1995, initiated on November 15, 2023, and pending in Superior Court of the State of California, County of El Dorado and the First Amended Complaint filed on January 19, 2024.
- 1.2. “Administrator” means Phoenix Class Action Administrators, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means all current and former nonexempt, hourly employees who worked for Defendant in California at any time during the PAGA Period. Defendant represents that, at the time of the mediation, the PAGA Settlement Class consists of approximately 97 employees that worked a total of approximately 1,338 pay periods during the PAGA Period.
- 1.5. “Class Counsel” means Jonathan Melmed, Meghan N. Higday, and Emily G. Horrigan of Melmed Law Group P.C. and Lawyers for Employee and Consumer Rights.
- 1.6. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.7. “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, Social Security number, hire date and termination date.
- 1.8. “Class Member,” “Class” or “Settlement Class Member” All individuals who are or were employed by Defendant as non-exempt employees in California during the Class Period. This includes either a Participating Class Member or Non-Participating Class Member (including a Non- Participating Class Member who qualifies as an Aggrieved Employee). Defendant represents that, at the time of the mediation, the Settlement Class consists of approximately 272 class members that worked a total of approximately 7,200 workweeks during the Class Period.
- 1.9. “Class Member Address Search” means the Administrator’s investigation and search for

current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

- 1.10. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English and Spanish in the form, without material variation, attached as **Exhibit A** and incorporated by reference into this Agreement.
- 1.11. “Class Period” means the period from November 15, 2019, and continuing through and including January 31, 2025.
- 1.12. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.13. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.14. “Court” means the Superior Court of California, County of El Dorado.
- 1.15. “Defendant” means the named Defendant Emerald Cascade Restaurant Systems, Inc.
- 1.16. “Defense Counsel” means the attorneys of record for Defendant, i.e., Musick Peeler Garrett LLP.
- 1.17. “Effective Date” The date on which the Final Approval becomes final. For purposes of this Section, the Final Approval “becomes final” only after the Court grants the Stipulation or Motion for Final Approval and upon service of the Notice of Entry of Order and/or Judgment, and upon the latter of: (i) if no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from, or other challenge to, the Order Granting Final Approval and/or Judgment (this time period shall not be less than sixty (60) calendar days after the Court’s Order is entered); (ii) the date of affirmance of an appeal of the Order Granting Final Approval and/or Judgment becomes final under the California Rules of Court; or (iv) the date of final dismissal of any appeal from the Order Granting Final Approval and/or Judgment or the final dismissal of any proceeding on review of any court of appeal decision relating to the Order Granting Final Approval and/or Judgment.
- 1.18. “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.19. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.20. “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.21. “Gross Settlement Amount” (“GSA”) means \$125,000.00 which is the total amount Defendant agrees to pay under the Settlement. Defendant shall also be separately

responsible for paying employer's side payroll taxes on any portion of the Gross Settlement Amount allocated to wages. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Litigation Expenses, Class Representative Service Payment and the Administration Expenses Payment.

- 1.22. "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of workweeks worked during the Class Period.
- 1.23. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods worked during the PAGA Period.
- 1.24. "Judgment" means the judgment entered by the Court based upon the Final Approval.
- 1.25. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.26. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.27. "Net Settlement Amount" or "NSA" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.28. "Non-Participating Class Member" means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.29. "Operative Complaint" means the First Amended Complaint filed on January 19, 2024.
- 1.30. "Pay Period" means any pay period during which a Class Member or an Aggrieved Employee worked for Defendant for at least one day.
- 1.31. "PAGA Period" means November 15, 2022, and continuing through and including January 31, 2025.
- 1.32. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.33. "PAGA Notice" means Plaintiff's November 15, 2023, PAGA letter to the LWDA providing notice pursuant to Labor Code section 2699, LWDA No. LWDA-CM-994571-23.
- 1.34. "PAGA Penalties" means the \$12,500.00 allocated to PAGA civil penalties to be paid from

the Gross Settlement Amount, allocated 25% to the Aggrieved Employee and 75% to the LWDA in settlement of PAGA claims.

- 1.35. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.36. "Plaintiff" means Branden Kaai, the named Plaintiff in the Action.
- 1.37. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.
- 1.38. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval.
- 1.39. "Released Class Claims" means the claims being released as described in Paragraph 5.1 below.
- 1.40. "Released PAGA Claims" means the claims being released as described in Paragraph 5.2 below.
- 1.41. "Released Parties" " means Defendant Emerald Cascade Restaurant Systems, Inc., and their past, present, and future parents, subsidiaries, affiliated companies, agents, managing agents, employees, servants, heirs, officers, directors, owners (whether direct or indirect) and officers (both individually and in their official capacities), general partners, limited partners, franchisors, trustees, former and present representatives, shareholders, stockholders, members, mortgagees or ground lessors, administrators, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or partnerships, divisions, assigns, predecessors, successors, insurers, consultants, joint venturers, joint employers, potential and/or alleged joint employers, co-employers, potential or alleged co-employers, common law employers, contractors, affiliates, service providers, alter-egos, potential and/or alleged alter-egos, vendors, affiliated organizations, any person and/or entity with potential or alleged to have joint liability, and all of their respective past, present and future employees, officers, members, owners, agents, representatives, payroll agencies, attorneys, stockholders, fiduciaries, parents, subsidiaries, other service providers, and assigns and any and all persons and/or entities acting under, by, through or in concert with any of them.
- 1.42. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.43. "Response Deadline" means 60 days after the Administrator mails Notice to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.44. "Settlement" means the disposition of the Action effected by this Agreement and the

Judgment.

- 1.45. “Workweek(s)” means any week during which a Class Member worked for Defendant for at least one day, during the Class Period.

2. RECITALS.

- 2.1. On November 15, 2023, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for Failure to Pay Minimum Wages (Cal. Lab. Code §§ 204, 1194, 1194.2 and 1197), Failure to Pay Overtime Compensation (Cal. Lab. Code §§ 1194 and 1198), Failure to Provide Meal Periods and Pay Missed Meal Premiums (Cal. Lab. Code §§ 226.7, 512), Failure to Authorize and Permit Rest Periods and Pay Missed Rest Period Premiums (Cal. Lab. Code § 226.7), Failure to Indemnify All Necessary Business Expenses (Cal. Labor Code § 2802), Failure to Maintain Accurate Employment Records (Cal. Lab. Code §§ 226, 226.3, 1174), Failure to Pay Wages Timely During Employment (Cal. Lab. Code §§ 204, 210), Failure to Pay All Wages Earned and Unpaid at Separation (Cal. Lab. Code §§ 201-203), Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226, and Violations of California’s Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 et seq.). On January 19, 2024, Plaintiff filed a First Amended Complaint adding a claim for PAGA Penalties based upon the alleged Labor Code violations. Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged therein.
- 2.2. On December 3, 2024, the Parties participated in an all-day mediation presided over by Kelly Knight, Esq. which led to this Agreement to settle the Action.
- 2.3. Prior to mediation, Plaintiff obtained, through investigation and informal discovery, which included and was not limited to, Defendant’s production of a sampling of information/data for the putative class members to allow Plaintiff to perform an analysis and valuation of all claims. Prior to mediation the Parties exchanged information and documents to investigate the veracity, strength, and scope of the claims, and to allow analysis and evaluation of the claims and Defendant’s defenses thereto. Plaintiff’ investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).
- 2.4. The Court has not granted class certification because the Parties engaged in early mediation prior to the filing of a motion for class certification.
- 2.5. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant of liability or wrongdoing. Defendant makes no admission of liability or wrongdoing by virtue of entering into this Agreement. Additionally, Defendant reserves the right to contest any issues relating to class certification or Aggrieved Employee status and liability if the Settlement is not approved. Defendant denies that they have engaged in any unlawful activity, have failed to comply with the law in any respect,

have any liability to anyone under the claims asserted in the Action, or that but for the Settlement, a Class should be certified in the Action or that there are Aggrieved Employees.

- 2.6. Class Counsel represent that they have thoroughly investigated the claims alleged against Defendant in the Action. Class Counsel represents that they have conducted their own investigation into the underlying facts, events, and issues related to the subject matter of this Action. Class Counsel represent that they have further undertaken an extensive analysis of the legal principles applicable to the claims asserted against Defendant, and the potential defenses thereto. Both Class Representatives and Defendant have had an opportunity to evaluate their respective positions on the merits of the claims asserted.
- 2.7. Class Counsel has also engaged in intensive arm's-length negotiations with Defense Counsel with a view toward achieving substantial benefits for the Class while avoiding the cost, delay and uncertainty of further litigation, trial, and appellate review.
- 2.8. As a consequence of said negotiations, and of Class Counsel's investigation, analysis and discovery, Plaintiff and Class Counsel determined to enter into this Settlement Agreement on the terms and conditions hereinafter set forth, believing such Settlement to be fair, reasonable and adequate and in the best interests of Plaintiff and the other members of the Class. Plaintiff and Class Counsel have determined to execute this Settlement Agreement and urge approval by the Court of the Settlement after considering (a) the substantial factual and legal defenses available to Defendant to the claims asserted in the Action, which render the outcome of the Action substantially uncertain; (b) the potential difficulties Plaintiff and Class Members would encounter in establishing the elements of their claims; (c) the substantial benefits made available to Class Members pursuant to the Settlement; (d) the fact that the Settlement ensures that Class Members will receive relief in the most expeditious and efficient manner practicable, and thus much sooner than would be possible were the claims to be litigated successfully through trial and appeal; and (e) the fact that the Settlement allows persons who would otherwise fall within the definition of the Class, if they so desire, to opt out of the Action and individually possibly pursue any Released Class Claims that he or she may have.
- 2.9. As set forth above, without admitting any wrongdoing or liability, in the interest of avoiding further litigation, Defendant is willing to agree to the terms of the Settlement in order to settle, compromise, and fully resolve the Action and Released Class Claims and the Released PAGA Claims.
- 2.10. The Settlement will not constitute, in this or any other proceeding, an admission of any kind by Defendant, including without limitation, that certification of a class is appropriate or proper, that there are aggrieved employees, or that Plaintiff could establish any of the requisite elements for class or aggrieved employee treatment of any of the claims in the Action. In the event that the Settlement is not finally approved, or the Settlement is otherwise terminated, and any class and representative action, which were certified or treated as such for settlement purposes only, shall be vacated, and shall be of no force or

effect whatsoever and shall not be admissible nor construed as an admission or concession of any kind by the Parties, in whole or part, and Defendant expressly reserves all rights to challenge certification of a class on all available grounds.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 4.1 below, Defendant promises to pay \$125,000.00 as the Gross Settlement Amount. Defendant shall also be separately responsible for paying employer's side taxes on any portion of the Gross Settlement Amount allocated to wages. Defendant has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.
- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
 - 3.2.1. To Plaintiff: Class Representative Service Payments to the Class Representative of not more than \$10,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed the amount of \$10,000.00. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for taxes owed on the Class Representative Service Payment.
 - 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than \$41,666.67 and a Class Counsel Litigation Expenses Payment of not more than \$15,000.00. Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing or other deadline set by the Court. If the Escalator Provision described below is triggered so as to increase the Gross Settlement Amount, the Parties agree that the fee portion of the Class Attorney Fees and Expenses will increase proportionally such that the total amount of attorneys' fees remains one-third of the Gross Settlement Amount *after* the upward adjustment required by the Escalator Provision is implemented. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and the Class Counsel Litigation Expenses

Payment in accordance with proper IRS reporting. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

- 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$8,950.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$8,950.00, the Administrator will retain the remainder in the Net Settlement Amount.
- 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.
- 3.2.5. Tax Allocation of Individual Class Payments. Payments from the NSA will be allocated 10% to Wages, subject to applicable withholdings for which W-2's will be issued and 90% Non-Wage Portion that are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any taxes owed on their Individual Class Payment.
- 3.2.6. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.
- 3.2.7. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$12,500.00 to be paid from the Gross Settlement Amount, with 75% (\$9,375.00) allocated to the LWDA PAGA Payment and 25% (\$3,125.00) allocated to the Individual PAGA Payments.
 - 3.2.7.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.
 - 3.2.7.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on

IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1. Class Data. Not later than 15 business days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a duty to notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. The Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.2. Funding of Gross Settlement Amount. Within 15 business days of the Effective Date, Defendant shall transmit the GSA and any amounts necessary to fully pay the Defendant's share of payroll taxes to the Settlement Administrator.
- 4.3. Payments from the Gross Settlement Amount. Within 14 business days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks or initiate wire transfers for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
 - 4.3.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
 - 4.3.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address.

Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.3.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks in conformity with Code of Civil Procedure Section 384, subd. (b) to the State Controller Unclaimed Property Fund in the name of the Class Member for whom the funds are designated.

4.3.4. Neither Plaintiff nor Defendant shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Administrator.

5. RELEASE OF CLAIMS. Upon the date of the funding of the Gross Settlement Amount, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

5.1 Release of Class Claims: Upon the Effective Date, each and all participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, shall release and discharge Released Parties from the Released Class Claims (defined below) and any and all federal and California state law wage-and-hour claims, rights, demands, liabilities, and/or causes of action of every nature and description arising from any and all claims that were alleged or could have been alleged in the Operative Complaint based on the facts contained therein, including, without limitation, statutory, constitutional, contractual, and/or common law claims for wages, reimbursements, damages, unpaid costs, penalties, liquidated damages, interest, attorneys' fees, litigation costs, or equitable relief or claims based on facts occurring during the Class Period. The Released Class Claims include, without limitation, California Code of Civil Procedures Sections 382, 1021.5, California Labor Code sections 200, 201, 202, 203, 204, 210, 216, 218.5, 218.6, 226, 226.3, 226.7, 256, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2698, et seq., 2699, et seq., 2802, 2804 and any federal counterparts, California Business and Professions Code sections 17200, et seq., California Civil Code Sections 3287 and 3289, IWC Wage Order No. 4-2001, any cause of action for (i) Failure to Pay Minimum Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197]; (ii) Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 510, 1194 and 1198]; (iii) Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512); (iv) Failure to Authorize and Permit Rest Break (Cal. Lab. Code §§ 226.7); (v) Failure to Indemnify Necessary Business Expenses (Cal. Lab. Code § 2802 and IWC Wage Orders); (vi) Failure to Timely Pay Final Wages at Termination Cal. Lab. Code §§ 201-203); (vii) Failure to Maintain

Accurate Employment Records (Cal. Lab. Code §§ 226, 226.3, 1174), (viii) Failure to Pay Wages Timely During Employment (ix) Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226); (x) Unfair Business Practices (Cal. Bus. & Prof Code §§ 17200, et seq.); and (xi) Civil Penalties Under PAGA (Cal. Lab. Code §§ 2699, et seq.).

Upon entry of Judgment, Class Members are precluded from filing a wage and hour action under the Fair Labor Standards Act against the Released Parties for claims and/or causes of action encompassed by the Released Claims which are extinguished and precluded pursuant to the holding in *Rangel v. PLS Check Cashers of California, Inc.*, 899 F.3d 1106 (2018). This release excludes the release of claims not permitted by law.

- 5.2 PAGA Released Claims: Upon the Effective Date, all Aggrieved Employees (including Plaintiff), on behalf of themselves, and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, and the State of California shall be deemed to have fully, finally, and forever released, relinquished, and discharged each and all of the Released Parties from any and all claims, demands, rights, liabilities, and/or causes of action for penalties under PAGA that accrued during the PAGA Period and that were asserted in Plaintiff's PAGA Notice or the Operative Complaint as well as those that could have been alleged in the Operative Complaint or PAGA Notice based on the facts contained therein, including, without limitation, Labor Code sections 200, 201, 202, 203, 204, 210, 216, 218.5, 218.6, 226, 226.3, 226.7, 256, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2698, *et seq.*, 2699, *et seq.*, 2802, 2804, California Business and Professions Code sections 17200, *et seq.*, California Civil Code Sections 3287 and 3289, California Code of Civil Procedure § 1021.5 and the applicable Industrial Welfare Commission Orders. Plaintiff and the Aggrieved Employees shall be deemed to have acknowledged and agreed that their claims in this Action are disputed, and that the payments to them set forth in this Agreement constitute payment of all sums allegedly due to them arising from the PAGA claims and constitute settlement of all PAGA claims.

Nothing in this Agreement is intended to or shall preclude Plaintiff and Aggrieved Employees from filing a complaint and/or charge with any appropriate federal, state, or local government agency and/or cooperating with said agency in its investigation. Plaintiff and Aggrieved Employees retain the right to file a charge with, and to participate in an investigation conducted by, any appropriate government agency charged with enforcement of any law and the right to engage in concerted activity granted by Section 7 of the National Labor Relations Act.

- 5.3 Plaintiff's Release. Upon the Effective Date, and after Defendant has fully funded the Settlement, and as a condition of receiving any portion of the Class Representative Service Payment, Plaintiff and his former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns, shall fully and finally release the Released Parties from any and all claims, known and unknown, under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, including

but not limited to claims arising from or related to Plaintiff's employment with Defendant Emerald Cascade Restaurant Systems, Inc. and Plaintiff's compensation while an employee of Defendant. Plaintiff's Released Claims include, but are not limited to, all claims asserted in, arising from, or related to the Action, to include but not limited to the Released PAGA Claims and Released Class Claims. Plaintiff's Released Claims include all claims for unpaid wages, including, but not limited to, failure to pay minimum wages, overtime compensation, double-time compensation, and interest; failure to properly calculate the regular rate of pay and associated claims; wages related to alleged illegal time rounding; failure to timely pay final wages; missed/short/late/interrupted meal period, rest period, and/or recovery period wages/premiums; failure to provide meal periods; failure to authorize and permit rest periods and/or recovery periods; the calculation of meal period, rest period, and/or recovery period premiums; reimbursement for all necessary business expenses ; payment for all hours worked, including off-the-clock work; failure to provide accurate itemized wage statements; deductions; failure to keep accurate records; unlawful deductions and/or withholdings from wages; unfair business practices; penalties, including, but not limited to, recordkeeping penalties, wage statement and payroll reporting penalties, minimum-wage penalties, and waiting-time penalties; and attorneys' fees and costs. Plaintiff's Released Claims include all claims arising under the California Labor Code (including, but not limited to, §§ 200, 201, 202, 203, 204, 210, 216, 218.5, 218.6, 226, 226.3, 256, 226.7, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 et seq., 2699 et seq., 2802 and 2084); all claims arising under: the Wage Orders of the California Industrial Welfare Commission; the California Private Attorneys General Act of 2004 (PAGA); California Business and Professions Code § 17200, et seq; California Civil Code Sections 3287 and 3289, California Code of Civil Procedure § 1021.5; all state and local ordinances related to COVID-19 right of recall; the California common law of contract; the FLSA, 29 U.S.C. §§ 201, et seq.; 29 CFR 778.223; 29 CFR 778.315; federal common law; and the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001, et seq. (ERISA). Plaintiff's Released Claims also include all claims for lost wages and benefits, emotional distress, retaliation, punitive damages, prejudgment interest, past and future medical expenses, and attorneys' fees and costs arising under federal, state, or local laws for discrimination, harassment, retaliation, failure to accommodate, failure to engage in a good faith interactive process and wrongful termination, such as, by way of example only, (as amended) 42 U.S.C. § 1981, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), Labor Code § 1102.5 and the California Fair Employment and Housing Act (FEHA); and the law of contract and tort. This release excludes the release of claims not permitted by law.

5.4 Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agree, nonetheless, that Plaintiff's Release (Paragraph 5.3) shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

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

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

5.4.2 No Conditional Payments Made By Medicare to Plaintiff. Plaintiff expressly acknowledges Medicare's statutory right to recovery of conditional payments for medical treatment and medical service rendered in connection with any illness or injury suffered by Plaintiff in the course of Plaintiff's employment with Defendant, Emerald Cascade Restaurant Systems, Inc. and guarantees that Plaintiff is not a Medicare Beneficiary, and there are no outstanding Medicare or Medicaid claims or rights of recovery of conditional payments based on Plaintiff's application for, or receipt of, Medicare or Medicaid benefits. This specifically includes benefits arising out of or in any way connected with, directly or indirectly, the facts and/or allegations that form the basis of the Action, the occurrences described herein, and any consequences thereof. Additionally, Plaintiff warrants, represents, and guarantees that Plaintiff has no medical expenses arising out of or in any way connected with, directly or indirectly, the facts and/or allegations that form the basis of the Action, the occurrences described herein, and any consequences thereof, including any of Plaintiff's Released Claims, nor does Plaintiff anticipate any medical expenses arising out of or in any way connected with, directly or indirectly, the facts and/or allegations that form the basis of the Action, the occurrences described herein, and any consequences thereof, including any released claims. In the event Medicare asserts such a claim or right of reimbursement now, or at any point in the future, all such claims or rights of reimbursement shall be satisfied from among the proceeds of this settlement, and no additional monies shall ever be requested from or paid by the Released Parties. This settlement is based upon a good faith determination of the Parties to resolve disputed claims. The Parties have not shifted responsibility of medical treatment to Medicare in contravention of 42 U.S.C. § 1395y(b). The Parties resolved this matter in compliance with both state and federal law. The Parties made every effort to adequately protect Medicare's interest and incorporate such into the settlement terms. The Parties acknowledge and understand that any present or future action or decision by the Centers for Medicare & Medicaid Services ("CMS") or Medicare on this Agreement, or Plaintiff's eligibility or entitlement to Medicare or Medicare payments, will not render this release void or ineffective, or in any way affect the finality of this Agreement.

6. ADMINISTRATION OF TAXES.

6.1 Tax Treatment of Individual Settlement Payments. The Individual PAGA Payments will be allocated as 100% penalties and reported on an IRS-Form 1099. All Individual Class Payments will be allocated as follows: ten percent (10%) of each Individual Class Payment will be allocated as wages and ninety percent (90%) will be allocated as non-wages. The portion allocated to wages will be reported on an IRS Form W-2 and the portion allocated to non-wages will be reported on an IRS Form-1099 by the Administrator. The Individual Class Payments will be reduced by any required legal deductions for each Class Member.

All standard employee payroll deductions will be made for state and federal withholding taxes, including any other applicable payroll deductions owed by the Class Members as a result of the wage component, resulting in a net wage component. The Administrator will issue a check and W-2 Form to each Class Member for the wage component. The Administrator will issue a second check and IRS Form-1099 for the remaining non-wages component. No withholding shall be made on the non-wages portion of the Individual Settlement Payment. The Administrator shall be responsible for issuing the payments and calculating and withholding all required state and federal taxes. The Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this Settlement Agreement. Any disputes not resolved by the Administrator concerning the administration of the Settlement will be resolved by the Court, under the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties will confer in good faith to resolve the dispute without the necessity of involving the Court.

6.2 Tax Liability. Defendant makes no representation as to the tax treatment or legal effect of the payments called for hereunder, and Plaintiff and Class Members are not relying on any statement, representation, or calculation by Defendant or by the Administrator in this regard. Plaintiff and Class Members understand and agree they will be solely responsible for the payment of their share of any taxes and penalties assessed on the payments described herein.

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

OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS SETTLEMENT AGREEMENT.

7. MOTION FOR PRELIMINARY APPROVAL. The Parties agree to jointly prepare a motion for preliminary approval (“Motion for Preliminary Approval”).

7.1 Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval; (iii) a draft proposed Class Notice; (iv) a “not to exceed” bid from the Administrator for administering the Settlement; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members; and (vi) a signed declaration from Class Counsel attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2))).

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

8. SETTLEMENT ADMINISTRATION.

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

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

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

8.4 Notice to Class Members.

- 8.4.1 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice, with Spanish translation, if applicable, substantially in the form attached to this Agreement as **Exhibit A**. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of workweeks and PAGA Pay Periods used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.
- 8.4.2 Not later than 3 business days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- 8.4.3 The deadlines for Class Members’ written objections, challenges to workweeks or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- 8.4.4 If the Administrator, Defendant or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

8.5 Requests for Exclusion (Opt-Outs).

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

telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

- 8.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
- 8.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 5.1 and 5.2 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- 8.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 5.2 of this Agreement and are eligible for an Individual PAGA Payment.
- 8.6 Challenges to Calculation of Workweeks/Pay Periods. Each Class Member shall have 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Workweeks and/or Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks and/or Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination on the challenges.

8.7 Objections to Settlement.

- 8.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the

Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

8.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 60 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

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

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

8.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); and (b) the names of Class Members who have submitted invalid Requests for Exclusion.

8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments ("Weekly Report"). The Weekly Reports must provide the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

8.8.4 Workweeks and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all

Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator's decision shall be final and not appealable or otherwise susceptible to challenge.

- 8.8.5 Administrator's Declaration. Not later than 14 days before the date by which Plaintiff are required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.
- 8.8.6 Final Report by Settlement Administrator. Within 30 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.
- 9. DEFENDANT'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% or more of the Class, Defendant may, but is not obligated to, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than ten days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.
- 10. ESCALATOR PROVISION.** The Gross Settlement Amount is based on Defendant's estimate, at the time of the mediation, that the Class Members worked a total of 7,200 Workweeks during the Class Period. If the actual number of Workweeks encompassed within the Class Period increases by more than 10%, then Defendant at its exclusive discretion shall either (1) end the Class Period on the date on which the total number workweeks is no more than 7,920 Workweeks, or (2) increase the Gross Settlement Amount by a pro-rata dollar value for the weeks in excess of the escalation margin. For example, if the number of Workweeks increases by 11%, the Gross Settlement Amount will increase by 1%. Under the first option no additional payment is necessary.

At the time of the Mediation, as to the Aggrieved Employees, there was a total of 1338 Pay

Periods. If the actual number of Pay Periods encompassed within the PAGA Period increases by more than 10%, then Defendant at its exclusive discretion shall either (1) end the PAGA Period on the date on which the total number Pay Periods is no more than 1,472 Pay Periods, or (2) increase the Gross Settlement Amount attributable to PAGA claims by a pro-rata dollar value for the Pay Periods in excess of the escalation margin. For example, if the number of Workweeks increases by 11%, the Gross Settlement Amount will increase by 1%. Under the first option no additional payment is necessary.

If this provision is triggered so as to increase the GSA, the Parties agree that the portion of the GSA allocated to attorneys' fees will increase proportionally such that the total amount of attorneys' fees remains one-third of the GSA after the upward adjustment required by this provision is implemented.

11. NULLIFICATION OF AGREEMENT. In the event: (i) the Court does not enter the Preliminary Approval Order and approve the Released Class Claims and Released PAGA Claims specified herein; (ii) the Court does not finally approve the Settlement as provided herein; (iii) Defendant exercises its option to nullify the Settlement Agreement based on an excessive number of opt-outs, as described in the above Section; or (iv) the Settlement does not become final for any other reason (e.g., an objection by the LWDA), this Settlement Agreement shall be null and void. A reduction of the Class Counsel Fees Payment and/or Class Counsel Litigation Expenses Payment and/or any Class Representative Service Payment shall not be grounds for nullification of this Settlement. If the Settlement is nullified, any order or judgment entered by the Court in furtherance of this Settlement Agreement shall be treated as void from the beginning, and the stipulations and recitals contained herein shall be of no force or effect and shall not be treated as an admission by the Parties or their counsel. In such a case, the Parties and any funds to be awarded under this Settlement Agreement shall be returned to their respective statuses as of the date and time immediately prior to the execution of this Settlement Agreement, and the Parties shall proceed in all respects as if this Settlement Agreement had not been executed, except that any fees already incurred by the Administrator shall be paid equally by both Parties. The Parties agree that they will cooperate and take all steps necessary in order to obtain preliminary and/or Final Approval in the event that the Court raises issues or questions about this Settlement or anything pertaining to this Settlement (including, but not limited to, the motion for preliminary approval and motion for final approval).

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

12.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in

Court, no later than five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

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

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

12.4 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

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

14. ADDITIONAL PROVISIONS.

14.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. The Parties enter into this Settlement Agreement to resolve the dispute that has arisen between them and to avoid the burden, expense, and risk of continued litigation. In entering into this Settlement Agreement, Defendant does not admit, and specifically denies, it has violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to their employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or

concession by Defendant of any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Settlement Agreement or to support a defense of res judicata, collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to the claims being released in this Settlement Agreement, this Settlement Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendant or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local or other applicable law.

- 14.2 Confidentiality. Neither Plaintiff nor Plaintiff's Counsel shall issue any press release or announcement of any kind related in any way to the Settlement. Plaintiff and Plaintiff's Counsel agree that, prior to Preliminary Approval of the Settlement, they will keep the terms of this Settlement confidential except for purposes of communicating with Plaintiff only. Plaintiff shall be informed that the Settlement is confidential and shall be advised to keep the Settlement confidential. From and after Preliminary Approval of the Settlement, the Class Members (including Plaintiff and Class Counsel) may: (1) as required by law; (2) as required under the terms of the Settlement; or (3) as required under counsel's duties and responsibilities as Class Counsel, comment regarding the specific terms of the Settlement. In all other cases, Plaintiff and Class Counsel agree to limit their statements regarding the terms of the Settlement, whether oral, written or electronic (including the world wide web), to say the Action have been resolved and that Plaintiff and Class Counsel are satisfied with the Settlement terms. Nothing in this Section is intended to interfere with Class Counsel's duties and obligations to faithfully discharge their duties as Class Counsel, including but not limited to, communicating with Class Members regarding the Settlement. This Settlement shall not be advertised or mentioned on any source, including Plaintiff's Counsel's personal or firm website(s). To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 14.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 14.4 Integrated Agreement. Upon execution by all Parties, this Agreement together with its attached exhibits executed by the Parties and the Individual Settlement Agreement, shall constitute the entire agreement between the Parties relating to the Settlement, and any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 14.5 Attorney. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms. The Parties and their counsel will cooperate with each other and

use their best efforts to effect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of Kelly Knight, Esq. (mediator) to attempt to resolve such disagreement.

- 14.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court to attempt resolution.
- 14.7 Enforcement Action. In the event that any Party institutes any legal action or other proceeding against another Party or Parties to enforce the provisions of this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees, incurred in connection with any enforcement action.
- 14.8 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 14.9 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 14.10 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 14.11 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 14.12 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 14.13 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 14.14 Representation by Counsel. The Parties acknowledge that they have been represented

by counsel throughout all negotiations that preceded the execution of this Settlement Agreement and that this Settlement Agreement has been executed with the consent and advice of counsel and reviewed in full. Further, Plaintiff and Class Counsel warrant and represent that there are no liens on the Settlement Agreement.

- 14.15 Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one Party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.
- 14.16 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.
- 14.17 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 14.18 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 14.19 Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement, intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms or to support a defense of res judicata, collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to the claims being released in this Settlement Agreement. Plaintiff, and not Plaintiff's representative(s), must personally execute this Settlement Agreement.
- 14.20 Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements may be deemed binding on the Parties.

- 14.21 Contractual Terms. Each term of this Agreement is contractual and not merely a recital.
- 14.22 Invalidity of Any Provision. Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.
- 14.23 Exhibits Incorporated by Reference. The terms of this Settlement include the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein. Any Exhibits to this Settlement are an integral part of the Settlement.
- 14.24 Captions. The captions and section numbers in this Settlement Agreement are inserted for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the provisions of this Settlement Agreement.
- 14.25 Waiver. No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.
- 14.26 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 14.27 Class Action Certification for Settlement Purposes Only. The Parties agree to stipulate to class certification only for purposes of the Settlement. If, for any reason, the Settlement is not approved, the stipulation to certification will be void. The Parties further agree that certification for purposes of the Settlement is not an admission that class action certification is proper under the standards applied to contested certification motions and that this Settlement Agreement will not be admissible in this or any other proceeding as evidence that either: (a) a class action should be certified or (b) Defendant is liable to Plaintiff or any Class Member, other than according to the Settlement's terms.
- 14.28 Class Representative represents that no other firms or persons besides Melmed Law Group P.C. and Lawyers for Employee and Consumer Rights are entitled to attorneys fees or costs for this Action.
- 14.29 Acknowledgement that the Settlement is Fair and Reasonable. The Parties have arrived at this Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into account all relevant factors, present and potential. The Parties further acknowledge that they are each represented by competent counsel and that they

have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

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

To Plaintiff:

Jonathan Melmed, Esq., Meghan N. Higday, Esq., and Emily G. Horrigan, Esq.,
Melmed Law Group P.C., 1801 Center Park East, Suite 850, Los Angeles, CA
90067; Telephone: (310) 824-3828.

Sabrina Sanders, Esq. Lawyers for Employee and Consumer Rights, 3500 West
Olive Avenue, Third Floor, Burbank, CA 91505.

To Defendant:

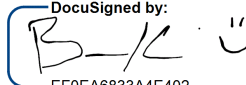
Beth Kahn, Esq., Laura P. Birnbaum, Esq., Musick, Peeler & Garrett, LLP, 333 S.
Hope St., Suite 2900, Los Angeles, California 90071; Telephone: (213) 629-7600.

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

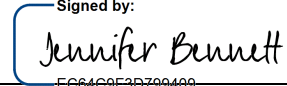
The Settlement Agreement consists of 26 pages.

IN WITNESS WHEREOF, this Settlement Agreement has been duly executed by and on behalf of the Parties, as follows:

Plaintiff and Proposed Class Representative Branden Kaai

Dated: 4/4/2025, 2025 By: 
Branden Kaai

Defendant Emerald Cascade Restaurant Systems, Inc.

Dated: 4/23/2025, 2025 By: 
Name: Jennifer Bennett
Title: Human Resources Manager