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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

JULIO C. HERNANDEZ, an individual, on
behalf of himself, and on behalf of all persons
similarly situated,

Plaintiff,

vs.

BREAKFAST CLUB LLC, a California limited
liability company, and DOES 1-50, Inclusive,
Defendants.

Case No. CVRI2203757

**DECLARATION OF JEAN-CLAUDE
LAPUYADE, ESQ., IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: December 5, 2023

Time: 8:30 a.m.

Judge: Hon. Harold W. Hopp

Dept.: 1

Reservation ID: 256835660622

1 I, Jean-Claude Lapuyade, Esq., declare as follows:

2 1. I am over eighteen years of age and if called as a witness, I could and would competently
3 testify to the following facts from my own personal knowledge. I am an attorney-at-law and the owner
4 of the law firm of JCL LAW FIRM, APC (hereinafter "Class Counsel"). I am co-counsel of record for
5 Plaintiff JULIO C. HERNANDEZ (hereafter "Plaintiff") in this wage and hour class action filed against
6 BREAKFAST CLUB LLC (hereinafter "Defendant").

7 2. This declaration is being submitted in support of Plaintiff's motion for Preliminary
8 Approval of Class Action Settlement.

9 I. EXHIBITS

10 **CMO Section D(1)(a)-(c)**

11 3. Attached hereto as **Exhibit "1"** is a true and correct copy of the fully executed Stipulation
12 of Settlement of Class and PAGA Action Claims and Release of Claims ("Agreement" or "Settlement
13 Agreement"). Attached as **Exhibit "A"** to the Agreement is a true and correct copy of the proposed
14 Class Notice. Attached as **Exhibit "B"** to the Agreement is a true and correct copy of a Request for
15 Exclusion form. Attached as **Exhibit "C"** to the Agreement is a true and correct copy of an Objection
16 Form.

17 4. As more fully detailed in paragraphs 13-14 and 21, herein, the Parties agreed to mediate
18 the Action with Judge Carl West (Ret.), an experienced mediator of wage and hour. The Parties' full-
19 day mediation with Judge West took place on June 28, 2023. The mediation concluded in a settlement.

20 5. Attached hereto as **Exhibit "2"** is a true and correct copy of the proof of filing with the
21 Labor and Workforce Development Agency notice of this settlement with the Stipulation of Settlement
22 of Class and PAGA Action Claims and Release of Claims evidencing Class Counsel's compliance with
23 California Labor Code Section 2699(1)(2).

24 **CMO Section D(8)(a): Administrator Bids**

25 6. Attached hereto as **Exhibit "3"** is a true and correct copy of the bid for
26 settlement administration submitted by Apex Class Action LLC, in the amount of \$4,500. Bids were
27 sought from multiple potential administrators including CPT Group, ILYM Group, Inc. and Apex Class
28 Action LLC. Apex Class Action LLC provided the lowest bid.

1 II. INTRODUCTION

2 7. An objective evaluation of the Settlement confirms that the relief negotiated on behalf of
3 the Class Members is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at
4 arm's length. The Settlement confers substantial benefits to the Class Members. The relief offered by
5 the Settlement is particularly impressive when viewed against the difficulties encountered by plaintiffs
6 pursuing wage and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class
7 Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class
8 certification being denied or of Defendant prevailing at trial. Given that there are approximately 62
9 Class Members, the average gross recovery (assuming a 100% participation rate) is approximately
10 \$1,830.65 (Net Settlement Amount divided by Class Members).

11 8. As discussed below, the proposed Settlement satisfies all criteria for preliminary
12 settlement approval and falls within the range of reasonableness. The average Individual Settlement
13 Payment to the Settlement Class meets or exceeds awards in similar wage and hour class actions.
14 Moreover, the proposed Settlement Class is appropriate for provisional certification. Accordingly,
15 Plaintiff respectfully requests the Court grant preliminary approval of the Settlement.

16 III. FACTS AND PROCEDURE

17 A. Overview of the Litigation

18 9. Defendant owns and operates a restaurant in Riverside, California. This action asserts
19 claims on behalf of Defendant's non-exempt employees. Plaintiff worked for Defendant as a non-
20 exempt employee in California during 2022. At all times during his employment, Plaintiff earned an
21 hourly wage and was entitled to legally compliant meal and/or rest periods, and minimum, regular and
22 overtime wages for all hours worked. Throughout his employment, Plaintiff was subject to Defendant's
23 written policies and procedures.

24 10. Generally, Plaintiff claims that Defendant failed to pay for all time worked, failed to
25 provide compliant meal and rest periods, failed to reimburse employees for required expenses, failed to
26 furnish accurate itemized wage statements, and failed to pay all wages when due. Defendant forcefully
27 denies liability for each of Plaintiff's claims. Further, Defendant asserts that it fully complied with all
28 applicable employment laws and raised several other significant defenses to Plaintiff's claims, including

1 but not limited to, facially compliant meal and rest period polices, compliant wage statements, and
2 timely payment of all wages.

3 11. On June 29, 2022, Plaintiff served Defendant and the Labor and Workforce Development
4 Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’s PAGA Notice set forth
5 the facts and theories supporting Defendant’s alleged violations of various provisions of the California
6 Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of his intent to
7 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections
8 2698 et seq (“PAGA”).

9 12. On September 2, 2022, Plaintiff filed a class action lawsuit in the Riverside Superior
10 Court, Case Number CVRI2203757 (“Action”). The Action alleged ten causes of action against
11 Defendant for: (1) Unfair Competition in Violation of California Business and Professions Code §§
12 17200 *et seq.*; (2) Failure to Pay Minimum Wages in Violation of California Labor Code §§ 1194, 1197
13 and 1197.1; (3) Failure to Pay Overtime Wages in Violation of California Labor Code §§ 510 *et seq.*;
14 (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5)
15 Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6) Failure
16 to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code § 2802; (7) Failure to
17 Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203; (8) Failure to Provide
18 Accurate Itemized Wage Statements in Violation of Cal. Lab. Code §§ 226 and 226.2; (9) Failure to
19 Provide Gratuities in Violation of Cal. Lab. Code § 351 and (10) Violation of the Private Attorneys
20 General Act [Labor Code §§ 2698 *et seq.*]

21 13. The Parties agreed to mediate the Action with Judge Carl West (Ret.), an experienced
22 mediator of wage and hour class actions. To prepare for mediation, the Parties agreed to informally
23 exchange documents and data points subject to the mediation privilege, including but not limited to, the
24 Class Members’ time data and certain payroll data points. As discussed *infra*, Plaintiff’s counsel
25 retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze Defendant’s time and
26 payroll data.

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28 ///

1 14. On June 28, 2023, the Parties participated in a full day mediation with Judge West. After
2 arms-length negotiations and bargaining, the mediation concluded in a settlement which was
3 subsequently memorialized in the form of a Memorandum of Understanding. The Parties drafted and
4 negotiated a long-form settlement agreement, which is the subject of the instant motion.

5 B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

6 15. Months before filing the Action, Class Counsel began its pre-filing investigation into the
7 Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with
8 Plaintiff. At the conclusion of the interviews, Class Counsel determined that Plaintiff's complaints
9 justified further inquiry.

10 16. Considering the many anticipated factual disputes, the Parties agreed, relatively early in
11 the litigation, that it would be in the best interest of both Parties to mediate the matter. To prepare for
12 mediation, Class Counsel requested documents and data points to further evaluate Plaintiff's claims and
13 Defendant's liability exposure to the Class Members. In response to Class Counsel's request, Defendant
14 produced time records and pay data for the Class Members, which allowed Plaintiff's expert to
15 determine the average shift length, average hourly rate for the Class Members, and total number of
16 workweeks and pay periods in the Class Period and PAGA Period, respectively, before beginning its
17 analysis related to Plaintiff's allegations. Defendant also produced copies of applicable handbooks,
18 policies, and agreements containing, *inter alia*, compensation, timekeeping and meal and rest period
19 policies.

20 17. Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
21 Members' payroll and time data. BCG provides data analysis and damage modeling consulting services
22 specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed
23 and experienced experts in their fields and have provided their expertise on thousands of cases. Stated
24 differently, the BCG is uniquely qualified to analyze Defendant's time and payroll data.

25 18. BCG analyzed Defendant's time and payroll data to assist in the development of various
26 damage models. Among other things, BCG determined the approximate number of work shifts, pay
27 periods, and average number of hours worked per shift during the Class Period. BCG also estimated the
28

number of unpaid overtime hours, unpaid reporting time pay, the number of meal and rest break violations, as well as the total damages due to unreimbursed business expenses during the Class Period.

19. In advance of mediation, Class Counsel created several damage models predicated on the BCG analysis. Class Counsel's models calculated Defendant's potential liability exposure while accounting for the uncertainties of continued litigation. These damage models informed and guided Class Counsel during the mediated settlement discussions.

20. Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiff's suitability as a putative class representative through interviews, background investigations, and analysis of his employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing the Settlement Class' time and payroll records; (5) analyzing Defendant's labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed.

C. The Parties Settled at Mediation

21. On June 28, 2023, the Parties conducted a full day of mediation with by Judge Carl West (Ret.), an experienced wage and hour mediator. Judge West helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Judge West's assistance. Namely, the Parties exchanged information regarding their respective claims and defense, including their respective evaluation of the damages. After a day of arm's length and adversarial negotiations, the mediation concluded with a settlement. The complete and final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue.

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1 IV. ARGUMENT

2 A. The Court Should Preliminarily Approve the Settlement

3 22. The Gross Settlement Amount of \$225,000 is fair and reasonable considering the nature
4 and magnitude of the claims being settled and the various potential impediments to recovery. Prior to
5 mediation, Class Counsel retained BCG to develop economic damage models measuring Defendant's
6 liability exposure while accounting for the uncertainties of continued litigation. The various models
7 were informed by Class Counsel's investigation, including the analysis of a significant sample of time
8 and payroll data. Class Counsel projected Defendant's liability exposure for *class claims* (excluding
9 PAGA Penalties) at \$1,303,598 if successful at trial. Thus, the Gross Settlement Amount of \$225,000
10 represents approximately 33.5% of Defendant's *class-wide* liability exposure as estimated by Class
11 Counsel at the time of mediation. The following summarizes Defendant's estimated exposure.

12 23. Plaintiff alleges Defendant failed to pay its employees a minimum wage pursuant to
13 California law. Specifically, Plaintiff alleges that based on the time and wage data provided by
14 Defendant, Defendant paid its employees less than the state-mandated minimum wage (for example,
15 less than \$14 per hour in 2021). Similarly, Plaintiff alleges that Defendant failed to properly pay
16 overtime wages for hours worked in excess of eight hours per day. Specifically, Defendant paid
17 overtime hours at the employee's regular hourly rate rather than at the overtime rate of one-and-one-
18 half times the regular rate of pay. Plaintiff's expert estimated the damages for this claim at
19 approximately \$12,339.

20 24. Plaintiff alleges Defendant required its employees to report for work, but failed to put
21 them to work and/or failed to furnish them with work for at least half of their scheduled shift. More
22 specifically, Plaintiff alleges Defendant required Plaintiff and Class Members to arrive to work at the
23 start of their scheduled shifts, but would then send them home before the end of their shift if there was
24 not a need for them. On these occasions, Defendant failed to compensate its employees with Reporting
25 Time pay, as required by the applicable Wage Order, in that they were not paid a minimum of two hours
26 or for half of their scheduled day's work. Based on the time and wage data provided by Defendants,
27 Plaintiff's expert estimated the damages for this claim at approximately \$9,284.

1 25. Plaintiff alleges Defendant regularly: (a) failed to provide meal periods; (b) provided late
2 meal periods; (c) provided short meal periods; and/or (d) required employees to work through their
3 meal periods. Plaintiff's expert made the following notable findings with respect to Defendant's meal
4 break violations: (1) 46.9% of shifts greater than 6 hours did not record a meal break; (2) 28.2% of
5 shifts greater than 5 hours included a meal break that was less than 30 minutes (*i.e.* a "short" meal
6 break); and (3) 12.1% of shifts included a first meal break that was taken after the end of the 5th hour of
7 work. Defendant raised a number of defenses, including that in shifts exceeding 5 hours but less than
8 6 hours, employees voluntarily waived their meal periods, and that in shifts exceeding 10 hours but less
9 than 12 hours, employees voluntarily waived their second meal periods. Defendants also argued, among
10 other things, that they provided all their employees, *i.e.*, Class Members and PAGA Class Members,
11 with the opportunity to take compliant meal periods, and that they maintained facially compliant meal
12 period policies. Thus, Defendant argued that any missed meal periods were voluntarily and did not
13 trigger liability for premium payments. Taking Defendant's defenses into account, Plaintiff discounted
14 Defendant's liability for meal period violations by 15%. Plaintiff estimated the damages for this claim
15 at approximately \$153,981 in damages for unpaid meal period premiums.

16 26. Plaintiff also alleged that Defendants failed to provide compliant rest periods.
17 Specifically, Plaintiff alleged that Class Members were often not afforded the opportunity to take a
18 complaint rest period due to their rigorous work load requirements and understaffing. Defendants
19 denied liability and asserted that it maintained legally compliant rest period policies and practices
20 throughout the Class Period. Moreover, Plaintiff recognized the evidentiary burdens establishing this
21 claim. Establishing Plaintiff's rest period claim would rely, almost entirely, on Class Member
22 testimony, making it a riskier claim at class certification and liability stages. Certification likely would
23 have required depositions of Class Members who provided declarations, and Defendant surely would
24 have obtained opposing declarations stating either rest breaks were taken, or rest breaks were
25 voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223,
26 at *11 ("Because of the competing testimony before the Court, plaintiff's evidence that defendant may
27 have an illegal, written rest break policy is insufficient for this Court to find that common issues
28 predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL

1 5503550, at *8 (“Indeed, Plaintiff’s own evidence confirms that the written policy does not generate
2 uniform practices.”). Accordingly, Plaintiff’s Damages model mirrored the 15% discount as applied to
3 Class Members’ meal periods. Plaintiff estimated Defendants’ exposure for this claim to be \$268,400.

4 27. Plaintiff alleged that Defendant required that Plaintiff and other Class Members use their
5 personal cell phones in furtherance of their job duties, as well as maintain their uniform at their personal
6 expense. Specifically, Plaintiff alleges that he was required to use his personal cell phone to call
7 customers when their tables were ready if the landlines were already in use. California employers who
8 require employees to use a personal cellular device for work purposes must reimburse the employee for
9 the cost incurred in furnishing the device, including voice and data service. *See* Cal. Labor Code §
10 2802(a), providing that “[a]n employer shall indemnify his or her employee for all necessary
11 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
12 duties, or of his or her obedience to the directions of the employer...”

13 28. Additionally, Plaintiff was required to wear a uniform, which included a Breakfast Club
14 T-shirt. Plaintiff and Class Members were provided a single T-shirt, which they were required to wear
15 during each shift and maintain in good condition. If Plaintiff or Class Members wanted additional T-
16 shirts or other approved apparel, they were required to pay for those items. In order to maintain clean
17 uniforms, Plaintiff and Class Members were required to incur additional personal expenses for which
18 they were not reimbursed. Plaintiff estimated Defendants’ exposure for this claim to be \$30,240.

19 29. Plaintiff alleges that Defendant’s alleged violations resulted in derivative violations of
20 Labor Code section 203 and 226. Although these *penalties* collectively represented Defendant’s largest
21 dollar amount of exposure, Class Counsel considered these penalties and weighed the potential
22 recoveries against probable defenses. Specifically, Defendant contends that Plaintiff could not prove
23 the “willful” prong needed to obtain waiting time penalties under Labor Code section 203. Additionally,
24 Defendant contends that Plaintiff cannot show that Class Members suffered an “injury” because of wage
25 statement violations, as required by Labor Code section 226. Plaintiff would have to overcome
26 precedent to prove the Class deserved the penalties. *See, e.g., Howard v. CVS Caremark Corp.*, 2014
27 U.S. Dist. LEXIS 172406 (C.D. Cal. Dec. 9, 2014) (denying class certification for the same penalty
28 claims); *Alonzo v. Maximus, Inc.*, 832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011) (finding

insufficient evidence of bad faith or actual injury). These claims represented Plaintiff's most legally precarious and uncertain claims, thus Plaintiff applied a 25% discount to these claims and estimated Defendant's exposure for these claims to be approximately \$198,360

CMO Section D(2): PAGA Penalties

30. "Under PAGA, a plaintiff may bring a representative action as an aggrieved employee on behalf of herself and other current or former employees and may seek civil penalties for Labor Code violations." *Wilner v. Manpower, Inc.*, 35 F.Supp.3d 1116 (N.D. Cal. 2014). Thus, Plaintiff sought penalties for unpaid wages (including unpaid overtime), non-compliant or no meal periods, noncompliant or no rest periods, and unreimbursed business expenses. The PAGA Period is the period between June 29, 2021 until July 28, 2023 and there are approximately 56 Aggrieved Employees who worked a total of 1,176 pay periods.

31. Plaintiff's claims and corresponding PAGA penalties can be broken down as follows:

Labor Code Section	Number of employees	Statutory penalty	Number of pay periods / violations	Violation rate	Total Penalties
351, 510, 558, 1194 and 1197 (unpaid wages)	56	\$100	1,176	100% of total pay periods	\$117,600
510 (unpaid overtime)	56	\$100	249	21.2% of total pay periods	\$24,900
512 and 226.7 (meal period violations)	53	\$50	1,109	94% of total pay periods	\$55,450
512 and 226.7 (rest period violations)	56	\$50	1,176	100% of total pay periods	\$58,800
2802 (unreimbursed business expenses)	56	\$100	1,176	100% of total pay periods	\$117,600
TOTAL					\$374,350

32. California Labor Code section 2699(e)(1) permits a court to award a lesser amount than the maximum civil penalty if, based on the facts and circumstances, to do otherwise would result in an award that is "unjust, arbitrary and oppressive or confiscatory." Before and during the mediation,

1 Defendant argued, among other things, that it was unlikely that any judge would award more than the
2 actual amounts owed on the claims, let alone the full \$50, \$100 or \$200 per violation authorized under
3 PAGA. In *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 204 (2018), the Court of Appeal affirmed a
4 judgement after trial which only provided for a PAGA penalty of \$5 per pay period. Therefore, at trial,
5 any PAGA penalties awarded in this case could be significantly less than Plaintiff's calculation even
6 had Plaintiff prevailed on the PAGA claim. Here, multiplying the number of pay periods (1,176) by \$5
7 results in a total potential liability of \$5,880. Therefore, even assuming Plaintiff would have prevailed
8 on all of her claims at trial, the result obtained by Plaintiff in the Settlement exceeds the amount Plaintiff
9 would have recovered had the Court relied on *Carrington* in awarding the PAGA penalties

10 33. As discussed above, Defendant asserted a number of defenses to both the PAGA claim
11 and the underlying Labor Code violations, not only as to liability but also as to the amount of penalties.
12 Defendant could argue that no penalties prior to the PAGA notification should be awarded because the
13 violations were not intentional, and at least one court has ruled. These defenses present a risk to the
14 PAGA claim and a serious risk that some or all of the PAGA penalties Plaintiff sought would not be
15 awarded. Based on the defenses outlined above, Defendant has argued, and continues to argue, that any
16 violation was not knowing or intentional, and that any penalty awarded beyond the benchmark set in
17 *Carrington* would be unjust, arbitrary and oppressive or confiscatory. Plaintiff concedes that, at least
18 some of the alleged violations, were arguably not intentional. The Parties ultimately allocated \$10,000
19 to PAGA, agreeing on a \$8.50 per pay-period violation, which is in between \$5 and \$10 per pay period,
20 and takes into account the significant defenses Defendant raised.

21 B. Litigation Risks

22 34. Continuing to litigate this action would require continued and extensive resources
23 coupled with significant Court time to proceed through trial and post-trial motions; which can often
24 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
25 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at
26 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that
27 Defendant would appeal any favorable judgment. As demonstrated by *Magadia v. Wal-Mart Associates,*
28 *Inc.* (9th Cir. 2021) 999 F.3d 668, the risk of an appeal and subsequent reversal is real.

1 35. In this matter, Class Counsel negotiated a Gross Settlement Amount of \$225,000 that is
2 roughly 33.5% Defendant's estimated class wide liability exposure. Given the amount of the settlement
3 here, as compared to potential value of the claims, offset by the various inherent risks to continued
4 litigation, the settlement is fair and reasonable.

5 B. Proposed Notice Informs the Class About the Case and Settlement

6 36. The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class Members
7 of their rights and remedies. The Settlement Administrator will first verify addresses, then mail
8 the proposed Class Notice to all Class Members. The Class Notice will include information
9 regarding the nature of the lawsuit, a summary of the substance of the Settlement's terms, the
10 class definition, the procedure and time period within which the form Request for Exclusion or
11 form Objection must be submitted, the date for the final approval hearing, the formula used to
12 calculate settlement payments, and the terms and scope of the Released Claims. This method was
13 negotiated by the Parties to ensure delivering the most reasonable method of notice to the Class
14 Members while ensuring cost effective administration of the Settlement.

15 C. The Court Should Preliminarily Approve the Enhancement Award

16 **CMO Section D(5)**

17 37. The Settlement provides for a Class Representative Service Award of \$10,000 for Plaintiff. The
18 service award is fair and reasonable compensation for the Plaintiff's efforts bringing the action,
19 assisting Class Counsel with the litigation and settlement, regularly conferring with Class
20 Counsel on the status of his case and the strategies for prosecuting the claims, reviewing the
21 proposed Settlement to ensure that its terms are fair and provide adequate relief for the
22 Settlement Class, and agreeing to provide Defendant a general release of all claims arising out
23 of his employment. Class Counsel on behalf of Plaintiff will file a formal motion for the
24 negotiated Class Representative Service Award once preliminary approval of the Settlement is
25 granted. Such motion will be accompanied by a declaration from Plaintiff that describes the
26 services he performed to prosecute this action, includes an estimate of time incurred by Plaintiff
27 in performing these services, the risks he assumed or benefits he received in prosecuting this
28 action, and identify any adverse consequences he suffered in prosecuting this action. As noted

1 by Plaintiff in his declaration, Plaintiff has **not** negotiated any settlement of individual claims
2 with Defendant separate from the settlement at bar. Plaintiff respectfully submits that the above
3 showing is sufficient for preliminary approval of the negotiated Class Representative Service
4 Award.

5 D. The Court Should Preliminary Approve the Negotiated Class Counsel Award

6 **CMO Section D(3)**

7 38. Class Counsel took this matter on a contingency fee basis and invested significant time and
8 expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average
9 Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement
10 Class Members. Considering the positive outcome for the Settlement Class Members, and in light
11 of the supporting authority, the proposed Class Counsel award is fair and reasonable.

12 39. Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary
13 approval of the Settlement is granted. Such motion will be accompanied by a declaration that
14 provides evidence of the total amount of time spent by Class Counsel, a description of the work
15 performed, and the reasonableness of the fees charged. Such declaration will also include a
16 detailed description of the costs actually incurred. Such declaration will include details related
17 to fee splitting between Class Counsel, and Plaintiff's written notice of such. Plaintiff
18 respectfully submits that the above showing is sufficient for preliminary approval of the
19 negotiated attorneys' fees.

20 E. The Court Should Provisionally Certify the Settlement Class

21 40. For Settlement, Plaintiff contends, and Defendant does not dispute, that provisional certification
22 of the Class is appropriate.

23 41. Because all Class Members are Defendant's current and former employees, the class is readily
24 ascertainable from Defendant's regular business records, i.e., payroll records.

25 42. The statutes relating to each of Plaintiff's claims apply with equal force and effect to the entire
26 Settlement Class. Factually, Defendant's policies and practices apply class-wide and Defendant's
27 liability can be determined by facts common to all members of the class. The wage and hour
28

issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Settlement Class.

43. Plaintiff's wage and hour claims are typical of the proposed Settlement Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Settlement Class. Plaintiff alleges that she was injured by the same company-wide practices to which the proposed Class Members were subject to and seek the same relief. Plaintiff has already demonstrated her ability to advocate for the interests of the Class Member by initiating this litigation, undertaking discovery in order to meaningfully mediate, and evaluating the proposed settlement to assure that it is fair.

44. A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual claim, the Class Members likely have little incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication.

F. Class Counsel's Experience

45. Plaintiff and the Settlement Class Members are represented by competent and experienced counsel to pursue their claims. I established the JCL Law Firm, APC ("Firm"), in 2010. The Firm is a boutique plaintiff firm representing aggrieved employees and consumers throughout California in wage and hour class actions, PAGA Actions and complex multi-party product liability matters. The Firm currently consists of myself, Jean-Claude Lapuyade, Esq. (Partner/Owner), Sydney Castillo-Johnson (attorney), Monnett De La Torre (attorney), Perssia Razma (Law Clerk), Tesla Stone (Paralegal), Sara Christensen (Legal Secretary), Jennifer Heming (Paralegal), and Madelyn Uchiyama (Legal Assistant).

46. I am qualified to represent the Plaintiff and the State of California. I have extensive experience with wage and hour class and representative actions litigation like this matter, and employment matters in general. Additionally, I have extensive complex mass tort litigation experience and complex construction product liability experience. I can, will and have adequately represented

1 the interests of the Plaintiff, the State of California and the Aggrieved Employees throughout this
2 action.

3 47. I have represented consumers and employees in California class actions, and complex multi-party
4 product liability actions exclusively for more than 13 years. I have been in practice as a plaintiffs'
5 civil litigation attorney since April 2007.

6 48. I have significant class counsel and collective action counsel experience. I served as class and/or
7 collective (PAGA) counsel in the following matters:

8 a. *Nunes v. Home Depot U.S.A., Inc.* San Joaquin Superior Court Case No. Case
9 No. STK-CV-UOE-2020-0011011 (October 20, 2021 – Hon. Roger Ross appointed the
10 Jean-Claude Lapuyade, Esq. as Class Counsel and approved a \$1.5 million dollar wage
11 and hour class and PAGA action settlement for, among things, unpaid off-the-clock
12 work.

13 b. *Munoz v. AMTCR, Inc.*, San Bernardino Superior Court Case No.
14 CIVDS2001914 (August 24, 2021 – Hon. David Cohn approved a \$1.85 million dollar
15 wage and hour class and PAGA action for, among other things, inaccurate itemized wage
16 statements, and appointed the JCL Law Firm, APC as Class Counsel.)

17 c. *Rodriguez v. RSI Home Products, Inc.*, San Bernardino Superior Court Case No.
18 CIVDS2023354 (July 30, 2021 – Hon. David Cohn approved a \$1.45 million class and
19 PAGA settlement for, *inter alia*, failure to comply with piece-rate laws, and appointed
20 the JCL Law Firm, APC as Class Counsel)

21 d. *Jer Vang v. Bridge Property Management*, Alameda County Superior Court,
22 Case No RG19047434 (January 8, 2021 – Hon. Winifred Smith approved a class and
23 PAGA settlement for, *inter alia*, unpaid off the clock work. The JCL Law Firm, APC
24 acted as class counsel for the settlement class and as representative PAGA counsel the
25 State of California and the Aggrieved Employees.)

26 e. *Johnson v. Volt Management Corp., Inc. et al.*, Los Angeles County Superior
27 Court, Case No. 19STCV16466 (December 11, 2020 – Hon. Amy Hogue approved a
28

1 PAGA Settlement negotiated on behalf of the State of California and the aggrieved
2 employees by the JCL Law Firm, APC.)

3 f. *Salazar v. Frontier Auto Sales Inc., dba Frontier Toyota*, Los Angeles Superior
4 Court, Case No. 19STCV20382 (November 24, 2020 – Hon. John P. Doyle appointed
5 the JCL Law Firm, APC as class counsel and approved a class and PAGA settlement
6 for, *inter alia*, missed meal and rest periods.)

7 g. *Villalobos v. Alterra Group, LLC et al.*, Los Angeles County Superior Court,
8 Case No. 19STCV19448 (November 11, 2020 – Hon. Richard Fruin approved a PAGA
9 Settlement for, *inter alia*, unreimbursed business expenses. The JCL Law Firm, APC
10 acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.)

11 h. *Stevens et al., v. Bank of England*, San Diego County Superior Court Case No.
12 37-2019-00018662-CU-OE-CTL (October 16, 2020 – Hon. John Meyer appointed JCL
13 Law Firm as Class Counsel and granted final approval of wage and hour class action for,
14 *inter alia*, off-the-clock work.)

15 i. *Frazier v. ASA Carlton, Inc.*, San Diego Superior Court Case No. 37-2019-
16 00036147 (October 9, 2020 Hon. Kenneth Medel appointed the JCL Law Firm as Class
17 Counsel and granted final approval of wage and hour class action for off-the-clock
18 work.)

19 j. *Krake et al., v. Central Valley Diner, Inc.*, Placer County Superior Court Case
20 No. SCV0041645 (September 4, 2020 – Hon. Michael Jones appointed JCL Law Firm
21 as class counsel and granted final approval of wage and hour class action for meal period
22 violations.)

23 k. *Conner v. Ascendant Marketing, LLC et al.*, San Diego Superior Court Case No.
24 37-2019-00026864-CU-OE-CTL (July 24, 2020 Hon. Joel Wohlfeil granted approval of
25 PAGA Settlement for, among other things, off-the-clock work. JCL Law Firm, APC
26 acted as lead counsel.)

27 l. *Guerrero v. Estancia Operations, LLC.*, San Diego Superior Court Case No. 37-
28 2019-00028963 (August 25, 2020 – Hon. Katherine Bacal approved PAGA Settlement

1 for, *inter alia*, missed meal and rest periods. JCL LAW Firm, APC, acted as lead
2 counsel.)

3 m. *Moreno v. Dash Lube, et al.*, United States District Court, Southern District of
4 California, Case No. 18cv1922 DMS (AHG) (December 13, 2019 – Granted class
5 certification of Labor Code Section 226 claim and appointed JCL Law Firm, APC, as
6 Class Counsel.)

7 n. *Perkins et al., v. Tahiti Enterprises, Inc., et al.*, Orange County Superior Court
8 Case No. 30-2016-00863095 (October 22, 2019 – Hon. Peter Wilson appointed JCL Law
9 Firm, APC, as Class Counsel and granted final approval for an unlawful housing class
10 action settlement arising out of Civil Code Section 1940.1.)

11 o. *Hill v. Stemak Holdings, Ltd.*, San Diego Superior Court Case No., 37-2018-
12 00000747 (January 28, 2020 – Hon. Kenneth Medel appointed JCL Law Firm, APC as
13 class counsel and granted final approval of wage and hour class action for unpaid
14 overtime.)

15 p. *Shachno et al., v. KT Hotels, LLC, et al.* San Diego Superior Court Case No Case
16 No. 37-2018-00043601 (May 31, 2019 – Hon, Gregory Pollack appointed JCL Law
17 Firm, APC, as Class Counsel and granted preliminary approval for the wage and hour
18 class action settlement involving nearly 900 current and former employees. Final
19 approval scheduled for October 4, 2019)

20 q. *Almanza v. The Express Group, Inc.*, San Bernardino Superior Court Case No.
21 CIVDS1722542 (April 19, 2019 – Hon. David Cohn appointed the JCL Law Firm, APC,
22 as Class Counsel and granted final approval for a wage and hour class action settlement
23 for *inter alia*, missed meal and rest periods and independent contractor
24 misclassification.)

25 r. *Moschetto v. Pillow Global, Inc.* San Diego Superior Court, Case No. 37-2017-
26 00024031-CU-OE-CTL (April 5, 2019 – Hon. John S. Meyer appointed JCL LAW Firm,
27 APC, as Class Counsel and granted final approval for a wage and hour wage class action
28 settlement involving misclassified house cleaners.)

- s. *Burke v. Friendship Hotel, LLC*, San Diego County Superior Court Case No. 37-2017-00022517-CU-OE-CTL (March 10, 2019 – final approval granted on for an unlawful housing class action arising under Civil Code Section 1940.2)
- t. *Terrado et al., v. Accredited Debt Relief, LLC*, San Diego County Superior Court Case No. 37-2018-00014181-CU-OE-CTL (February 8, 2019 – Hon. Gregory W. Pollock appointed JCL Law Firm, APC as Class Counsel and granted final approval for a wage and hour class action settlement for meal and rest period violations);
- u. *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case No. CIVDS1512625, (July 27, 2018 – Hon. Thomas S. Garza appointed JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement involving claims for on duty meal and rest periods.);
- v. *Summerlin et al. v. Maplebear, Inc. dba Instacart*, Los Angeles Superior Court Case No. BC603030 (2018 - certified and settled wage and hour class action.)
- w. *Ortega v. Prime Healthcare*, San Diego Superior Court Case No. 37-2014-00011240-CU-OE-CTL (2018 – Approved PAGA only settlement for on duty meal and rest periods)
- x. *Engstrom v. Bender-Rosenthal, Inc.* San Diego Superior Court Case No. 37-2016-00012373-CU-OE-CTL (2017 - Certified and settled class action for employee misclassification);
- y. *Crawford v. Outlook Amusements, Inc.*, Los Angeles Superior Court Case No. BC617160 (2017 - Certified and settled wage and hour class action.);
- z. *Hernandez v. Sunglass Hut Trading, LLC*, San Bernardino Superior Court Case No. CIVDS1505181 (2016 - Certified and settled wage and hour class action);
- aa. *Burns v. Shalom, LLC*, San Diego Superior Court, Case No., 37-2013-00058356-CU-BT-CTL (2015 - certified and settled class action for unlawful housing practices arising out of Civil Code Section 1940.1);

49. Since 2010, my firm has successfully resolved more than sixty (65) cases and recovered in excess of \$75 million on behalf of the Firm's clients.

1 50. Since 2010, I have successfully tried two (2) cases to conclusion, each resulting in a favorable
2 verdict for the firm's clients.

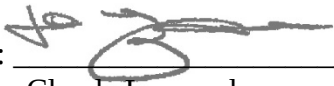
3 51. Finally, I have published appellate experience in *William Blanchette et al., v. The Superior Court*
4 *of Imperial County, (GHA Enterprises)*, 8 Cal.App.5th 521.

5 52. Consequently, I was named to the prestigious Thomson Reuters, Super Lawyers, Rising Star in
6 2015, 2016, 2017 and, again, in 2018.

7 53. I am not aware of any class, representative, or other collective action in any other court in this or
8 any other jurisdiction that asserts claims similar to those asserted in this action on behalf of a
9 class or group of individuals some or all of whom would also be members of the class defined in
10 this action. I made reasonable inquiry of other members of my law firm and associated law firms
11 to determine whether those attorneys are aware of any such similar actions, which they are not.
12

13 I declare under the penalty of perjury under the laws of the State of California that the foregoing
14 is true and correct. Executed this 8th day of November 2023, at San Diego, California.
15

16 **JCL LAW FIRM, APC**

17 By:  _____

18 Jean-Claude Lapuyade
19 Attorneys for Plaintiff
20
21
22
23
24
25
26
27
28

EXHIBIT 1

ZAKAY LAW GROUP, APLC

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF RIVERSIDE

JULIO C. HERNANDEZ, an individual, on
behalf of himself, and on behalf of all persons
similarly situated;

Plaintiff,

v.

BREAKFAST CLUB LLC, a California
limited liability company, and DOES 1-50,
Inclusive,

Defendants.

Case No. CVRI2203757

[Action Filed 09/02/2022]

**STIPULATION OF SETTLEMENT OF
CLASS AND PAGA ACTION CLAIMS
AND RELEASE OF CLAIMS**

This Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims is entered into by and between plaintiff JULIO C. HERNANDEZ (hereinafter “Plaintiff”), an individual, on behalf of the Settlement Class, and in his representative capacity on behalf of the State of California and the Aggrieved Employees, and defendant BREAKFAST CLUB, LLC, a California Corporation (hereinafter “Defendant”):

I. DEFINITIONS

- A. “Action” shall mean the putative class action lawsuit designated *Julio v. Hernandez v. Breakfast Club, LLC*, Riverside County Superior Court, Case No. CVRI2203757, filed September 2, 2022.
- B. “Aggrieved Employees” shall mean all non-exempt employees who are or previously were employed by Defendant and performed work in California during the PAGA Period.
- C. “Aggrieved Employee Payment” shall mean each Aggrieved Employee’s pro rata share of the PAGA Settlement. This will be determined by taking the Aggrieved Employee’s respective PAGA Payment Ratio and multiplying it by the PAGA Settlement Amount.
- D. “Agreement” or “Settlement Agreement” means this Stipulation of Settlement of Class Action and Release of Claims.
- E. “Class Counsel” shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC and Shani Zakay of Zakay Law Group, APLC.
- F. “Class Counsel Award” means the award of fees and expenses that the Court authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff and the Class in the Action, consisting of attorneys’ fees currently not to exceed one-third of the Gross Settlement Amount currently estimated to be \$75,000 out of \$225,000 plus costs and expenses in an estimated amount of \$12,000. Class Counsel’s award for attorneys’ fees will be divided equally between Class Counsel (50% to JCL Law Firm, APC and 50% to Zakay Law Group, APLC).

- 1 G. "Class Data" means information regarding Class Members that Defendant will in
2 good faith compile from its records and provide to the Settlement Administrator. It
3 shall be formatted as a Microsoft Excel spreadsheet and shall include: each Class
4 Member's full name; last known address; Social Security Number; start dates and end
5 dates of employment.
- 6 H. "Class Members" or the "Class" means all non-exempt employees who are or
7 previously were employed by Defendant and performed work in California during the
8 Class Period.
- 9 I. "Class Period" means the period between September 2, 2018 to July 28, 2023.
- 10 J. "Class Representative Service Award" means the amount that the Court authorizes to
11 be paid to the Class Representative, in addition to his Individual Settlement Payment
12 and his pro-rata share of the PAGA Settlement, in recognition of his efforts and risks
13 in assisting with the prosecution of the Action and in exchange for executing a
14 General Release of Defendant.
- 15 K. "Class Representative" shall mean plaintiff JULIO C. HERNANDEZ.
- 16 L. "Court" means the Superior Court for the State of California, County of Riverside
17 currently presiding over the Action.
- 18 M. "Defendant" shall mean BREAKFAST CLUB, LLC.
- 19 N. "Effective Date" means the earliest date, following entry by the Court of an order
20 and judgment finally approving this Settlement, upon which one of the following have
21 occurred: (i) if no objection is filed to the settlement and no objector appears at the
22 hearing on final approval, the date of the Court's entry of the order granting final
23 approval, (ii) if an objection is filed to the settlement and/or an objector appears at the
24 hearing on final approval, then the earlier of the following: (a) the expiration of all
25 potential appeal periods without a filing of a notice of appeal of the final approval
26 order or judgment; (b) final affirmance of the final approval order and judgment by
27 an appellate court as a result of any appeal(s), or (c) final dismissal or denial of all
28

such appeals (including any petition for review, rehearing, certiorari, etc.) such that the final approval order and judgment is no longer subject to further judicial review.

O. "Funding Date" shall mean sixty (60) calendar days after the Effective Date and is the date Defendant transfers the Gross Settlement Amount into the QSF in accord with the terms of this Agreement.

P. "Gross Settlement Amount" means Two Hundred Twenty-Five Thousand Dollars (\$225,000.00) that Defendant must pay into the QSF in connection with this Settlement, inclusive of the sum of the Individual Settlement Payments, the Class Representative Service Award, the Class Counsel Award, PAGA Settlement and the Settlement Administration Costs and **exclusive** of the employer's share of payroll tax, if any, triggered by any payment under this Settlement.

Q. "Individual Settlement Payment" means the amount payable from the Net Settlement Amount to each Settlement Class Member and excludes any amounts distributed to Aggrieved Employees pursuant to PAGA.

R. "Net Settlement Amount" or "NSA" means the Gross Settlement Amount, less Class Counsel Award, Class Representative Service Award, PAGA Settlement, and Settlement Administration Costs.

S. "Notice Packet" means the Class Notice to be provided to the Class Members by the Settlement Administrator in the form set forth as Exhibit A to this Agreement (other than formatting changes to facilitate printing by the Settlement Administrator).

T. "PAGA" means the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698 *et seq.*

U. "PAGA Payment Ratio" means the respective pay periods during the PAGA Period for each Aggrieved Employee divided by the total of the pay periods for all Aggrieved Employees during the PAGA Period.

V. "PAGA Pay Periods", for purposes of calculating the distribution of the Aggrieved Employee Payment, as defined herein, means the number of pay periods of

employment during the PAGA Period that each Aggrieved Employee worked in California.

W. “PAGA Period” means the period between June 29, 2021 until July 28, 2023 (the “PAGA Period”).

X. “PAGA Settlement” shall mean Ten Thousand Dollars (\$10,000) to be allocated from the Gross Settlement Amount.

Y. “Parties” means Plaintiff and Defendant, collectively, and “Party” shall mean either Plaintiff or Defendant, individually.

Z. “Class Payment Ratio” means the respective Workweeks for each Class Member divided by the sum total Workweeks for all Class Members.

AA. “Plaintiff” shall mean JULIO C. HERNANDEZ.

BB. “QSF” means the Qualified Settlement Fund established, designated and maintained by the Settlement Administrator to fund the Gross Settlement Amount.

CC. “Released Class Claims” means all class claims which are alleged in the operative complaint, or could have been alleged based upon the facts in the operative complaint, which occurred during the Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers’ compensation, and class claims outside of the Class Period.

DD. “Released PAGA Claims” means all  claims for statutory penalties that could have been sought by the Labor Commissioner for the violations identified in Plaintiff’s pre-filing letter to the LWDA; Plaintiff does not release any aggrieved employee’s claim for wages or damages.

EE. “Released Party” shall mean Defendant, its officers,  directors, managers, members, employees and agents.

1 FF. "Response Deadline" means the date forty-five (45) days after the Settlement
2 Administrator mails Notice Packets to Class Members and the last date on which
3 Class Members may submit requests for exclusion or objections to the Settlement.

4 GG. "Settlement" means the disposition of the Action pursuant to this Agreement.

5 HH. "Settlement Administrator" means Apex Class Action LLC, 18 Technology Drive,
6 Suite 164 Irvine, California 92618; Tel: 1-800-355-0700; Fax: 949-878-3536;
7 apexclassaction.com. The Settlement Administrator establishes, designates and
8 maintains, as a QSF under Internal Revenue Code section 468B and Treasury
9 Regulation section 1.468B-1, into which the amount of the Gross Settlement Amount
10 is deposited for the purpose of resolving the claims of Settlement Class Members.
11 The Settlement Administrator shall maintain the funds until distribution in an
12 account(s) segregated from the assets of Defendant and any person related to
13 Defendant. ***All accrued interest shall be paid and distributed to the Settlement Class***
14 ***Members as part of their respective Individual Settlement Payment.***

15 II. "Settlement Class Members" or "Settlement Class" means all Class Members who
16 have not submitted a timely and valid request for exclusion as provided in this
17 Agreement.

18 JJ. "Workweeks", for purposes of calculating the distribution of the Net Settlement
19 Amount, means the number of weeks of employment during the Class Period that
20 each Class Member was employed by Defendant in California, excluding weeks
21 during which the Class Member did not perform any work for Defendant.

22 **II. RECITALS**

23 A. On June 29, 2022, Plaintiff filed a Notice of Violations with the Labor and Workforce
24 Development Agency (LWDA) and served the same on Defendant.

25 B. On September 2, 2022, Plaintiff filed the Class Action lawsuit for:

26 1. Unfair Competition in Violation of Bus. and Prof. Code sections 17200 *et seq*;
27
28

2. Failure to pay minimum wages in violation of California Labor Code sections 1194, 1197 and 1197.1;
3. Failure to pay overtime wages in violation of California Labor Code sections 510 *et seq*;
4. Failure to provide required meal periods in violation of California Labor Code sections 226.7 and 512 and the applicable IWC wage order;
5. Failure to provide required rest periods in violation of California Labor Code sections 226.7 and 512 and the applicable IWC wage order;
6. Failure to reimburse Plaintiff for required expenses in violation of California Labor Code section 2802;
7. Failure to provide wages when due in violation of California Labor Code sections 201, 202 and 203;
8. Failure to provide accurate itemized wage statements in violation of California Labor Code section 226;
9. Failure to provide gratuities in violation of California Labor Code §351; and
10. Violation of the Private Attorneys General Act [Labor Code sections 2698 *et seq*].

C. The Class Representative believes he has meritorious claims based on alleged violations of the California Labor Code, and the Industrial Wage Commission Orders, and that class certification is appropriate because the prerequisites for class certification can be satisfied in the Action, and this action is manageable as a PAGA representative action.

D. Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, disputes any wages, damages and penalties claimed by the Class Representative are owed, and further contends that, for any purpose other than settlement, the Action is not appropriate for class or representative action treatment.

1 Defendant contends, among other things, that at all times they complied with the
2 California Labor Code and the Industrial Wage Commission Orders.

3 E. The Class Representative is represented by Class Counsel. Class Counsel conducted
4 an investigation into the facts relevant to the Action, including conducting an
5 independent investigation as to the allegations, reviewing documents and information
6 exchanged through informal discovery, and reviewing documents and information
7 provided by Defendant pursuant to informal requests for information including time
8 calculator entries and employee payroll “detail earnings” sheets for a sampling of
9 employees, January 1, 2023 employee handbook, Plaintiff’s personnel file that
10 includes but is not limited to: paystubs, time slips, weekly roster report, various
11 policies, and pay schedule disclosure, to prepare for mediation. Defendant produced
12 for the purpose of settlement negotiations certain employment data concerning the
13 Settlement Class, which Class Counsel reviewed and analyzed. Based on their own
14 independent investigation and evaluation, Class Counsel are of the opinion that the
15 Settlement with Defendant is fair, reasonable and adequate, and is in the best interest
16 of the Settlement Class in light of all known facts and circumstances, including the
17 risks of significant delay, defenses asserted by Defendant, uncertainties regarding
18 class certification, and numerous potential appellate issues. Although they deny any
19 liability, Defendant is agreeing to this Settlement solely to avoid the inconveniences
20 and cost of further litigation. The Parties and their counsel have agreed to settle the
21 claims on the terms set forth in this Agreement.

22 F. On June 28, 2023, the Parties participated in mediation presided over by Judge Carl
23 West (Ret.), an experienced mediator of wage and hour class actions. The mediation
24 concluded in settlement which was subsequently memorialized in the form of a
25 Memorandum of Understanding (“MOU”).

26 G. This Agreement replaces and supersedes the MOU and any other agreements,
27 understandings, or representations between the Parties. This Agreement represents a
28

1 compromise and settlement of highly disputed claims. Nothing in this Agreement is
2 intended or will be construed as an admission by Defendant that the claims in the
3 Action of Plaintiff or the Class Members have merit or that Defendant bears any
4 liability to Plaintiff or the Class on those claims or any other claims, or as an
5 admission by Plaintiff that Defendant's defenses in the Action have merit.

6 H. The Parties believe that the Settlement is fair, reasonable and adequate. The
7 Settlement was arrived at through arm's-length negotiations, taking into account all
8 relevant factors. The Parties recognize the uncertainty, risk, expense and delay
9 attendant to continuing the Action through trial and any appeal. Accordingly, the
10 Parties desire to fully, finally, and forever settle, compromise and discharge all
11 disputes and claims arising from or relating to the Action.

12 I. The Parties agree to certification of the Class for purposes of this Settlement only. If
13 for any reason the settlement does not become effective, Defendant reserves the right
14 to contest certification of any class for any reason and reserves all available defenses
15 to the claims in the Action.

16 Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

17 **III. TERMS OF AGREEMENT**

18 A. Settlement Consideration and Settlement Payments by Defendant.

19 1. Settlement Consideration. In full and complete settlement of the Action, and
20 in exchange for the releases set forth below, Defendant and the Released
21 Parties will pay the sum of the Individual Settlement Payment, the Class
22 Representative Service Award, the Class Counsel Award, PAGA Settlement,
23 and the Settlement Administration Costs, as specified in this Agreement, equal
24 to the Gross Settlement Amount of Two Hundred Twenty-Five Thousand
25 Dollars (\$225,000.00). The Parties agree that this is a non-reversionary
26 Settlement and that no portion of the Gross Settlement Amount shall revert to
27 Defendant. Other than the Defendant's share of employer payroll taxes and
28

1 as provided for in Section III(A)(2) below, if any, Defendant shall not be
2 required to pay more than the Gross Settlement Amount, except as provided
3 for hereinbelow.

4 2. Class Size. At the time of mediation, Defendant estimated that the Settlement
5 Class was comprised of 62 individuals who collectively worked
6 approximately 5,892 Workweeks ("Projected Workweeks") during the Class
7 Period. In regard hereto, Defendant will provide a declaration under penalty
8 of perjury before the deadline for filing the motion for preliminary approval
9 of the settlement, confirming the number of applicable Class Members and
10 workweeks they worked during the applicable Class Period. If the workweek
11 number increases by more than 10% of the estimate stated herein, the Gross
12 Settlement Amount will increase on a pro-rata basis equal to the percentage
13 increase in the number of workweeks worked by the Class Members above
14 10% (In other words, if the excess is 707, the increase will be 2% and if the
15 increase is 589 (or less) than the increase is 10% or lower, and the increase
16 will be zero (0%)).

17 3. Settlement Payment. Defendant is liable for payment of the Gross Settlement
18 Amount. Defendant shall pay the Gross Settlement Amount to the Settlement
19 Administrator on the Funding Date. If Defendant does not make the payment,
20 the Released Parties will be responsible for making the payment.

21 4. Defendant's Share of Payroll Taxes. Defendant's share of employer side
22 payroll taxes is in addition to the Gross Settlement Amount and shall be paid
23 together with the Gross Settlement Amount.

24 B. Release by Settlement Class Members. Upon entry of final judgment and funding of
25 the Gross Settlement Amount, the Defendant and the Released Parties shall be entitled
26 to a release from the Class Members of all class claims alleged in the operative
27 complaint which occurred during the Class Period, and expressly excluding all other
28

1 claims, including claims for vested benefits, wrongful termination, unemployment
2 insurance, disability, social security, workers' compensation, and class claims outside
3 the Class Period.

4 C. Release by the Aggrieved Employees. Upon entry of final judgment and funding of
5 the Gross Settlement Amount, the Defendant and Released Parties shall be entitled to
6 a release from Plaintiff and the State of California of all claims for statutory penalties
7 that could have been sought by the Labor Commissioner for the violations identified
8 in Plaintiff's pre-filing letter to the LWDA. Such release expressly excludes all other
9 claims, including claims for vested benefits, wrongful termination, unemployment
10 insurance, disability, social security, workers' compensation and PAGA claims
11 outside of the PAGA period.

12 D. General Release by Plaintiff. Upon funding of the Gross Settlement Amount, Plaintiff
13 waives, releases, acquits and forever discharges the Defendant and Released Parties
14 from any and all claims, whether known or unknown, which exist or may exist on his
15 behalf as of the date of this Agreement, including but not limited to any and all tort
16 claims, contract claims, wage claims, wrongful termination claims, disability claims,
17 benefit claims, public policy claims, retaliation claims, statutory claims, personal
18 injury claims, emotional distress claims, invasion of privacy claims, defamation
19 claims, fraud claims, quantum meruit claims, and any and all claims arising under any
20 federal, state or other governmental statute, law, regulation or ordinance, including,
21 but not limited to claims for violation of the Fair Labor Standards Act, the California
22 Labor Code, the Wage Orders of California's Industrial Welfare Commission, other
23 state wage and hour laws, the Americans with Disabilities Act, the Age Discrimination
24 in Employment Act (ADEA), the Employee Retirement Income Security Act, Title VII
25 of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, the
26 California Family Rights Act, the Family Medical Leave Act, California's
27 Whistleblower Protection Act, California Business & Professions Code Section 17200

1 et seq., and any and all claims arising under any federal, state or other governmental
2 statute, law, regulation or ordinance. Plaintiff also waives and relinquishes any and all
3 claims, rights or benefits that he may have under California Civil Code § 1542, which
4 provides as follows:

5 ***A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE***
6 ***CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO***
7 ***EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE***
8 ***RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE***
9 ***MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR***
10 ***OR RELEASED PARTY.***

11
12 Thus, notwithstanding the provisions of section 1542, and to implement a full and
13 complete release and discharge of the Released Parties, Plaintiff expressly
14 acknowledges this Settlement Agreement is intended to include in its effect, without
15 limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff's favor at
16 the time of signing this Agreement, and that this Agreement contemplates the
17 extinguishment of any such claims. Plaintiff warrants that Plaintiff has read this
18 Agreement, including this waiver of California Civil Code section 1542, and that
19 Plaintiff has consulted with or had the opportunity to consult with counsel of Plaintiff's
20 choosing about this Agreement and specifically about the waiver of section 1542, and
21 that Plaintiff understands this Agreement and the section 1542 waiver, and so Plaintiff
22 freely and knowingly enters into this Agreement. Plaintiff further acknowledges that
23 Plaintiff later may discover facts different from or in addition to those Plaintiff now
24 knows or believes to be true regarding the matters released or described in this
25 Agreement, and even so Plaintiff agrees that the releases and agreements contained in
26 this Agreement shall remain effective in all respects notwithstanding any later
27 discovery of any different or additional facts. Plaintiff expressly assumes any and all
28

1 risk of any mistake in connection with the true facts involved in the matters, disputes,
2 or controversies released or described in this Agreement or with regard to any facts now
3 unknown to Plaintiff relating thereto.

4 E. Conditions Precedent: This Settlement will become final and effective only upon the
5 occurrence of all of the following events:

- 6 1. The Court enters an order granting preliminary approval of the Settlement;
- 7 2. The Court enters an order granting final approval of the Settlement and a Final
8 Judgment;
- 9 3. If an objector appears at the final approval hearing, the time for appeal of the
10 Final Judgment and Order Granting Final Approval of Class Action
11 Settlement expires; or, if an appeal is timely filed, there is a final resolution of
12 any appeal from the Judgment and Order Granting Final Approval of Class
13 Action Settlement; and
- 14 4. Defendant fully funds the Gross Settlement Amount.

15 F. Nullification of Settlement Agreement. In the event that this Agreement is not
16 preliminarily or finally approved by the Court, fails to become effective, or is reversed,
17 withdrawn or modified by the Court, or in any way prevents or prohibits Defendant
18 from obtaining a complete resolution of the Released Claims, or if Defendant fails to
19 fully fund the Gross Settlement Amount:

- 20 1. This Settlement Agreement shall be void *ab initio* and of no force or effect,
21 and shall not be admissible in any judicial, administrative or arbitral
22 proceeding for any purpose or with respect to any issue, substantive or
23 procedural;
- 24 2. The conditional class certification (obtained for any purpose) shall be void *ab*
25 *initio* and of no force or effect, and shall not be admissible in any judicial,
26 administrative or arbitral proceeding for any purpose or with respect to any
27 issue, substantive or procedural; and

1 3. None of the Parties to this Settlement will be deemed to have waived any
2 claims, objections, defenses or arguments in the Action, including with respect
3 to the issue of class certification.

4 4. If Defendant has funded the Gross Settlement Amount, such amount will be
5 returned to Defendant. If Defendant fails to fully fund the Gross Settlement
6 Amount, Defendant shall bear the sole responsibility for any cost to issue or
7 reissue any curative notice to the Settlement Class Members and all Settlement
8 Administration Costs incurred to the date of nullification. If after Court
9 approval, Defendant fails to fully fund the Gross Settlement Amount,
10 Defendant shall bear the sole responsibility for any cost to issue or reissue any
11 curative notice to the Settlement Class Members and all Settlement
12 Administration Costs incurred to the date of nullification.

13 G. Certification of the Settlement Class. The Parties stipulate to conditional class
14 certification of the Class for the Class Period for purposes of settlement only. In the
15 event that this Settlement is not approved by the Court, fails to become effective, or is
16 reversed, withdrawn or modified by the Court, or in any way prevents or prohibits
17 Defendant from obtaining a complete resolution of the Released Claims, the
18 conditional class certification (obtained for any purpose) shall be void *ab initio* and of
19 no force or effect, and shall not be admissible in any judicial, administrative or arbitral
20 proceeding for any purpose or with respect to any issue, substantive or procedural.

21 H. Tax Liability. The Parties make no representations as to the tax treatment or legal
22 effect of the payments called for, and Class Members and/or Aggrieved Employees are
23 not relying on any statement or representation by the Parties in this regard. Class
24 Members and/or Aggrieved Employees understand and agree that they will be
25 responsible for the payment of any taxes and penalties assessed on the Individual
26 Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA
27 Settlement described and will be solely responsible for any penalties or other
28

obligations resulting from their personal tax reporting of Individual Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA Settlement.

I. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section, the “acknowledging party” and each Party to this Agreement other than the acknowledging party, an “other party”) acknowledges and agrees that: (1) no provision of this 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 shall 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 Agreement, (b) has not entered into this 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 adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging party, and (3) no attorney or adviser to any other Party has imposed any limitation that protects the confidentiality of any such attorney’s or adviser’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 Agreement.

J. Preliminary Approval Motion. Plaintiff shall draft and file with the Court a Motion for Order Granting Preliminary Approval and supporting papers within a reasonable period of time after complete execution of this agreement and will provide Defendant with a draft of the Motion at least 3 business days prior to the filing of the Motion to give Defendant an opportunity to propose changes or additions to the Motion. Defendant shall provide all Declarations with required information as directed by the

1 Case Management Order entered on September 7, 2022 no later than 7 calendar days
2 prior to the filing of the Motion.

3 K. Settlement Administrator. The Settlement Administrator shall be responsible for:
4 establishing and administering the QSF; calculating, processing and mailing payments
5 to the Class Representative, Class Counsel, LWDA and Class Members; printing and
6 mailing the Notice Packets to the Class Members as directed by the Court; receiving
7 and reporting the objections and requests for exclusion; calculating, deducting and
8 remitting all legally required taxes from Individual Settlement Payments and
9 distributing tax forms for the Wage Portion and Non-Wage Portion of the Individual
10 Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA
11 Settlement; processing and mailing tax payments to the appropriate state and federal
12 taxing authorities; providing declaration(s) as necessary in support of preliminary
13 and/or final approval of this Settlement; and other tasks as the Parties mutually agree
14 or the Court orders the Settlement Administrator to perform. The Settlement
15 Administrator shall keep the Parties timely apprised of the performance of all
16 Settlement Administrator responsibilities by among other things, sending a weekly
17 status report to the Parties' counsel stating the date of the mailing, the of number of
18 Elections Not to Participate in Settlement it receives (including the numbers of valid
19 and deficient), and number of objections received. The Settlement Administrator will
20 be responsible to provide all reports necessary to Defendant's payroll company to
21 report all wages and withholdings on the Plaintiff's, Class Members', and Aggrieved
22 Employees' W-2. The Settlement Administrator will be responsible to provide
23 information necessary to assure all 1099s as required.

24 L. Notice Procedure.

25 1. Class Data. No later than ten (10) business days after the Preliminary
26 Approval Date, Defendant shall provide the Settlement Administrator with the
27
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1 Class Data for purposes of preparing and mailing Notice Packets to the Class
2 Members.

3 2. Notice Packets.

4 a) The Notice Packet shall contain the Notice of Class Action Settlement
5 in a form substantially similar to the form attached as Exhibit A, a
6 Request for Exclusion form attached hereto as Exhibit B, and an
7 Objection Form attached hereto as Exhibit C. The Notice of Class
8 Action Settlement shall inform Class Members and Aggrieved
9 Employees that they need not do anything in order to receive an
10 Individual Settlement Payment and/or Aggrieved Employees'
11 individual shares of the PAGA Settlement and to keep the Settlement
12 Administrator apprised of their current mailing address, to which the
13 Individual Settlement Payments and/or Aggrieved Employees'
14 individual shares of the PAGA Settlement will be mailed following
15 the Funding Date. The Notice of Class Action Settlement shall set
16 forth the release to be given by all members of the Class who do not
17 request to be excluded from the Settlement Class and/or Aggrieved
18 Employees' in exchange for an Individual Settlement Payment and/or
19 Aggrieved Employees' individual shares of the PAGA Settlement, the
20 number of Workweeks worked by each Class Member during the
21 Class Period and PAGA Period, if any, and the estimated amount of
22 their Individual Settlement Payment if they do not request to be
23 excluded from the Settlement and each Aggrieved Employee's share
24 of the PAGA Settlement, if any. The Settlement Administrator shall
25 use the Class Data to determine Class Members' Workweeks and
26 PAGA pay periods. The Notice will also advise the Aggrieved
27 Employees that they will release the Released PAGA Claims and will
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1 receive their share of the PAGA Settlement regardless of whether they
2 request to be excluded from the Settlement.

3 b) The Notice Packet's mailing envelope shall include the following
4 language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE
5 ENTITLED TO PARTICIPATE IN A CLASS ACTION
6 SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR
7 ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED
8 NOTICE."

9 3. Notice by First Class U.S. Mail and Email. Upon receipt of the Class Data,
10 the Settlement Administrator will perform a search based on the National
11 Change of Address Database to update and correct any known or identifiable
12 address changes. No later than fourteen (14) calendar days after receiving the
13 Class Data from Defendant, the Settlement Administrator shall mail and email
14 copies of the Notice Packet to all Class Members via regular First-Class U.S.
15 Mail and electronic mail. The Settlement Administrator shall exercise its best
16 judgment to determine the current mailing address for each Class Member.
17 The address identified by the Settlement Administrator as the current mailing
18 address shall be presumed to be the best mailing address for each Class
19 Member.

20 4. Undeliverable Notices. Any Notice Packets returned to the Settlement
21 Administrator as non-delivered on or before the Response Deadline shall be
22 re-mailed to any forwarding address provided. If no forwarding address is
23 provided, the Settlement Administrator shall promptly attempt to determine a
24 correct address by lawful use of skip-tracing, or other search using the name,
25 address and/or Social Security number of the Class Member involved, and
26 shall then perform a re-mailing, if another mailing address is identified by the
27 Settlement Administrator. In addition, if any Notice Packets, which are
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1 addressed to Class Members who are currently employed by Defendant, are
2 returned to the Settlement Administrator as non-delivered and no forwarding
3 address is provided, the Settlement Administrator shall notify Defendant.
4 Defendant will request that the currently employed Class Member provide a
5 corrected address, and transmit to the Administrator any corrected address
6 provided by the Class Member. Class Members who received a re-mailed
7 Notice Packet shall have their Response Deadline extended fifteen (15) days
8 from the original Response Deadline.

9 5. Disputes Regarding Individual Settlement Payments. Class Members will
10 have the opportunity, should they disagree with Defendant's records regarding
11 the start and end dates of employment to provide documentation and/or an
12 explanation to show contrary dates. If there is a dispute, the Settlement
13 Administrator will consult with the Parties to determine whether an
14 adjustment is warranted. The Settlement Administrator shall determine the
15 eligibility for, and the amounts of, any Individual Settlement Payments under
16 the terms of this Agreement. The Settlement Administrator's determination
17 of the eligibility for and amount of any Individual Settlement Payment shall
18 be binding upon the Class Member and the Parties, except as provided herein
19 below in Paragraph 6.

20 6. Disputes Regarding Administration of Settlement. Any disputes not resolved
21 by the Settlement Administrator concerning the administration of the
22 Settlement will be resolved by the Court under the laws of the State of
23 California. Before any such involvement of the Court, counsel for the Parties
24 will confer in good faith to resolve the disputes without the necessity of
25 involving the Court.

26 7. Exclusions. The Notice of Class Action Settlement contained in the Notice
27 Packet shall state that Class Members who wish to exclude themselves from
28

1 the Settlement must submit a signed copy of the Request for Exclusion form
2 to the Settlement Administrator. A Request for Exclusion form will be mailed
3 together with the Notice Packet to all Class Members. The Request for
4 Exclusion will not be valid if it is not timely submitted, if it is not signed by
5 the Class Member, or if it does not contain the name and address and last four
6 digits of the Social Security number of the Class Member. The date of the
7 postmark on the mailing envelope or fax stamp on the Request for Exclusion
8 shall be the exclusive means used to determine whether the request for
9 exclusion was timely submitted. Any Class Member who submits a timely
10 Request for Exclusion shall be excluded from the Settlement Class will not be
11 entitled to an Individual Settlement Payment and will not be otherwise bound
12 by the terms of the Settlement or have any right to object, appeal or comment
13 thereon. However, any Class Member that submits a timely Request for
14 Exclusion that is also a member of the Aggrieved Employees will still receive
15 his/her pro rata share of the PAGA Settlement, as specified below, and in
16 consideration, will be bound by the Release by the Aggrieved Employees as
17 set forth herein. Settlement Class Members who fail to submit a valid and
18 timely Request for Exclusion on or before the Response Deadline shall be
19 bound by all terms of the Settlement and any final judgment entered in this
20 Action if the Settlement is approved by the Court. No later than fourteen (14)
21 calendar days after the Response Deadline, the Settlement Administrator shall
22 provide counsel for the Parties with a final list of the Class Members who have
23 timely submitted timely Requests for Exclusion. At no time shall any of the
24 Parties or their counsel seek to solicit or otherwise encourage members of the
25 Class to submit Requests for Exclusion from the Settlement.

- 26 8. Objections. The Notice of Class Action Settlement contained in the Notice
27 Packet shall state that Class Members who wish to object to the Settlement
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must submit a signed copy of the Objection Form to the Settlement Administrator by the Response Deadline. A Objection Form will be mailed together with the Notice Packet to all Class Members. The postmark date of mailing shall be deemed the exclusive means for determining that a Objection Form was served timely. The Objection Form must be signed by the Settlement Class Member and state: (1) the name of the Settlement Class Member; (2) the basis for the objection; and (3) the Class Member's signature. Class Members who fail to submit an Objection Form may still make their objections orally at the Final Approval/Settlement Fairness Hearing with the Court's permission. Settlement Class Members will have a right to appear at the Final Approval/Settlement Fairness Hearing to have their objections heard by the Court regardless of whether they submitted a written objection. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to file or serve written objections to the Settlement or appeal from the Order and Final Judgment. Class Members who submit a written request for exclusion may not object to the Settlement. Class Members may not object to the PAGA Settlement.

M. Allocation of the Gross Settlement Amount.

1. Individual Settlement Payments. Individual Settlement Payments shall be paid from the Net Settlement Amount and shall be paid pursuant to the formula set forth herein. Using the Class Data, the Settlement Administrator shall add up the total number of Workweeks for all Class Members. The respective Workweeks for each Class Member will be divided by the total Workweeks for all Class Members, resulting in the Payment Ratio for each Class Member. Each Class Member's Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Class Member's estimated Individual Settlement Payments. Each Individual Settlement Payment will be

1 reduced by any legally mandated employee tax withholdings (e.g., employee
2 payroll taxes, etc.). Individual Settlement Payments for Class Members who
3 submit valid and timely requests for exclusion will be redistributed to
4 Settlement Class Members who do not submit valid and timely requests for
5 exclusion on a pro rata basis based on their respective Payment Ratios.

6 2. Calculation of Individual Payments to the Aggrieved Employees. Using the
7 Class Data, the Settlement Administrator shall add up the total number of
8 PAGA pay periods for all Aggrieved Employees during the PAGA Period.
9 The respective PAGA pay periods for each Aggrieved Employee will be
10 divided by the total PAGA pay periods for all Aggrieved Employees, resulting
11 in the “PAGA Payment Ratio” for each Aggrieved Employee. Each
12 Aggrieved Employee’s PAGA Payment Ratio will then be multiplied by the
13 Aggrieved Employee Payment to calculate each Aggrieved Employee’s
14 estimated share of the PAGA Settlement.

15 3. Allocation of Individual Settlement Payments. For tax purposes, Individual
16 Settlement Payments shall be allocated and treated as follows: 20% as wages
17 (“Wage Portion”); 80% as penalties and interest (“Non-Wage Portion”). The
18 Wage Portion is subject to wage withholdings and shall be reported on IRS
19 Form W-2. The Non-Wage Portion shall not be subject to wage withholdings
20 and shall be reported on IRS Form 1099.

21 4. Allocation of Aggrieved Employee Payments. For tax purposes, Aggrieved
22 Employee Settlement Payments shall be allocated and treated as 100%
23 penalties and shall be reported on IRS Form 1099.

24 5. No Credit Toward Benefit Plans. The Individual Settlement Payments and
25 individual shares of the PAGA Settlement made to Settlement Class Members
26 and/or Aggrieved Employees under this Settlement Agreement, as well as any
27 other payments made pursuant to this Settlement Agreement, will not be
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utilized to calculate any additional benefits under any benefit plans to which any Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans.

6. All monies received by Settlement Class Members under the Settlement which are attributable to wages shall constitute income to such Settlement Class Members solely in the year in which such monies actually are received by the Settlement Class Members. It is the intent of the Parties that Individual Settlement Payments and individual shares of the PAGA Settlement provided for in this Settlement agreement are the sole payments to be made by Defendant to Settlement Class Members and/or Aggrieved Employees in connection with this Settlement Agreement, with the exception of Plaintiff, and that the Settlement Class Members and/or Aggrieved Employees are not entitled to any new or additional compensation or benefits as a result of having received the Individual Settlement Payments and/or their shares of the PAGA Settlement.

7. Mailing. Individual Settlement Payments and Aggrieved Employee Payments shall be mailed by regular First-Class U.S. Mail to Settlement Class Members' and/or Aggrieved Employees last known mailing address no later than fifteen (15) calendar days after the Funding Date.

8. Expiration. Any checks issued to Settlement Class Members and Aggrieved Employees shall remain valid and negotiable for one hundred and eighty (180) days from the date of their issuance. If a Settlement Class Member and/or Aggrieved Employee does not cash his or her settlement check within 90 days, the Settlement Administrator will send a letter to such persons, advising that

1 the check will expire after the 180th day, and invite that Settlement Class
2 Member and/or Aggrieved Employee to request reissuance in the event the
3 check was destroyed, lost or misplaced. In the event an Individual Settlement
4 Payment and/or Aggrieved Employee's individual share of the PAGA
5 Settlement check has not been cashed within one hundred and eighty (180)
6 days, the check will be voided and the funds from any such uncashed checks
7 will then be directed to the State Controller's Office Unclaimed Property
8 Division in the name of the Class Member or Aggrieved Employee.

- 9 9. Class Representative Service Award. In addition to the Individual Settlement
10 Payment and his individual share of the PAGA Settlement to be paid to
11 Plaintiff, Plaintiff will apply to the Court for an award of not more than
12 \$10,000, as the Class Representative Service Award. Defendant does not
13 presently intend to oppose a Class Representative Service Award of not more
14 than \$10,000 for Plaintiff. The Settlement Administrator shall pay the Class
15 Representative Service Award, either in the amount stated herein if approved
16 by the Court or some other amount as approved by the Court, to Plaintiff from
17 the Gross Settlement Amount no later than fifteen (15) calendar days after the
18 Funding Date. Any portion of the requested Class Representative Service
19 Award that are not awarded to the Class Representative shall be part of the
20 Net Settlement Amount and shall be distributed to Settlement Class Members
21 as provided in this Agreement. The Settlement Administrator shall issue an
22 IRS Form 1099 — MISC to Plaintiff for his Class Representative Service
23 Award. Plaintiff shall be solely and legally responsible to pay any and all
24 applicable taxes on his Class Representative Service Award and shall hold
25 harmless the Released Parties from any claim or liability for taxes, penalties,
26 or interest arising as a result of the Class Representative Service Award. The
27 Class Representative Service Award shall be in addition to Plaintiff's
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1 Individual Settlement Payment as a Settlement Class Member. Approval of
2 this Settlement shall not be conditioned on Court approval of the requested
3 amount of the Class Representative Service Award. If the Court reduces or
4 does not approve the requested Class Representative Service Award, Plaintiff
5 shall not have the right to revoke the Settlement, and it will remain binding.

6 10. Class Counsel Award. Defendant understands a motion by Class Counsel for
7 attorneys' fees not to exceed one-third of the Gross Settlement Amount
8 currently estimated to be \$75,000 plus costs and expenses supported by
9 declaration not to exceed Twelve Thousand Dollars (\$12,000), from the Gross
10 Settlement Amount will be filed. Any portion of the requested Class Counsel
11 Award that is not awarded to Class Counsel shall be part of the Net Settlement
12 Amount and shall be distributed to Settlement Class Members as provided in
13 this Agreement. The Settlement Administrator shall allocate and pay the
14 Class Counsel Award to Class Counsel from the Gross Settlement Amount no
15 later than fifteen (15) calendar days after the Funding Date. Class Counsel
16 shall be solely and legally responsible to pay all applicable taxes on the
17 payment made pursuant to this paragraph. The Settlement Administrator shall
18 issue an IRS Form 1099 — MISC to Class Counsel for the payments made
19 pursuant to this paragraph. In the event that the Court reduces or does not
20 approve the requested Class Counsel Award, Plaintiff and Class Counsel shall
21 not have the right to revoke the Settlement, or to appeal such order, and the
22 Settlement will remain binding.

23 11. PAGA Settlement. Ten Thousand Dollars (\$10,000) shall be allocated from
24 the Gross Settlement Amount for settlement of claims for civil penalties under
25 the Private Attorneys General Act of 2004 ("PAGA Settlement"). The
26 Settlement Administrator shall pay seventy-five percent (75%) of the PAGA
27 Settlement (\$7,500) to the California Labor and Workforce Development
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Agency no later than twenty-five (25) calendar days after the Funding Date (hereinafter "LWDA Payment"). Twenty-five percent (25%) of the PAGA Settlement (\$2,500) will be distributed to the Aggrieved Employees as described in this Agreement (hereinafter "Aggrieved Employee Payment"). For purposes of distributing the PAGA Settlement to the Aggrieved Employees, each Aggrieved Employee shall receive their pro-rata share of the Aggrieved Employee Payment using the PAGA Payment Ratio as defined above.

12. Settlement Administration Costs. The Settlement Administrator shall be paid for the costs of administration of the Settlement from the Gross Settlement Amount. The estimate of the Settlement Administration Costs is \$4,500.00. The Settlement Administrator shall be paid the Settlement Administration Costs no later than fifteen (15) calendar days after the Funding Date.

N. Final Approval Motion. Class Counsel and Plaintiff shall use best efforts to file with the Court a Motion for Order Granting Final Approval and Entering Judgment, within a reasonable time following the expiration of the Response Deadline, which motion shall request final approval of the Settlement and a determination of the amounts payable for the Class Representative Service Award, the Class Counsel Award, the PAGA Settlement, and the Settlement Administration Costs. Plaintiff will provide Defendant with a draft of the Motion at least 3 business days prior to the filing of the Motion to give Defendant an opportunity to propose changes or additions to the Motion. Defendant will provide any required Declarations as required by the Court within the Case Management Order issued on September 7, 2022 at least 7 calendar days prior to the filing of the Motion.

1. Declaration by Settlement Administrator. No later than fourteen (14) days after the Response Deadline, the Settlement Administrator shall submit a declaration in support of Plaintiff's motion for final approval of this

1 Settlement detailing the number of Notice Packets mailed and re-mailed to
2 Class Members, the number of undeliverable Notice Packets, the number of
3 timely requests for exclusion, the number of objections received, the amount
4 of the average Individual Settlement Payment and highest Individual
5 Settlement Payment, the Settlement Administration Costs, and any other
6 information as the Parties mutually agree or the Court orders the Settlement
7 Administrator to provide.

8 2. Final Approval Order and Judgment. Class Counsel shall present an Order
9 Granting Final Approval of Class Action Settlement to the Court for its
10 approval, and Judgment thereon, at the time Class Counsel files the Motion
11 for Final Approval.

12 N. Review of Motions for Preliminary and Final Approval. Class Counsel will provide
13 an opportunity for Counsel for Defendant to review the Motions for Preliminary and
14 Final Approval, including the Order Granting Final Approval of Class Action
15 Settlement, and Judgment before filing with the Court. The Parties and their counsel
16 will cooperate with each other and use their best efforts to affect the Court's approval
17 of the Motions for Preliminary and Final Approval of the Settlement, and entry of
18 Judgment.

19 O. Cooperation. The Parties and their counsel will cooperate with each other and use
20 their best efforts to implement the Settlement.

21 P. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
22 except such proceedings necessary to implement and complete the Settlement, pending
23 the Final Approval/Settlement Fairness Hearing to be conducted by the Court

24 Q. Amendment or Modification. This Agreement may be amended or modified only by
25 a written instrument signed by counsel for all Parties or their successors-in-interest.

26 R. Entire Agreement. This Agreement and any attached Exhibit constitute the entire
27 Agreement among these Parties, and no oral or written representations, warranties or
28

1 inducements have been made to any Party concerning this Agreement or its Exhibit
2 other than the representations, warranties and covenants contained and memorialized
3 in this Agreement and its Exhibit.

4 S. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
5 represent they are expressly authorized by the Parties whom they represent to negotiate
6 this Agreement and to take all appropriate Action required or permitted to be taken by
7 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
8 documents required to effectuate the terms of this Agreement. The persons signing
9 this Agreement on behalf of Defendant represent and warrant that they are authorized
10 to sign this Agreement on behalf of Defendant. Plaintiff represents and warrants that
11 he is authorized to sign this Agreement and that he has not assigned any claim, or part
12 of a claim, covered by this Settlement to a third-party.

13 T. No Public Comment: The Parties and their counsel agree that they will not issue any
14 press releases, initiate any contact with the press, respond to any press inquiry, or have
15 any communication with the press about the fact, amount or terms of the Settlement
16 Agreement. Class Counsel further agrees not to use the Settlement Agreement or any
17 of its terms for any marketing or promotional purposes. Nothing herein will restrict
18 Class Counsel from including publicly available information regarding this settlement
19 in future judicial submissions regarding Class Counsel's qualifications and experience.
20 Further, Class Counsel will not include, reference or use the Settlement Agreement for
21 any marketing or promotional purposes, either before or after the Motion for
22 Preliminary Approval is filed.

23 U. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure
24 to the benefit of, the successors or assigns of the Parties, as previously defined.

25 V. California Law Governs. All terms of this Agreement and the Exhibit and any disputes
26 shall be governed by and interpreted according to the laws of the State of California.

- 1 W. Counterparts. This Agreement may be executed in one or more counterparts. All
2 executed counterparts and each of them shall be deemed to be one and the same
3 instrument provided that counsel for the Parties to this Agreement shall exchange
4 among themselves copies or originals of the signed counterparts.
- 5 X. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement
6 is a fair, adequate and reasonable settlement of this Action and have arrived at this
7 Settlement after extensive arms-length negotiations, taking into account all relevant
8 factors, present and potential.
- 9 Y. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with
10 respect to the interpretation, implementation and enforcement of the terms of this
11 Agreement and all orders and judgments entered in connection therewith, and the
12 Parties and their counsel submit to the jurisdiction of the Court for purposes of
13 interpreting, implementing and enforcing the settlement and all orders and judgments
14 entered in connection with this Agreement.
- 15 Z. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,
16 the Court shall first attempt to construe the provisions valid to the fullest extent
17 possible consistent with applicable precedents so as to define all provisions of this
18 Agreement valid and enforceable.
- 19 AA. No Unalleged Claims. Plaintiff and Class Counsel represent that they do not currently
20 intend to pursue any claims against the Released Parties, including, but not limited to,
21 any and all claims relating to or arising from Plaintiff's employment with Defendant,
22 regardless of whether Class Counsel is currently aware of any facts or legal theories
23 upon which any claims or causes of action could be brought against Released Parties,
24 including those facts or legal theories alleged in the operative complaint in this Action.
25 The Parties further acknowledge, understand and agree that this representation is
26 essential to the Agreement and that this Agreement would not have been entered into
27 were it not for this representation.

1 BB. Stipulation to Class Certification. The Parties agree to stipulate to class certification
2 for purposes of this settlement only.

3 CC. No Admissions by the Parties. Plaintiff has claimed and continues to claim that the
4 Released Claims have merit and give rise to liability on the part of Defendant.
5 Defendant claims that the Released Claims have no merit and do not give rise to
6 liability. This Agreement is a compromise of disputed claims. Nothing contained in
7 this Agreement and no documents referred to and no action taken to carry out this
8 Agreement may be construed or used as an admission by or against the Defendant or
9 Plaintiff or Class Counsel as to the merits or lack thereof of the claims asserted. Other
10 than as may be specifically set forth herein, each Party shall be responsible for and
11 shall bear its/his own attorney's fees and costs.

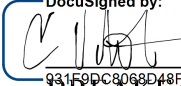
12 IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

13
14 DATED: Nov 3, 2023


julio hernandez (Nov 3, 2023 11:18 PDT)
15 JULIO C. HERNANDEZ

16
17
18
19
20 IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANT:

21
22 DATED: 11/3/2023

DocuSigned by:

931F9DC8068D48F...
23 BREAKFAST CLUB, LLC

24
25 Christopher Vitolo

26
27 Manager

1
2 IT IS SO AGREED AS TO FORM BY COUNSEL:

3 DATED: November 3, 2023

JCL LAW FIRM, A.P.C.

4
5 By: 

6 Attorneys for Plaintiff and the Settlement Class
7 Members

8 DATED: November 3, 2023

ZAKAY LAW GROUP, APLC

9
10 By: 

11 Attorneys for Plaintiff and the Settlement Class
12 Members

13
14 DATED: 11/7/2023

ROSENSTEIN & ASSOCIATES

15
16 By: 

11B3D880C47F4D4...
ROBERT B. ROSENSTEIN
DANIEL A. THOMPSON
Attorneys for Defendant

EXHIBIT A

**NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT
AND FINAL HEARING DATE**

(Hernandez v. Breakfast Club, LLC, Riverside County Superior Court Case No. CVRI2203757)

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE
READ THIS CLASS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. Your estimated Settlement Share is: \$<<[REDACTED]>>. See the explanation below. After final approval by the Court, the payment will be mailed to you at the same address as this class notice. If your address has changed, please notify the Settlement Administrator as explained below. In exchange for the settlement payment, you will release claims against the Defendant as detailed below.
Exclude Yourself	If you wish to exclude yourself from the Settlement, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive no money from the Settlement. Instructions are set forth below.
Object	You may write to the Court about why you believe the Settlement should not be approved. Directions are provided below.

1. Why did I get this Class Notice?

A proposed class action settlement (the “Settlement”) of this lawsuit pending in the Superior Court for the State of California, County of Riverside (the “Court”) has been reached between Plaintiff Julio Hernandez (“Plaintiff”) and Defendant Breakfast Club, LLC, a California Corporation (“Defendant”). The Court has granted preliminary approval of the Settlement. **You may be entitled to receive money from this Settlement.**

You have received this Class Notice because you have been identified as a member of the Class, which is defined as:

All non-exempt employees who are or previously were employed by Defendant and performed work in California during the Class Period.

The “Class Period” is the period of time running from September 2, 2018, to July 28, 2023.

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Class Notice carefully as your rights may be affected by the Settlement.

2. What is this class action lawsuit about?

On September 2, 2022, Plaintiff filed a Complaint against Defendant in the Superior Court of the State of California, County of Riverside (the “Action”). Plaintiff asserted the following claims alleging that Defendant: (a) Violated California Business and Professions Code sections 17200-17210.; (b) Failed to pay minimum wages in violation of California Labor Code sections 1194, 1197, and 1197.1; (c) Failed to pay overtime wages in violation of California Labor Code sections 510-558.1 ; (d) Failed to provide required meal periods in violation of California Labor Code sections 226.7 & 512, and the applicable Industrial Welfare Commission (“IWC”) Wage Order ; (e) Failed to provide required rest periods in violation of California Labor Code sections 226.7 & 512, and the applicable IWC Wage Order; (f) Failed to reimburse employees for required expenses in violation of California Labor Code section 2802; (g) Failed to provide wages when due in violation of California Labor Code sections 201, 202, and 203; (h) Failed to provide accurate and complete itemized wage statements in violation of California Labor Code section 226; and (i) Failed to provide gratuities in violation of California Labor Code section 351; (j) Violations of the Private Attorney General Act at Labor Code Section 2698-2699.8 (“PAGA”). PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who does so as the proxy or agent of the state’s labor law enforcement agency. The purpose of the PAGA is not to recover damages or restitution, but to create a means of “deputizing” citizens as private attorney general to enforce the Labor Code.

Defendant denies and disputes all claims asserted in the Action. Specifically, Defendant contended (and continues to contend) that the Action could not properly be maintained as a class action; that Defendant properly paid members of the class all wages and overtime that was due; that Defendant provided members of the class with all legally required meal breaks and rest breaks; that Defendant paid any members of the class all wages due them during employment and at the time of their terminations; that Defendant provided accurate, itemized wage statements to members of the class; that Defendant did not violate California Business and Professions Code sections 17200-17210; and that Defendant is not liable for any of the penalties claimed or that could be claimed in the Action.

On June 28, 2022, the Parties participated in an all-day mediation with Judge Carl West (Ret.), an experienced mediator of wage and hour class and PAGA actions. The mediation concluded in a settlement. The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representative, and the law firms of JCL Law Firm, APC and Zakay Law Group, APLC to serve as Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendant has agreed to pay an “all in” amount of Two Hundred Twenty-Five Thousand Dollars (\$225,000) (the “Gross Settlement Amount”) to fund the Settlement. The Gross Settlement Amount includes the payment of all Individual Settlement Payments to participating Class Members, Class Counsel Award, Settlement Administration Costs, PAGA Settlement, and the Class Representative Service Award to the Plaintiff.

After the Judgment becomes Final, Defendant will pay the Gross Settlement Amount by depositing the money with the Settlement Administrator. “Final” means the date the Judgment is no longer subject to appeal, or if an appeal is filed, the date the appeal process is completed and the Judgment is affirmed.

Amounts to be Paid from the Gross Settlement Amount. The Settlement provides for certain payments to be made from the Gross Settlement Amount, which will be subject to final Court approval, and which will be deducted from the Gross Settlement Amount before settlement payments are made to Class Members, as follows:

- Settlement Administration Costs. Payment to the Settlement Administrator, estimated not to exceed \$4,500.00 for expenses, including expenses of sending this Class Notice, processing opt-outs, and distributing settlement payments.
- Class Counsel Award. Payment to Class Counsel attorneys' not to exceed one-third of the Gross Settlement Amount (currently \$75,000) plus costs and expenses not to exceed \$12,000 for all costs and expenses incurred as documented in Class Counsel's billing records, both subject to Court approval. Class Counsel have been prosecuting the Action on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.
- Class Representative Service Award. Class Representative Service Award of up to Ten Thousand Dollars (\$10,000) to Plaintiff, or such lesser amount as may be approved by the Court, to compensate him for services on behalf of the Class in initiating and prosecuting the Action, and for the risks she undertook.
- PAGA Settlement. A payment of \$10,000 relating to Plaintiff's claim under the Private Attorneys General Act ("PAGA"), \$7,500 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA") and the remaining \$2,500 will be distributed to the Aggrieved Employees ("Aggrieved Employee Payment").
- Calculation of Individual Settlement Payments. After all the above payments of the court-approved Class Counsel Award, the Class Representative Service Award, the PAGA Settlement, and the Settlement Administration Costs are deducted from the Gross Settlement Amount, the remaining portion, called the "Net Settlement Amount," shall be distributed to class members who do **not** request exclusion ("Settlement Class Members"). The Individual Settlement Payment for each Settlement Class Member will be calculated by dividing the Net Settlement Amount by the total number of workweeks for all Settlement Class Members that occurred during the Class Period and multiplying the result by each individual Settlement Class Member's workweeks that occurred during the Class Period. A "workweek" is defined as a normal seven-day week of work during the Class Period in which, according to Defendant's records, a member of the class worked at least one day during any such workweek.
- Calculation of Individual Payments to Aggrieved Employees. The Aggrieved Employee Payment of the PAGA Settlement shall be distributed to Aggrieved Employees irrespective of whether they exclude themselves or opt-out. The Aggrieved Employee Payment will be divided by the total number of pay periods worked by all Aggrieved Employees during the PAGA Period, and then taking that number and multiplying it by the number of pay periods worked by each respective Aggrieved Employee during the PAGA Period. The estimated average Individual Payment to each Aggrieved Employee is \$40.32. "Aggrieved Employees" means all non-exempt employees who are or previously were employed by Defendant and performed work in California during the PAGA Period. The PAGA Period means the period between June 29, 2021 to July 28, 2023.

If the Settlement is approved by the Court, you will automatically be mailed a check for your Individual Settlement Payment to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to ensure you receive your payment.

You may find the full text of Settlement Agreement entitled "Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims" attached as Exhibit 1 to the Declaration of Jean-Claude Lapuyade in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement, filed on [REDACTED], 2023 with the Riverside County Superior Court, Dept. 1, located at 4050 Main Street, Riverside, CA 92501. You may also find the Settlement Agreement online by visiting the Riverside County Superior Court website <https://www.riverside.courts.ca.gov/>.

Tax Matters. Twenty percent of each Individual Settlement Payment is allocated to wages. Taxes are withheld from this amount, and each participating Class Member will be issued an Internal Revenue Service Form W-2 for such payment. Eighty percent of each Individual Settlement Payment is allocated to interest, penalties and other non-wage payments, and no taxes will be withheld, and each participating Class Member will be issued an Internal Revenue Service Form 1099 for such payment. In addition, no taxes will be withheld from Aggrieved Employee Settlement Payments paid to Aggrieved Employees, and each Aggrieved Employee will be issued an Internal Revenue Service Form 1099 for such payment. Neither Class Counsel nor Defendant's counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

4. What Do I Release Under the Settlement?

Released Claims. Upon entry of final judgment and funding in full of the Gross Settlement Amount by Defendant, Plaintiff and the Settlement Class Members shall release all Released Class Claims that occurred during the Class Period as to the Released Parties. Released Class Claims means all class claims which are alleged in the operative complaint which occurred during the Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period. The Released PAGA Claims shall be released as follows: Upon entry of final judgment and upon funding in full of the Gross Settlement Amount by Defendant, all Aggrieved Employees shall release all Released PAGA Claims, irrespective of whether they opted-out of the Class Settlement, and will be bound by this PAGA Release (the "PAGA Release"). "Released PAGA Claims" means all PAGA claims which are alleged in the operative complaint and Plaintiff's PAGA notice to the LWDA which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside of the PAGA Period.

This means that, if you do not timely and formally exclude yourself from the Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant about the legal issues resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

5. How much will my payment be?

Defendant's records reflect that you have <<____>> Workweeks worked during the Class Period (September 2, 2018 to July 28, 2023).

Based on this information, your estimated Individual Settlement Payment is <<____>>.

Defendant's records reflect that you have <<____>> pay periods worked during the PAGA Period (June 29, 2021 to July 28, 2023).

Based on this information, your estimated PAGA Payment Share is <<____>>.

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Class Notice no later than _____ [forty-five (45) days after the Class Notice or re-mailed Class Notice].

6. How can I get a payment?

To get money from the Settlement, you do not have to do anything. A check for your settlement payment will be mailed automatically to the same address as this Class Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is Apex Class Action LLC, 18 Technology Drive, Suite 164 Irvine, California 92618 Tel: 1-800-355-0700; Fax: 949-878-3536; apexclassaction.com.

The Court will hold a hearing on _____ to decide whether to finally approve the Settlement. The Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable. Any final determination of those issues will be made at the final approval hearing. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed within a few months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient. After entry of the Judgment, the Settlement Administrator will provide notice of the final judgment to the Class Members by posting a copy of the Judgment on the administrator's website at apexclassaction.com.

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will receive NO money from the Settlement, and you will not be bound by its terms, except as provided as follows.** Irrespective of whether you exclude yourself from the Settlement or "opt out," you will be bound by the PAGA Release, you will be deemed to have released the Released PAGA Claims, and you will receive a share of the Aggrieved Employee Payment.

To opt out, you must submit to the Settlement Administrator, by First Class Mail, a written, signed and dated request for exclusion postmarked no later than _____. The address for the Settlement Administrator is Apex Class Action LLC, 18 Technology Drive, Suite 164 Irvine, California 92618. The request for exclusion must state in substance: "I wish to opt out of the settlement of the class action lawsuit entitled ***Hernandez v. Breakfast Club, LLC, Riverside County Superior Court, Case No. CVRI2203757***. I understand that by requesting to be excluded from the Settlement, I will receive no money from the Settlement described in this Class Notice." The request for exclusion must contain your name, address, and signature for verification purposes. The request for exclusion must be signed by you. No other person may opt out for a member of the Class.

Written requests for exclusion that are postmarked after _____, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

8. How do I tell the Court that I would like to challenge the Settlement?

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason, may object to the proposed Settlement. Objections may be in writing and state the Class Member's name, current address, telephone number, and describe why you believe the Settlement is unfair and whether you intend to appear at the final approval hearing. All written objections or other correspondence must also state the name and number of the case, which is ***Hernandez v. Breakfast Club, LLC, Riverside County Superior Court, Case No. CVRI2203757***. You may also object without submitting a written objection by appearing at the final approval hearing scheduled as described in Section 9 below.

To object to the Settlement, you cannot opt out. If the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided in this Class Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

Written objections must be delivered or mailed to the Settlement Administrator no later than [REDACTED]. The address for the Settlement Administrator is Apex Class Action LLC, 18 Technology Drive, Suite 164 Irvine, California 92618.

The addresses for the Parties' counsel are as follows:

Class Counsel:

Jean-Claude Lapuyade, Esq.
JCL Law Firm, APC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Tel.: (619) 599-8292
Fax: (619) 599-2891
E-Mail: jlapuyade@jcl-lawfirm.com

E-Mail: jlapuyade@jcl-lawfirm.com

Class Counsel:

Shani O. Zakay, Esq.
Zakay Law Group, APLC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121 Tel: (619) 599-8292

Fax: (619) 599-8291

Email: shani@zakaylaw.com
Website: www.zakaylaw.com

Counsel for Defendant:

Robert B. Rosenstein
Daniel A. Thompson
Rosenstein & Associates
28600 Mercedes Street, Suite 100
TEmecula, CA 92590
Tel.: (951) 296-3888
Fax: (951) 296-3889

E-Mail:
robert@thetemeculalawfirm.com

9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at 00:00 AM/PM on _____, at the Riverside County Superior Court, Dept. 1, located at 4050 Main Street, Riverside CA 92501 before Judge Harold W. Hopp. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. The Court will listen to people who have made a timely written request to speak at the hearing or who appear at the hearing to object. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at 1-800-355-0700 or write to ***Hernandez v. Breakfast Club, LLC, Riverside County Superior Court, Case No. CVRI2203757***, Settlement Administrator, c/o

This class notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Final Judgment or other Settlement documents by writing to JCL Law Firm, APC, 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121.

PLEASE DO NOT CALL THE COURT ABOUT THIS CLASS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your Individual Settlement Payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall pay all funds from such uncashed checks to the Community Law Project. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT B

Superior Court of California, County of Riverside
Hernandez v. Breakfast Club, LLC
Riverside County Superior Court Case No. CVRI2203757

REQUEST FOR EXCLUSION

Instructions: Please complete this Form ONLY IF YOU **DO NOT** WANT TO PARTICIPATE IN THE SETTLEMENT that is described in the Notice Pendency of Class Action Settlement and Final Hearing Date that accompanies this Form. If you choose to complete this Form, the deadline for mailing it to the Settlement Administrator is [** INSERT DATE**]. Please note that exclusion from the Settlement does not result in exclusion of the PAGA Settlement

I. **PERSONAL INFORMATION**

Name (first, middle and last): _____

Home Street Address: _____

City, State, Zip Code: _____

Telephone Number: (____) _____

II. **REQUEST FOR EXCLUSION**

By signing and returning this Form, I certify that I wish to opt out of the settlement of the class action lawsuit entitled *Julio Hernandez v. Breakfast Club, LLC*, Case No. CVRI2203757, filed in the Superior Court of California, County of Riverside. I understand that by requesting to be excluded from the Settlement, I will receive no money from the Settlement described in the Notice Pendency of Class Action Settlement and Final Hearing Date that accompanies this Form. I understand that exclusion from the Settlement does not result in exclusion from the PAGA Settlement.

Any Class Member that submits a timely Request for Exclusion that is also a member of the Aggrieved Employees will still receive his/her pro rata share of the PAGA Settlement.

III. **MAILING INSTRUCTIONS**

If you choose to return this Form, you must return it to the Settlement Administrator postmarked on or before [**INSERT DATE**] AT THE ADDRESS LISTED BELOW:

Apex Class Action LLC
18 Technology Drive, Suite 164
Irvine, California 92618

IV. **PLEASE SIGN BELOW**

I declare that the foregoing is true and correct.

Dated: _____

(Signature)

Superior Court of California, County of Riverside
Hernandez v. Breakfast Club, LLC
Riverside County Superior Court Case No. CVRI2203757

(Print Name)

EXHIBIT C

Apex Class Action LLC,
18 Technology Drive, Suite 164
Irvine, California 92618

Must Be Postmarked
No Later Than
XXX, 2023

OBJECTION FORM

SUPERIOR COURT OF THE STATE OF CALIFORNIA – COUNTY OF RIVERSIDE
Hernandez v. Breakfast Club, LLC, Riverside County Superior Court Case No. CVRI2203757

<<Name>>

<<Address>>

<<City>>, <<State>> <<Zip Code>>

Indicate Name/Address Changes, if any:

YOU DO NOT NEED TO COMPLETE THIS FORM TO PARTICIPATE IN THE SETTLEMENT. THIS FORM IS TO BE USED ONLY IF YOU WANT TO PARTICIPATE IN THE SETTLEMENT, BUT YOU OBJECT TO THE TERMS OF THE SETTLEMENT. IF YOU OBJECT TO THE SETTLEMENT, YOU MUST SIGN AND COMPLETE THIS FORM ACCURATELY AND IN ITS ENTIRETY AND YOU MUST MAIL IT BY FIRST CLASS U.S. MAIL TO THE SETTLEMENT ADMINISTRATOR SO THAT IT IS POSTMARKED ON OR BEFORE XXX, 2023. THE ADDRESS FOR THE SETTLEMENT ADMINISTRATOR IS NOTED AT THE TOP OF THIS FORM. IF YOU DO NOT OBJECT TO THE SETTLEMENT, DO NOT SUBMIT THIS FORM.

The Court will consider your objection at the Final Approval Hearing if you submit a timely and valid written statement of objection. All of the information on this form is required. If you do not provide all of the information below, your objection will be deemed null and void.

I, _____, (name of Class Member) hereby object to the Settlement in this case for the following reasons:

Dated: _____

Signature: _____

Print or Type Name: _____

Telephone Number: _____

EXHIBIT 2

EXHIBIT 3

APEX

Class action settlement administration

**Quotation For:**

Laura Gonzalez Mendez
JCL Law Firm, A.P.C.
lmendez@jcl-lawfirm.com
888.498.6999

Settlement Specifications

Estimated Class Size:	62
Certified Language Translation:	No
Basic Settlement Website:	No
Percentage of Undeliverable Mail:	20%

Prepared by:

Sean Hartranft
Apex Class Action LLC
Sean@apexclassaction.com
949.878.3676

Case Name: Hernandez v. Breakfast

Date: 7/11/23

RFP Number: 69990014

Comments or Special Instructions

None

Service	Unit	Rate	Volume	Amount
Data Analytics and Standardization				
Import and Standardize Data*	Per Hour	\$125.00	1	\$125.00
Data Analyst	Per Hour	\$150.00	1	\$150.00
*Data provided must be in a workable format. Apex can standardized provided data at an additional cost of \$150/hr.				
Sub Total:				\$275.00
Mailing of Class Notice				
Form Set-Up (Formatting for Review and Approval)	Per Hour	\$120.00	1	\$120.00
Print & Mailing of Class Notice	Per Piece	\$2.50	62	\$155.00
USPS First Class Postage	Per Piece	\$0.60	62	\$37.20
Remail Notice to Updated Address (Skip Trace)	Per Piece	\$3.00	12	\$37.20
Receive and Process Undeliverable Mail	Per Hour	\$75.00	0	\$0.00
Process Class Member Correspondence via mail, e-mail & fax	Per Hour	\$75.00	1	\$75.00
NCOA Address Update	Static Rate	\$45.00	1	\$45.00
Sub Total:				\$469.40
Project Management				
Project Management	Per Hour	\$150.00	2	\$300.00
Project Coordinator	Per Hour	\$90.00	2	\$180.00
Data Analyst and Reporting	Per Hour	\$140.00	1	\$140.00
Sub Total:				\$620.00



Class action settlement administration



Service	Unit	Rate	Volume	Amount
Toll-Free Contact Center, Website & Reporting				
Toll-Free Contact Center	Static Rate	\$39.80	1	\$39.80
Status Reports	Static Rate	\$750.00	1	Waived
			Sub Total:	\$39.80
Distribution & Fund Management				
Settlement Calculations	Per Hour	\$140.00	2	\$280.00
Account Management and Reconciliation	Per Hour	\$140.00	2	\$280.00
Print & Mailing Distribution Settlement Check	Per Piece	\$2.50	62	\$155.00
USPS First Class Postage	Per Hour	\$0.60	62	\$37.20
Remail Distribution to Updated Address (Skip Trace)	Per Piece	\$3.00	6	\$18.60
Individual Income Tax Preparation & Reporting	Per Hour	\$100.00	6	\$600.00
QSF Income Tax Reporting (per calendar year)	Per Year	\$1,250.00	1	\$1,250.00
			Sub Total:	\$2,620.80
Post Distribution Reconciliation				
Bank Account Reconciliation	Per Hour	\$135.00	1	\$135.00
Project Management Reconciliation	Per Hour	\$100.00	1	\$100.00
Declarations	Per Hour	\$120.00	2	\$240.00
			Sub Total:	\$475.00
TOTAL ESTIMATED PROJECT COST:				\$4,500.00

Thank you for your business!
Sean at 949.878.3676

Terms & Conditions

The following Terms and Conditions govern the provision of all services to be provided by Apex Class Action and its affiliates ("Apex") to the Client. These terms and conditions are binding and shall apply to all services provided by Apex in relation to any related services or products.

1. **Services:** Apex commits to providing the Client with the administrative services detailed in the attached Proposal (the "Services").

2. **Payment Terms:** As compensation for the legal services to be provided, the Client agrees to pay Apex all fees detailed in the Proposal. The fees quoted in the Proposal (and any subsequent proposals for additional services) are estimates based on the information provided to Apex by the Client. Apex makes no representation that the estimated fees in the Proposal or any subsequent proposals for additional services shall equal the actual fees charged by Apex to the Client, which fees (including individual line items) may be greater or less than estimated. If additional services are requested on an hourly basis and are not specifically detailed in the Proposal, Apex will prepare estimates for such services subject to approval by the Client. In the performance of such additional services, Apex will charge standard hourly fees which shall apply.

3. **Incurred Expenses:** In relation to the provision of services outlined in this agreement, the Client agrees to reimburse Apex for all reasonable out-of-pocket expenses incurred. Such expenses may include, but are not limited to, costs associated with postage, media production or publication, banking fees, brokerage fees, messenger and delivery service expenses, travel expenses, filing fees, office supplies, meals, staff overtime expenses, and other related costs and expenses. If not otherwise specified in writing, fees for print notice and certain expenses, such as media publication and postage, must be paid immediately upon invoicing and, in certain cases, at least ten (10) days prior to the date on which such expenses will be incurred.

4. **Invoicing:** Apex shall present invoices for its fees and expenses on a monthly basis, except as provided in Section 3. The Client agrees to pay each invoice within 30 days of receipt. In case of non-payment within 90 days of the billing date, an additional service charge of 1.5% per month may apply. Apex reserves the right to increase its prices, charges, and rates annually, subject to reasonable adjustments. If any price increases exceed 10%, Apex shall give thirty (30) days' notice to the Client. In the event of any unpaid invoices beyond 120 days of the due date, Apex reserves the right to withhold services and reports until payment is received, subject to notice to the Client. It is important to note that Apex's failure to provide services and reports in such instances shall not constitute a default under this agreement.

5. **Case Duration:** The duration of these Terms and Conditions, except for the data storage obligations stated in Section 13, shall be in effect until 30 days following the completion of the Services as described in the Proposal. The parties may extend these Terms and Conditions in writing for a mutually agreed-upon period beyond this initial 30-day period.

6. **Termination of Services:** Either party may terminate the Services by providing thirty (30) days written notice to the other party. Alternatively, termination may occur immediately upon written notice for Cause, as defined below. Cause means (i) Apex's gross negligence or willful misconduct that causes serious and material harm to the Client; (ii) the Client's failure to pay Apex invoices for more than one hundred twenty (120) days from the date of the invoice; or (iii) the accrual of invoices or unpaid services where Apex reasonably believes it will not be paid. Termination of the Services shall not relieve the Client of its obligation to pay Apex for services rendered prior to the termination.

7. **Independent Contractor:** As an independent contractor, Apex will provide services under the terms of this agreement. It is agreed that neither Apex nor any of its employees will be considered an employee of the Client. Consequently, Apex and its employees will not be eligible for any benefits provided by the Client to its employees. The Client will not make any tax deductions from the payments due to Apex for state or federal tax purposes. Apex will be solely responsible for paying all taxes and other payments due on payments received from the Client under this agreement.

8. **Apex warrants that the Services outlined in the Proposal will be performed in accordance with the standards generally adhered to by professionals providing similar services. It is acknowledged that the Services may entail the likelihood of some human and machine errors, omissions, delays, and losses that may result in damage. However, Apex shall not be held liable for such errors, omissions, delays, or losses unless they are caused by its gross negligence or willful misconduct. In the event of any breach of this warranty by Apex, the Client's sole remedy will be limited to Apex's rerunning, at its expense, any inaccurate output provided that such inaccuracies occurred solely as a result of Apex's gross negligence or willful misconduct under this agreement.**

9. **Limitation of Liability:** The Client acknowledges that Apex shall not be held liable for any consequential, special, or incidental damages incurred by the Client in relation to the performance of Services, whether the claim is based on breach of warranty, contract, tort (including negligence), strict liability, or any other grounds. Under no circumstances shall Apex's liability to the Client, for any Losses (including court costs and reasonable attorney's fees), arising out of or in connection with these Terms and Conditions, exceed the total amount charged or chargeable to the Client for the specific service(s) that caused the Losses.

10. **Indemnification:** The Client agrees to indemnify and hold harmless Apex from any losses, suits, actions, judgments, fines, costs, liabilities, or claims arising from any action or proceeding relating to the Services provided by Apex, regardless of whether or not it results in liability (collectively referred to as "Indemnified Claims"). However, this indemnification provision shall not apply to the extent that such Indemnified Claims are caused by Apex's willful misconduct, gross negligence, or breach of these Terms and Conditions. This provision shall survive termination of the Services.

11. **Confidentiality:** Apex will uphold strict confidentiality between Apex and the Client and applies to all non-public records, documents, systems, procedures, processes, software, and other information received by either party in connection with the performance of services under these terms. Both Apex and the Client agree to keep confidential all such non-public information, including any material marked or identified as confidential or proprietary. Any such confidential information shall not be disclosed, provided, disseminated, or otherwise made available to any third party, except as required to fulfill the parties' obligations under these terms. The parties acknowledge that in the event of any request to disclose any confidential information in connection with a legal or administrative proceeding, or otherwise to comply with a legal requirement, prompt notice of such request must be given to the other party to enable that party to seek an appropriate protective order or other remedy or to waive compliance with the relevant provisions of these terms. If the Client seeks a protective order or another remedy, Apex, at the Client's expense, will cooperate with and assist the Client in such efforts. If the Client fails to obtain a protective order or waives compliance with the relevant provisions of these terms, Apex will disclose only that portion of the confidential information that it determines it is required to disclose. This confidentiality provision shall survive termination of the services provided. Both parties acknowledge and agree that any breach of these terms may cause irreparable harm to the non-breaching party and that injunctive relief may be necessary to prevent any actual or threatened breach. The terms set forth between the parties supersede all prior negotiations, understandings, and agreements between the parties concerning confidentiality. These terms may only be amended in writing and signed by both parties.

12. **Ownership of the programs, system data, and materials provided by Apex to the Client during the course of providing services herein shall solely belong to Apex. It is acknowledged that fees and expenses paid by the Client do not confer any rights in such property. It is also understood that the said property is made available to the Client solely for the purpose of using it during and in connection with the services provided by Apex.**

13. **Upon the completion of the administration and unless retention instructions are ordered by the court, Apex will notify the client that it will destroy and/or return all confidential information and property within 90 days upon the client's written request. Alternatively, the material may be stored for one year at a monthly fee of \$1.50 per storage box for paper documents and \$0.01 per image for electronic copies over a period of three years, which compensates Apex for its electronic and hard-copy storage costs. Apex will not be liable for any damages, liability, or expenses incurred in connection with any delay in delivery of, or damage to disks, magnetic tapes, or any input data provided by the client or its representatives unless Apex has agreed in writing to assume such responsibility.**

14. **COMPLETE AGREEMENT.** These Terms and Conditions, along with the attached Proposal, represent the complete agreement and understanding between the parties and override any prior agreements (whether written or oral) between Apex and the Client regarding the subject matter. Any modification to these Terms and Conditions may only be made in writing and must be signed by both Apex and the Client. The headings in this document are included for convenience only and do not alter or restrict any provisions in these Terms and Conditions. They may not be used in the interpretation of these Terms and Conditions.

15. **This provision outlines the requirements for providing notice or other communication under this agreement. All such communications must be in writing and can be delivered either by personal delivery or through U.S. Mail with prepaid postage or overnight courier. Once delivered personally or sent through the mail, the notice will be considered given after five (5) days from the deposit date in the U.S. Mail. Alternatively, if sent through an overnight courier, the notice will be considered given one business day after delivery to the such courier. It's important to note that the notice must be provided to a responsible officer or principal of the Client or Apex, depending on the case.**

16. **Force Majeure:** In the event of any failure or delay in performance due to circumstances beyond Apex's control, including but not limited to strikes, lockouts, fires, floods, acts of God or public enemy, riots, civil disorders, insurrections, war or war conditions, or interference by civil or military authorities, Apex shall not be held liable for any resulting loss or damage. The time for performance under this agreement shall be extended for a period equal to the duration of the disabling cause and a reasonable time thereafter. This provision shall constitute a force majeure clause and shall be construed accordingly.

17. **The applicable state and federal laws shall govern the interpretation and enforcement of these Terms and Conditions. No choice of law or conflict of laws provisions shall affect this governing law provision.**

18. **Severability:** This applies to all clauses and covenants contained within these Terms and Conditions. In the event that any clause or covenant is deemed invalid, illegal, or unenforceable, the remaining provisions shall remain valid and enforceable to the fullest extent permissible by law. The validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired by the invalidity, illegality, or unenforceability of any provision deemed so.

19. **Nonwaiver:** This applies to these Terms and Conditions. This means that any failure by one party to enforce a provision of these terms on one or more occasions shall not be construed as a waiver of that provision. In other words, any failure to enforce a provision does not give up the right to enforce it in the future. All provisions of these Terms and Conditions remain in full force and effect, regardless of any prior failure to enforce them.