

## **PAGA SETTLEMENT AGREEMENT**

This PAGA Settlement Agreement (“Agreement”), dated for reference purposes February 14, 2025, is made and entered into by and between Daniel Shibata (“Plaintiff”) and Amy’s Kitchen Restaurant Operating Company LLC, a California limited liability company (“Defendant”) (collectively the “Parties”) with respect the following definitions, recitals, terms and conditions:

### **ARTICLE 1 DEFINITIONS**

The following capitalized terms used in this Agreement shall have the meanings ascribed to them as set forth below:

- 1.1 “Action” means the Plaintiff’s PAGA lawsuit against Defendant initiated and pending in the Superior Court of the State of California, County of Imperial.
- 1.2 “Administrator” means, Phoenix Class Action Administration Solutions, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3 “Administrative Expenses Payment” means the approved amount the Administrator will be paid from the Gross Settlement Amount for reimbursement of its reasonable fees and expenses incurred in administering the Settlement.
- 1.4 “Aggrieved Employees” means all non-exempt California employees who worked for Defendant during the PAGA Release Period.
- 1.5 “Aggrieved Employee Data” means Aggrieved Employee identifying information in Defendant’s possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.
- 1.6 “Complaint” means the operative Complaint filed with the Court in the Action on February 13, 2025.
- 1.7 “Court” means the Superior Court for the State of California, County of Imperial.
- 1.8 “Defense Counsel” or “Counsel for Defendant” means PERKINS COIE, 1888 Century Park East, Suite 1700, Los Angeles, CA 90067-1721; email: Jripke@perkinscoie.com.
- 1.9 “Effective Date” means the date on which the Court issues an Order approving this Agreement and Parties’ Settlement.
- 1.10 “Gross Settlement Amount” means two hundred and twenty thousand dollars (\$220,000) which is the total amount Defendant agrees to pay under the Settlement.
- 1.11 “Individual PAGA Payment” means each Aggrieved Employee’s pro rata share of 25% of the Aggrieved Employees’ Share (25% of the Net Settlement Fund).

- 1.12 “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.13 “Net Settlement Fund” means the Gross Settlement Amount less the following amounts, (i) the Plaintiff’s Enhancement/Release Payment; (ii) Litigation Costs; (iii) Attorney’s Fees and (iv) the Administrative Expenses Payment.
- 1.14 “Order” means an Order issued by the Court approving the Settlement. To avoid confusion, the date an Order is issued is also referred to herein as the Effective Date (subject to Section 6.1).
- 1.15 “PAGA” means the Private Attorneys General Act (Labor Code §§2698, et seq.).
- 1.16 “PAGA Notice Referenced Statutes” means the California Labor Code sections and IWC wage orders set forth in the PAGA Notice.
- 1.17 “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day as a non-exempt employee during the PAGA Release Period.
- 1.18 “PAGA Release Period” is the period from June 7, 2023 to January 11, 2025.
- 1.19 “Plaintiff’s Counsel” or “PAGA Counsel” means Amit Peery, Esq., THE PEERY LAW FIRM, 4550 East Thousand Oaks Boulevard, Suite 100, Westlake Village, California 91362; email: ap@peerylaw.com.
- 1.20 “Released Parties” means the Defendant, Amy’s Kitchen Restaurant Operating Company LLC, and each of its past, present and future parent companies, divisions, directors, officers, shareholders, owners, predecessors, subsidiaries, affiliates, manager(s), members, officers, attorneys, insurers, successors, assigns, and agents and all of their respective employees, principals, managing agents, owners, board members, directors, investors, partners, tax advisors, legal representatives, accountants, donors, trustees, administrators, real or alleged alter egos, real or alleged joint employers, purchasers, transferees, affiliates, and all of representatives of Defendant, individually and in their corporate or representative capacities.
- 1.21 “Settlement” means the Parties’ resolution of their dispute and disposition of the Action on the terms and conditions set forth in this Agreement.

## **ARTICLE II RECITALS**

- 2.1 On June 7, 2024, Plaintiff, on behalf of himself and aggrieved employees, served notice on Defendant and the LWDA asserting Claims in compliance with Labor Code section 2699.3, subd.(a). A copy is attached as **Exhibit A** to this Agreement and referred to as the “PAGA Notice”.

- 2.2 On February 13, 2025, Plaintiff commenced the Action by filing his Complaint on behalf of himself and the Aggrieved Employees. Defendant denies the allegations in the Complaint, denies any failure to comply with the laws identified therein and also denies any and all liability for the claims asserted in the Complaint.
- 2.3 By and through this Agreement, the Parties intend to and have agreed to fully resolve Plaintiff's claim for PAGA penalties that occurred during the PAGA Release Period. This Agreement and the Settlement reflected herein follows months of investigation into the facts (including but not limited to informal discovery exchanges) and arguments pertinent to the Action as well as the legal merits regarding the claims and defenses thereto. After extensive and prolonged negotiations, the Parties reached the proposed settlement in light of the foregoing consideration of facts and legal positions and, further, in consideration of avoiding uncertainty, further expense, inconvenience and distraction of protracted litigation, and the risk of an adverse outcome that each of the Parties potentially face. At all times, the Parties' settlement negotiations have been non-collusive, adversarial and at arm's length. The Parties acknowledge that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission of liability by Defendant.
- 2.4 The Parties, PAGA Counsel and Defense Counsel by execution hereof represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.
- 2.5 The Parties, PAGA Counsel and Defense Counsel by execution hereof 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.
- 2.6 This Agreement contemplates the entry of an order by the Court approving the Settlement, which includes but is not limited to the (i) promise of Defendant to pay the Gross Settlement Amount; (ii) Plaintiff's promise to dismiss the Action with prejudice, with the Parties' agreement that the Court retain jurisdiction pursuant to California Code of Civil Procedure section 664.6 and otherwise as permitted by law to enforce this Agreement; (iii) the appointment of the neutral Administrator and (iv) provisions for the allocation and disbursement of the Gross Settlement Amount and Net Settlement Fund.

### **ARTICLE III MONETARY TERMS**

- 3.1 Gross Settlement Amount. Subject to issuance of the Order and the Effective Date, Defendant shall pay the Gross Settlement Amount pursuant to the terms of this Agreement. The Parties agree that there are no circumstances that would require Defendant to pay any amount greater than the Gross Settlement Amount in connection with this Agreement unless the escalator clause in paragraph 7.1 herein is invoked. For the avoidance of doubt, all payments by Defendant will be made to the Administrator and the Administrator will distribute the payments from the Gross Settlement Amount (and Net Settlement Amount as applicable).

**3.2 Payments from the Gross Settlement Amount.** The Parties agree that the Administrator shall make and deduct the following payments from the Gross Settlement Amount pursuant to paragraph 4.3: (i) to Plaintiff, an enhancement and general release payment of \$10,000 (“Plaintiff’s Enhancement/Release Payment”) (ii) to PAGA Counsel for the reasonable litigation costs incurred in pursuit of the claims and filing the Complaint according to proof delivered to the Administrator with copy to Defense Counsel, in an amount anticipated not to exceed \$2,000 (“Litigation Costs”); (iii) to PAGA Counsel, Attorneys’ fees of forty percent (40%) of the Gross Settlement Amount (“Attorney’s Fees”); and (iv) to the Administrator, the Administrator Expenses Payment not to exceed \$5,000.00; all the foregoing payments being subject to, and defined to include, any modifications expressly set forth in an issued Order. Defendant will not oppose or object to application for the approval of the foregoing fees, unless such application should request any payment in excess of the foregoing. Should the Court order payments to Plaintiff, PAGA counsel or the Administrator in amounts less than set forth above, the Administrator will allocate the remainder resulting therefrom to the Net Settlement Fund. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff’s counsel arising from any claim to any portion of any PAGA Counsel Attorney’s fees payment and/or PAGA Counsel litigation costs payment. The Administrator will pay the PAGA Counsel fees payment and PAGA Counsel litigation costs payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel fees payment and the PAGA Counsel litigation costs payment and holds Defendant and Released Parties harmless, and indemnifies Defendant and Released Parties from any dispute or controversy regarding any division or sharing of any of these Payments.

**3.3 Payments from the Net Settlement Fund.** The Parties agree that the Administrator shall distribute seventy-five percent (75%) of the Net Settlement Fund to the LWDA (“LWDA PAGA Payment”) and the remaining twenty-five percent (25%) of the Net Settlement Fund to the Aggrieved Employees (the “Aggrieved Employees’ Share”) pursuant to the provisions of this Section 3.3. The Administrator will calculate each Individual PAGA Payment by (a) dividing the Aggrieved Employees’ Share (25% of the Net Settlement Fund) by the total number of Pay Periods worked by all Aggrieved Employees during the PAGA Release Period and (b) multiplying the result by number of Pay Periods worked by each Aggrieved Employee during the PAGA Release Period. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms. The Administrator will disburse the Aggrieved Employees’ Share of the Net Settlement Funds without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount or Net Settlement Fund will revert to Defendant.

## **ARTICLE IV SETTLEMENT FUNDING AND PAYMENTS**

**4.1 Funding Obligations for the Gross Settlement Amount.** Subject to issuance of the Order, and the Effective Date of the Agreement and subject to Section 6.1 of this Agreement, Defendant shall deliver to the Administrator the Gross Settlement Amount according to the following schedule: (i) \$45,000.00 on or before February 1, 2025 unless the Court’s Order is issued after such date, in which case payment of said sum shall be made no later than 10 calendar days

following issuance of the Order (the “First Installment”); (ii) \$65,000.00 on or before March 1, 2025 (or, depending on when the Court’s Order is issued, no earlier than 10 calendar days following the issuance of the Order); and (iii) \$110,000.00 on or before June 1, 2025 (each an “Installment”, collectively the “Installments”). Time is of the essence with respect to the payment of the Installments and all other promises of Defendant to perform pursuant to the Agreement. Payments due hereunder shall be deposited into a Qualified Settlement Fund pursuant to Section 468B-1 of the US Treasury Regulations set up by the Administrator.

**4.2 Default in Payment Obligations.** If Defendant fails to timely make and deliver to the Administrator any Installment due and owing pursuant to the terms of this Agreement, Plaintiff shall provide written notice of such failure to Defense Counsel (“Default Notice”) by email and a copy by regular mail. Default Notice shall be deemed delivered on the date it is emailed to Defense Counsel. Defendant shall, with respect to the First Installment have three (3) business days, and with respect to the other Installments have ten (10) calendar days, from the date of delivery of the Default Notice to timely cure and make the Installment payment due (the “cure period”). If Defendant fails to make the Installment payment due within the cure period, Defendant shall be in default of this Agreement (“Default”). Should Defendant Default, all unpaid Installments (or portions thereof) shall become immediately due (accelerated), as well as any and all other payments owed by Defendant due under this Agreement if any, and Plaintiff shall be entitled to immediately enforce this Settlement and Agreement; it being stipulated and agreed that the Court shall retain jurisdiction, pursuant to California Code of Civil Procedure section 664.6 and otherwise as permitted by law for said purposes.

**4.3 Administrator Payments from Gross Settlement Amount.** The Administrator shall promptly make the following payments from the Gross Settlement Amount upon receipt of the Installments made from Defendant. Specifically, payments to Plaintiff, PAGA Counsel, and the Administrator should be made by the Administrator promptly and in no event later than ten (10) business days of the receipt of the Installments:

- First Installment of \$45,000 shall be paid as follows: (i) to Plaintiff, the Enhancement/Release Payment in full; (ii) to PAGA Counsel the Litigation Costs in full; (iii) to PAGA Counsel Attorney Fees in an amount proportionate to the First Installment made (40% of the First Installment) (iv) to the Administrator, \$2,500; and (v) any remaining amounts to be held by the Administrator for the Aggrieved Employee Payments and the LWDA Payments.
- Second Installment of \$65,000 shall be paid as follows: (i) to PAGA Counsel, Attorney Fees proportionate to the Second Installment made, (ii) to the Administrator, \$2,500; and (iii) remaining amounts to be held by the Administrator for the Agreed Employee Payments and the LWDA Payments.
- Third Installment of \$110,000 shall be paid as follows: (i) the remaining amount due to PAGA Counsel for Attorneys’ Fees and (ii) the Administrator shall use the remaining funds for the Aggrieved Employee Payments and the LWDA Payment.

**4.4. Aggrieved Employees and Payments from the Net Settlement Fund:**

4.4.1 Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant estimates there are 516 Aggrieved Employees and a total of approximately 7,537 PAGA Pay Periods. By its execution hereof, Defendant represents that the number of PAGA Pay Periods set forth in the preceding sentence is to the best of its knowledge, following careful review of Defendant's employment records, true and correct. Following execution of this Agreement, should Plaintiff, Plaintiff's Counsel, Defendant or Defense Counsel discover or otherwise become aware of additional Aggrieved Employees and/or PAGA Pay Periods it shall immediately notify all Parties, their Counsel and the Administrator of same and the provisions of paragraph 7.1 shall become applicable if the additional number of PAGA Pay Periods meets the Escalator Threshold.

4.4.2 Aggrieved Employee Data. Within thirty (30) days of issuance of the Order, Defendant shall deliver to Administrator the Aggrieved Employee Data in the form of a password protected Microsoft Excel spreadsheet. To protect Aggrieved Employees' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendant shall have a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible noting that Defendant shall have no obligation to update Aggrieved Employee Data for address changes. Without any extension of the deadline by which Defendant must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

4.4.3 Notice and Payments to Aggrieved Employees. No later than twenty-one (21) calendar days after Defendant has paid/delivered all of the Installments and the Gross Settlement Amount has been paid in full, the Administrator shall mail to each of the Aggrieved Employees for whom Aggrieved Employee Data is provided, at their last known address, by first class United States mail, postage prepaid, the Individual PAGA Payments due to them, respectively, along with the Notice of PAGA Settlement in form substantially the same as that attached hereto as Exhibit "B". No claims process is required as a condition to Administrator delivering the Individual PAGA Payments. For each settlement check and Notice of PAGA Settlement to Aggrieved Employees that is returned as undeliverable, the Administrator shall promptly attempt to locate the Aggrieved Employee by using an address refresher database. If no current address is located, the individual payment for that individual will be deemed undeliverable. If any Aggrieved Employees cannot be located within two attempts at mailings by the Administrator, the individual payment for that individual will be deemed undeliverable. The value of checks uncashed more than 180 days after issuance shall be paid to the Office of the California State Controller – Unclaimed Property Fund, to be held in the name of the respective Aggrieved Employees.

4.4.4 Payment to LWDA. No later than twenty-one (21) calendar days after Defendant has paid/delivered all Installments and the Gross Settlement Amount has been paid in full, the Administrator shall deliver to the LWDA the LWDA PAGA Payment.

4.5 Tax. Individual PAGA Payments are considered penalties and will not be subject to local, state or federal tax withholdings. All recipients of payments under this Agreement shall have their

payments reported on an IRS Form 1099. The Administrator shall issue IRS Form 1099s (if required) to the Aggrieved Employees. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payments.

## **ARTICLE V RELEASE**

**5.1 Shibata's General Release.** Subject to issuance of the Order and payment of the Gross Settlement Amount in full (including Plaintiff's Enhancement/Release Payment, a payment to which Plaintiff is not otherwise entitled), Plaintiff, Daniel Shibata ("Shibata"), for himself alone, hereby releases and discharges the Released Parties from all damages, losses, claims, causes of action and liabilities that he has, known or unknown, arising out of or relating to his employment with the Defendant, including, but not limited to all claims that were, or reasonably could have been, alleged by him individually based on the facts contained in the Complaint and/or the PAGA Notice. The claims released also include, without limitation: any claim for damages, fees, costs, equitable relief, restitution, or for any other kind of remedy, arising out of or related to Shibata's relationship with and contacts with Defendant or Released Parties, any claims in federal, state, or local statutory or common law, including ordinances, regulations, and wage orders relating to Shibata's employment with the Defendant and separation from employment, including, without limitation: (i) claims for any form of discrimination, harassment, retaliation, wrongful termination, failure to accommodate, failure to provide leave, or notice regarding employment status, including any claims under: the Employee Retirement Income Security Act; the National Labor Relations Act; the Civil Rights Act of 1866, including, but not limited to, Sections 1981 and 1983; Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991; the Rehabilitation Act of 1973; the Americans with Disabilities Act; the Genetic Information Nondiscrimination Act; the Immigration Reform and Control Act; the Worker Adjustment Retraining and Notification Act WARN the Family and Medical Leave Act; the Fair Credit Reporting Act; the Uniformed Services Employment and Reemployment Rights Act; the Occupational Safety and Health Act; the Families First Coronavirus Response Act; any state and local employment laws regarding COVID-19; the California Family Rights Act; the California Government Code; the California Fair Employment and Housing Act; the California Privacy Rights Act; the California Penal Code, as amended; the California Business and Professions Code; the California WARN Act; and the Constitutions of the State of California and the United States; (ii) claims relating to the payment of wages, salary, compensation, or penalties under any local, state, or federal law, statute, regulation, or ordinance, including any claims under: the California Labor Code (including without limitation Section 132a); any California Industrial Welfare Commission Wage Order; the Federal Fair Labor Standards Act; and the Equal Pay Act; (iii) breach of contract; breach of the implied covenant of good faith and fair dealing; violation of any privacy right; defamation; libel; slander; claims for fraud or fraudulent inducement including for entering this Agreement; whistleblower claims; misrepresentation claims; intentional and negligent infliction of emotional distress; (iv) any and all claims for equitable relief, restitution, and other money damages and damages; (v) any and all claims for fees and/or costs; and (vi) any other legal limitation on the employment relationship. The identification of specific statutes is for purposes of example only, and the omission of any specific statute or law shall not limit the scope of this general release in any manner. For avoidance of doubt, this Agreement releases any claims Shibata may have related to Shibata's employment with Defendant, including, but not limited to, any claims for severance pay, breach of contract, salary, bonus pay, commissions, incentive pay, overtime pay, meal and rest period premiums, final

wages, minimum wages, off-the-clock work, sick leave (including, but not limited to, COVID-19 emergency sick leave), penalties, such as penalties for incorrect wage statements, wages due on termination, or any pay, premium, or penalty provided for under the California Labor Code and any other applicable wage-and- Wages. By accepting this Agreement, Shibata acknowledges that Defendant disputes any claim Shibata may have for Wages, whether known or unknown. Shibata does not contend that Defendant's dispute is anything other than a bona fide (meaning a genuine and good faith) dispute. This release is hereinafter referred to as Shibata's Release.

Shibata's Release does not extend to any claims or actions to enforce this Agreement, claims that cannot be released as a matter of law, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time. Shibata acknowledges that Shibata may discover facts or law different from, or in addition to, the facts or law that Shibata now knows or believes to be true but agrees, nonetheless, that Shibata's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them. For purposes of Shibata's Release, Shibata expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

5.2 Release by Aggrieved Employees: Subject to issuance of the Order and payment of the Gross Settlement Amount in full and to the maximum extent permitted by law, the LWDA, the State of California, by and through Plaintiff as an agent and proxy of the LWDA, and all Aggrieved Employees shall be deemed to fully, finally and forever release, settle, compromise, relinquish and discharge Defendant and the Released Parties from all claims, rights, demands, liabilities and causes of action for all PAGA penalties asserted against Defendant arising from or relating to the alleged violations and/or facts asserted in the Complaint and/or PAGA Notice, including but not limited to, the PAGA Notice Referenced Statutes.

5.3 Release Limitations: The foregoing releases do NOT include the release or waiver of any claims that could arise as a result of a breach of this Agreement by Defendant. No release set forth herein applies to any claims that cannot be released as a matter of law.

5.4 Dismissal: Plaintiff agrees to dismiss the Action with prejudice upon the Court's approval of the Settlement and issuance of the Order contemplated herein, and in exchange for the Defendant's promises herein and Parties' stipulation and agreement that the Court shall retain jurisdiction over the Parties to enforce this Agreement and the Settlement pursuant to California Code of Civil Procedure 664.6.

## **ARTICLE VI APPROVAL OF SETTLEMENT / ORDER**

**6.1 Court Approval of Settlement / Cooperation.** The Parties will cooperate in preparing and filing with the Court a stipulation and proposed Order approving the Settlement, or if required by the Court following submission of the stipulation and proposed order, an unopposed motion to be filed by Plaintiff's Counsel approving the Settlement. Plaintiff has provided Defendant with a copy of the stipulation and proposed Order it intends to file with the Court. If following submission of same, an unopposed motion or other papers are necessary to be filed, Plaintiff agrees to provide Defendant with a copy of such papers it intends to file with the Court at least seven (7) days prior to either: (i) any deadline imposed by the Court to file the documents with the Court or (ii) the filing of documents with the Court if there is no deadline. The Parties agree to use their best efforts to expedite the preparation and submission of the stipulation and proposed Order. If the Parties disagree on any aspect of the proposed stipulation, application, or motion for approval if necessary, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to promptly resolve the disagreement. If the Court does not grant the submitted Order on stipulation/application or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to satisfy the Court's concerns or take such other and further action as may be reasonably needed to give effect to the terms of this Agreement. Defendant stipulates to and will not oppose or object to any stipulation, application or motion made consistent with the terms of this Agreement. Should the Court not grant approval of the Settlement as described in this Agreement, issue the contemplated Order, including following good faith cooperation of counsel, or decline to dismiss the Action with prejudice, this Agreement shall be null and void and have no further effect. The Parties acknowledge and agree that the Effective Date is subject to issuance of an Order (as defined in Article I) by the Court, and should the LWDA or a third party (unaffiliated with Shibata or Defendant) raise objection to or intervene after the time the Parties execute and enter into this Agreement, the Parties agree that such intervening causes will stay performance of this Agreement pending the resolution of such intervening causes and if no resolution is achieved within a reasonable timeframe (no more than 6 months) the Effective Date will be deemed to not have occurred. For the avoidance of doubt, if there are no objections, no third party intervenes, and the LWDA does not object to the settlement, the Effective Date of this Agreement will be the date the Order is issued, and absent any such objection or intervention time for performance of the terms of this Agreement shall be unaffected and remain of the essence.

**6.2 LWDA Notifications:** Concurrently with the submission of this Agreement to the Court, Plaintiff shall transmit a copy of this Agreement to the LWDA as required by PAGA. In addition, upon issuance and entry of a Court Order approving the Settlement, Plaintiff shall transmit a copy of said Order to the LWDA as required by PAGA.

## **ARTICLE VII ESCALATOR CLAUSE**

**7.1 Escalator Clause:** If the number of PAGA Pay Periods during the PAGA Release Period is later discovered or disclosed to exceed the number of PAGA Pay Periods represented in

paragraph 4.4.1 by more than 7.5% of the amount stated in paragraph 4.4.1 (“Escalator Threshold”), the Gross Settlement Amount due from Defendant shall be increased pro rata per the additional PAGA Pay Periods or at Defendant’s sole election Defendant may choose to shorten the PAGA Release Period such that the PAGA Pay Periods do not exceed the Escalator Threshold. All sums due proportionate to the Gross Settlement Amount shall be increased and paid/distributed by the Administrator accordingly (if this clause is triggered and Defendant does not elect to shorten the PAGA Release Period) and Defendant shall pay the Administrator its reasonable fees and expenses incurred in performing the additional services reasonably required as a result of the escalation.

## **ARTICLE VIII STIPULATION FOR COURT TO RETAIN JURISDICTION / BREACH**

**8.1 Court Retains Jurisdiction for Enforcement of Settlement.** The Parties hereby stipulate and agree that the Court shall retain jurisdiction over the Parties and the Action to enforce this Agreement and Settlement pursuant to California Code of Civil Procedure section 664.6.

**8.2 Breach of Agreement.** Upon a Default or other breach of this Agreement by Defendant, all unpaid payments due hereunder, as well as all other payments owed by Defendant pursuant to this Agreement, if any, shall become immediately due and payable in full. It is stipulated and agreed to by the Parties that upon a Default or other breach of this Agreement by Defendant, Plaintiff may apply to the Court, ex-parte or by noticed motion if required or deemed appropriate by Plaintiff or the Court, for the Court to enforce the terms of this Agreement and Settlement, which motion or application may be for an award of Judgment against Defendant for and compelling full performance of the terms herein. The Parties agree that before Plaintiff moves for a court order, it must notify Defense Counsel and provide Defendant a seven (7)-day grace period to comply with the Agreement before obtaining a Judgment from the court. Except for a good faith defense that Defendant made Installments due if Plaintiff claims it did not, Defendant expressly waives any and all defenses, objections, and/or challenges to a Judgment entered consistent herewith, and waives the right to appeal the Judgment. On a breach of this Agreement by Defendant, Plaintiff shall be entitled to all reasonable attorneys’ fees and costs incurred in connection with the enforcement of this Agreement and any Judgment entered in relation thereto. The default and the reasonable attorneys’ fees and costs incurred by Plaintiff may be established by a declaration filed by Plaintiff or his counsel.

## **ARTICLE IX MISCELLANEOUS**

**9.1 No Admission of Liability or Representative Manageability for Other Purposes.** This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Action have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant’s defenses in the

Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, the Parties reserve all claims and available defenses to the claims in the Action. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement). Nothing herein prevents Defendant from introducing this Agreement and the Settlement (assuming the court approves it) in another matter for *res judicata* or collateral estoppel purposes.

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

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

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

9.5 Assignment. None of the rights, commitments, or obligations under this Agreement may be assigned by any of the Parties without the express written consent of the other and their respective counsel's prior acknowledgment and consent thereto.

9.6 No Tax Advice. Neither Plaintiff, PAGA 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.

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

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

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

**9.10 Confidentiality.** To the extent permitted by law, all agreements made, and orders entered during the Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement. Plaintiff, PAGA Counsel, Defendant, and Defense Counsel agree that, other than with respect to the stipulation/motion for settlement approval, and related filings and actions to give effect or enforce its terms, they will not disclose, disseminate and/or publicize or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in any potentially-related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena or as otherwise required to comply with law or government orders; (5) in response to an inquiry or subpoena issued by a state or federal government agency or (6) with respect to Defendant, to provide information with respect to resolution to employees/managers/board members/members regarding the status and fact of the settlement. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. This paragraph does not restrict communications with Aggrieved Employees nor does it restrict communications acknowledging the filing of the complaint, denying the allegations in the complaint or stating that the matter was resolved/settled.

**9.11 Use and Return of Aggrieved Employee Data.** Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Defendant in connection with settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator discharges its obligation, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from Defendant.

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

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

**9.14 Notice.** All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and, unless otherwise expressly provided for otherwise herein, be deemed to have been duly given as of the third business day after mailing by United States mail; or one business day after deposited with a nationally recognized overnight courier, with a courtesy copy to be sent via email, addressed as follows:

To Plaintiff or Plaintiff's Counsel: THE PEERY LAW FIRM, Attn: Amit Peery, 4550 East Thousand Oaks Boulevard, Suite 100, Westlake Village, California 91362; email: ap@peerylaw.com.

To Defendant or Defense Counsel: PERKINS COIE, Attn: Jill Ripke and Brittany Sachs, 1888 Century Park East, Suite 1700, Los Angeles, CA 90067-1721; email:

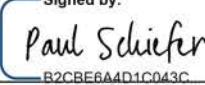
[Jripke@perkinscoie.com](mailto:Jripke@perkinscoie.com); [BSachs@perkinscoie.com](mailto:BSachs@perkinscoie.com); [PMiller@perkinscoie.com](mailto:PMiller@perkinscoie.com);  
[JPorras@perkinscoie.com](mailto:JPorras@perkinscoie.com) and [MVanOlfen@perkinscoie.com](mailto:MVanOlfen@perkinscoie.com).

9.15 Execution / 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 and binding. 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. Each signatory signing on behalf of an entity/entities represents that they are authorized to enter into this Agreement on behalf of such entity/entities and bind it to the terms herein.

By signing below, each of the undersigned acknowledges that they have read and understand, and hereby agree to and shall be bound by the recitals, terms and conditions set forth above in this PAGA Settlement Agreement.

Dated: February 17, 2025  
\_\_\_\_\_

**Amy's Kitchen Restaurant Operating  
Company LLC, a California limited liability  
company**

Signed by:  
  
By \_\_\_\_\_  
Its B2CBE6A4D1C0A3C  
President \_\_\_\_\_

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

By \_\_\_\_\_  
**Daniel Shibata**

**APPROVED AS TO FORM AND  
ATTORNEY OBLIGATIONS ONLY**

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

THE PEERY LAW FIRM

By: \_\_\_\_\_  
Amit Peery, Esq.  
Attorneys for Plaintiff

[Jripke@perkinscoie.com](mailto:Jripke@perkinscoie.com); [BSachs@perkinscoie.com](mailto:BSachs@perkinscoie.com); [PMiller@perkinscoie.com](mailto:PMiller@perkinscoie.com);  
[JPorras@perkinscoie.com](mailto:JPorras@perkinscoie.com) and [MVanOlfen@perkinscoie.com](mailto:MVanOlfen@perkinscoie.com).

9.15 Execution / 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 and binding. 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. Each signatory signing on behalf of an entity/entities represents that they are authorized to enter into this Agreement on behalf of such entity/entities and bind it to the terms herein.

By signing below, each of the undersigned acknowledges that they have read and understand, and hereby agree to and shall be bound by the recitals, terms and conditions set forth above in this PAGA Settlement Agreement.

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

**Amy's Kitchen Restaurant Operating  
Company LLC, a California limited liability  
company**

By \_\_\_\_\_  
Its \_\_\_\_\_

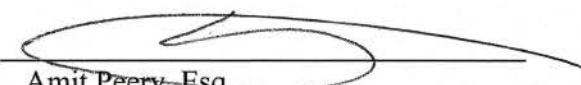
Dated: 2/17/2025  
\_\_\_\_\_

Signed by:   
By \_\_\_\_\_  
**Daniel Shibata**

**APPROVED AS TO FORM AND  
ATTORNEY OBLIGATIONS ONLY**

Dated: 2/18/2025  
\_\_\_\_\_

**THE PEERY LAW FIRM**

By:   
**Amit Peery, Esq.**  
**Attorneys for Plaintiff**

Dated: 2/18/2025

PERKINS COIE

By: Jill F Ripke  
Jill Ripke, Esq.  
Attorneys for Defendant

# EXHIBIT A



4550 E. Thousand Oaks Boulevard, Suite 100  
Westlake Village, California 91362

**T:** (818)995-4079

**F:** (818)995-6514

**E:** ap@peerylaw.com

June 7, 2024

Labor & Workforce Development Agency  
**Via electronic submission**

Amy's Kitchen Restaurant Operating Company LLC  
109 Kentucky Street, Suite 200  
Petaluma, CA 94952  
**Via Certified Mail**

Agent for Service of Process for Amy's Kitchen Restaurant Operating Company LLC  
LegalInc Registered Agents, Inc.  
Four Embarcadero Center, Suite 1400 #85  
San Francisco, CA 94111  
**Via Certified Mail**

**Re: Labor Code Violations of Amy's Kitchen Restaurant Operating Company LLC  
Compliance Letter of California Labor Code § 2698, the Private Attorneys General  
Act of 2004**

Dear LWDA:

This office represents Daniel Shibata, a former California employee of Amy's Kitchen Restaurant Operating Company LLC ("Defendant"). We write this letter in compliance with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 et seq.

Our client was employed by Defendant in one of its Southern California restaurants located in Thousand Oaks, California. Herein we set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to our client and other of its non-exempt California employees ("Aggrieved Employees").

Our client alleges that Defendant failed to pay premium wages to him and other Aggrieved Employees who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 5-2001. Our client and Aggrieved Employees were routinely unable to take a 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not paid premium wages

**JUN 11 2024**

of one hour's pay for each missed rest period. When they were able to take a rest period, they were oftentimes late or cut short. This violates Labor Code § 226.7 and IWC Wage Order No. 5-2001.

Defendant failed to pay premium wages to our client and other Aggrieved Employees who were denied meal periods, in violation of Labor Code §§ 226.7, 512, and 558 and IWC Wage Order 5-2001. Our client and Aggrieved Employees were routinely denied, and not authorized to take, a timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours in duration, or a second timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten hours, but were not paid premium wages of one hour's pay for each missed first or second meal period. When they were able to take a meal period, they were often late, cut short, or interrupted. This violates Labor Code §§ 226.7, 512, and 558 and IWC Wage Order No. 5-2001.

Our client further alleges that Defendant failed to pay our client and certain Aggrieved Employees all wages due at the separation of their employment based on the time frames required by Labor Code §§ 201 and 202. As stated above, our client and certain Aggrieved Employees were not paid all wages due during the course of their employment and, as a result of this failure, they were not timely paid all wages due at the separation of their employment. This violates Labor Code §§ 201-202 and is alleged on behalf of our client and Aggrieved Employees who have left their employment with Defendant.

Our client alleges that Defendant failed to properly compute bonus wages and/or other non-base hourly wages earned by our client and other Aggrieved Employees into their regular rate of pay for purposes of paying them meal and rest period premiums, sick pay wages, and overtime wages at the correct rates, in violation of Labor Code §§ 226.7, 246, 510, 512, 558 and 1194 and IWC Wage Order No. 5-2001. Defendants failed to properly blend bonus wages and/or other non-base hourly wages and instead paid our client and other Aggrieved Employees meal and rest period premiums, sick pay wages, and overtime wages based only on the base hourly rate of pay, thus depriving our client and other Aggrieved Employees of all meal and rest period premiums, sick pay wages, and overtime wages earned. This violates Labor Code §§ 226.7, 246, 510, 512, 558 and 1194 and IWC Wage Order No. 5-2001.

Our client further alleges that Defendant failed to provide him and all other Aggrieved Employees with wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a). Our client and other Aggrieved Employees were not paid all wages due, as stated above. As such, the wage statements provided by Defendant failed to accurately state all gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable hourly rates in effect during the pay period and the corresponding numbers of hours worked at each rate, in violation of Labor Code §§ 226(a)(9) and 226.3. Moreover, Defendant failed to correctly name the legal entity of the employer that employed our client and all other Aggrieved Employees in violation of Labor Code § 226(a)(8), having provided pay stubs / statements attached to their checks identifying the employer as "Amy's Kitchen Restaurant Opera" and pay statements identifying their employer as "Amy's Kitchen Restaurant Operating Co".

Our client further alleges that Defendant was required and failed to provide him and all other Aggrieved Employees that worked at Defendant's Thousand Oaks restaurant and, separately and

in addition was required and failed to provide Aggrieved Employees that worked at Defendant's Roseville restaurant (the Thousand Oaks and Roseville restaurants referred to herein as "Covered Establishments") with sixty (60) days prior written notice of orders of a mass layoff that occurred at those Covered Establishments as required under Labor Code §1400, et seq.; Defendant having ordered a mass layoff during a 30 day period of 50 or more of its employees at each of the Covered Establishments. As a result of these violations, Defendant is subject to civil penalties of up to \$500 a day for each day of the violations for each of its Covered Establishments (Labor Code §1403). Aggrieved Employees at the Covered Establishments were entitled to back pay and the value of the cost of benefits they would have been entitled to had their employment not been lost pursuant to the provisions of Labor Code §1402, giving rise to civil penalties including under Labor Code §§558, 201 and 202.

The \$75 PAGA filing fee has been submitted to the LWDA concurrently with the transmission of this letter.

We invite Defendant or its attorneys to contact our office to discuss this matter, including whether an early resolution of the claims can be reached.

Very truly yours,



Amit Peery, Esq.  
THE PEERY LAW FIRM

(Enclosures by email)

# EXHIBIT B

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF IMPERIAL**

DANIEL SHIBATA, on behalf of himself  
and all “aggrieved employees” pursuant to  
Labor Code § 2698 *et seq.*,

Plaintiff,

v.

AMY’S KITCHEN RESTAURANT  
OPERATING COMPANY LLC, a  
California limited liability company, and  
DOES 1 through 10, inclusive,

Defendants.

Case No. ECU003964

**NOTICE OF SETTLEMENT OF  
PRIVATE ATTORNEYS GENERAL ACT  
CLAIM (CAL. LABOR CODE § 2698 *ET  
SEQ.*)**

***The Superior Court for the State of California authorized this Notice. Read it carefully!  
It is not junk mail, spam, an advertisement or solicitation by a lawyer. You are not being sued.***

You have been identified as an individual who worked for Amy’s Kitchen Restaurant Operating Company LLC (“Defendant”) in California, as a non-exempt employee, at a time between June 7, 2023 and January 11, 2025 (the “PAGA Release Period”).

On February 13, 2025, Plaintiff for himself and other aggrieved employees commenced a lawsuit in the Superior Court of California, County of Imperial, Case Number ECU003964 (the “Lawsuit”) to recover civil penalties under California Labor Code’s Private Attorneys General Act of 2004, codified at Labor Code § 2698 *et seq.* (“PAGA”). PAGA is an enforcement mechanism whereby, following certain procedures, employees may file a lawsuit to recover civil penalties due to and on behalf of the State. As applicable to this Lawsuit brought under PAGA, if civil penalties were awarded, 75% of them would go to the State of California and 25% to employees.

The Lawsuit initiated by Plaintiff alleges that Defendant violated various Labor Code sections giving rise to civil penalties, including violations related to meal and rest breaks, wage statements, unpaid wages due at separation of employment, blending non-base hourly wages into regular rate of pay, and violations of the California WARN act.

Defendant vehemently denies all of the allegations made by Plaintiff in the Lawsuit and disputes all of the claims asserted. After many months of argument and negotiation, the Parties reached a settlement following due consideration of the facts and law, arguments, and the uncertainties, costs and risks of proceeding with litigation. The Court approved the settlement on

\_\_\_\_\_ and has determined that the settlement is fair and reasonable. The payment which accompanies this notice is made to you pursuant to the terms of the Settlement.

The Court-approved settlement contains the following release of claims, to which you are bound: all Aggrieved Employees shall be deemed to fully, finally and forever release, settle, compromise, relinquish and discharge Defendant and the Released Parties from all claims, rights, demands, liabilities and causes of action for all PAGA penalties asserted against Defendant arising from or relating to the alleged violations and/or facts asserted in the Complaint and/or PAGA Notice, including but not limited to, the PAGA Notice Referenced Statutes. The release does not include the release or waiver of any claims that could arise as a result of a breach of the Settlement Agreement or as to any claims that cannot be released as a matter of law.

“Released Parties” means the Defendant, Amy’s Kitchen Restaurant Operating Company LLC, and each of its past, present and future parent companies, divisions, directors, officers, shareholders, owners, predecessors, subsidiaries, affiliates, manager(s), members, officers, attorneys, insurers, successors, assigns, and agents and all of their respective employees, principals, managing agents, owners, board members, directors, investors, partners, tax advisors, legal representatives, accountants, donors, trustees, administrators, real or alleged alter egos, real or alleged joint employers, purchasers, transferees, affiliates, and all of representatives of Defendant, individually and in their corporate or representative capacities.

Enclosed you will find a check made payable to you. The enclosed check represents your portion of the PAGA settlement. It is important to note that this is not a class action settlement, and you cannot opt out of receiving this payment. Please note you are responsible for any taxes on the amount received as non-wage income. The check will become void in 180 days. If you do not cash your check, the amount will be transferred to the California Unclaimed Property Fund in your name.

If you have any questions, you can contact the settlement administrator at \_\_\_\_\_.