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10 Attorneys for Plaintiff,

11 DAVID JAIMES, and all others similarly situated

12 (Additional counsel listed on next page)

13 (Counsel for Defendant on Following Page)

14 **IN THE SUPERIOR COURT OF CALIFORNIA**

15 **FOR THE COUNTY OF SAN BERNARDINO**

16  
17  
18 DAVID JAIMES, on behalf of himself, and all  
19 others similarly situated, and as an “aggrieved  
20 employee” on behalf of other “aggrieved  
21 employees” under the Labor Code Private  
22 Attorneys General Act of 2004,

21 *Plaintiff(s),*

22 vs.

23  
24 BAKER’S BURGERS, INC., a California  
25 corporation; and DOES 1 through 50, inclusive,

26 *Defendant(s)*

Case No.: CIV DS 1933423

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

Judge: David Cohn

Dept. S26

**ATTORNEYS FOR DEFENDANT**

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Attorneys for Defendant,  
BAKER'S BURGERS, INC., a California corporation

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**SETTLEMENT AGREEMENT**

This Stipulation of Class Action and PAGA Settlement and Release (the “Settlement”) is made by and between Plaintiff David Jaimes (“Jaimes”) and Defendant Baker’s Burgers, Inc., a California corporation (hereafter “Defendant”).

**NATURE OF THE CASE AND THE PARTIES’ SETTLEMENT**

1. The Parties and Class Counsel. Plaintiff and Defendant are collectively referred to herein as “the Parties.” “Class Counsel” refers to David Spivak of The Spivak Law Firm and Walter Haines of the United Employees Law Group.

2. Compromise. Because the Parties desire to settle this Action, as defined below, on a class-wide basis pursuant to Code of Civil Procedure § 382, this Agreement must receive preliminary and final approval by the San Bernardino County Superior Court. Accordingly, the Parties enter into this Agreement on a conditional basis. The Parties expressly acknowledge that this Agreement is entered into solely for the purpose of compromising significantly disputed claims and that nothing herein is an admission of liability or wrongdoing by Defendant.

If for any reason the Court does not give preliminary or final approval of this Agreement or this Agreement is terminated or canceled pursuant to its terms, the Parties to this Agreement shall be deemed to have reverted to their respective positions as of the date and time immediately prior to the execution of this Agreement. In such an event: (a) the Agreement shall be void and have no force or effect; (b) any Court orders preliminarily or finally approving certification of any class contemplated by this Agreement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity; and (c) the fact that the Settlement reflected in this Agreement, the fact that Defendant did not oppose the certification of a Class under this Agreement, or that the Court preliminarily approved the certification of the Class, shall not be

1 used or cited thereafter by any person or entity, including without limitation, in any contested  
2 proceeding relating to the certification of any class. Solely for purposes of this Agreement, the  
3 Parties stipulate and agree to class certification. In the event this Agreement is not approved, it  
4 is understood and agreed that Defendant is not agreeing for any purpose that this Action is  
5 appropriate for class certification and reserves the right to move to compel sole plaintiff  
6 arbitration with respect to the underlying wage and hour claims alleged in the Action.  
7

8 3. The Class Action. On December 21, 2018, Jaimes notified the LWDA and  
9 Defendant of the facts and theories supporting his claims. Plaintiff filed a putative class action  
10 lawsuit in San Bernardino Superior Court on November 7, 2019.  
11

12 4. Plaintiff's Complaint. Plaintiff's complaint presents the following causes of  
13 action: (1) Failure to provide meal and rest periods; (2) Failure to pay all wages earned for all  
14 hours worked; (3) Wage statement penalties; (4) Waiting time penalties; (5) Unfair competition;  
15 and (6) Civil penalties. Plaintiff's lawsuit is referred to as "the Action." In the Action, Plaintiff  
16 alleges various wage and hour violations and seeks recovery on behalf of himself and all current  
17 and former non-exempt employees Defendant employed in California at any time during the  
18 period beginning December 22, 2014 and ending on the date the Court grants preliminary  
19 approval of this Settlement or ninety days from October 15, 2020, whichever occurs first.  
20

21 5. Case Status. Because of the Court's November 13, 2019 Initial Case  
22 Management Conference Order staying the proceedings in their entirety, Defendant has not filed  
23 an answer to Plaintiff's complaint. Notwithstanding, Defendant denies all claims as to liability,  
24 damages, penalties, interest, fees, restitution, injunctive relief and all other forms of relief as  
25 well as the class allegations asserted in the Action. Defendant has agreed to resolve the Action  
26 via this Agreement, but to the extent this Settlement is deemed void or the Final Effective Date  
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1 does not occur, Defendant does not waive, but rather expressly reserves, all rights to challenge  
2 all such claims and allegations in the Action upon all procedural and factual grounds, including,  
3 without limitation, the ability to challenge class treatment on any grounds, move to compel sole  
4 Plaintiff arbitration, as well as asserting any and all other potential defenses or privileges.  
5 Plaintiff as the Class Representative and Class Counsel agree that Defendant retains and reserves  
6 these rights, and agree not to argue or present any argument, and hereby waive any argument  
7 that, based on this Agreement, Defendant cannot challenge claims and allegations in the Action  
8 upon any procedural or factual grounds, including, without limitation, challenging class or  
9 representative treatment or certification on any grounds, moving to compel sole plaintiff  
10 arbitration, or asserting any and all other potential defenses or privileges.  
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13 6. Class and PAGA Period. For purposes of this Settlement, the “Class Period” shall  
14 mean December 22, 2014 through the date the Court grants preliminary approval of this  
15 Settlement or ninety days from October 15, 2020, whichever occurs first. For purposes of this  
16 Settlement, the “PAGA Period” shall mean December 22, 2017 through the date the Court grants  
17 preliminary approval of this Settlement or ninety days from October 15, 2020, whichever occurs  
18 first  
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20 7. Class Members. For purposes of this Settlement, Class Members (collectively  
21 referred to as the “Class”) shall mean all current and former non-exempt employees Defendant  
22 employed in California at any time during the Class Period. The Class will consist of  
23 approximately 5,314 non-exempt employees.  
24

25 8. Plaintiff and His Claims. As set forth in the Action, Plaintiff alleges Defendant  
26 failed to pay for all hours worked at the correct rates of pay; failed to provide lawful meal or  
27 rest breaks or pay required premiums; failed to timely pay all wages owed during employment  
28

1 or upon termination; failed to provide lawful itemized wage statements; failed to maintain  
2 proper employment records; and by so doing all of the above, engaged in unfair competition.  
3 Plaintiff has claimed, and continues to claim, that his contentions have merit and give rise to  
4 Defendant's liability.

5 (a) Plaintiff has considered the expense and length of continued proceedings  
6 necessary to litigate the Action against Defendant through trial and any possible appeals, and  
7 the risk and uncertainty of any recovery against Defendant. Plaintiff has also taken into account  
8 the uncertainty and risk of the outcome of further litigation, and the difficulties and delays  
9 inherent in such litigation, including those involved in seeking class certification. Plaintiff is  
10 also aware of the burdens of proof necessary to establish liability for the claims asserted in the  
11 Action, Defendant's defenses thereto, and the difficulties in establishing the damages and  
12 penalties claimed. Based on the foregoing, the advice of Plaintiff's counsel, a full day of intense  
13 negotiations before an experienced and well-regarded mediator, and the substantial benefits to  
14 the Class and the State of California, Plaintiff has determined that the terms set forth in this  
15 Settlement are fair, adequate, and reasonable and in the best interests of the Class.

16 (b) Nothing in this Settlement, the documents referenced in this Settlement,  
17 or any action taken to carry out this Settlement is, may be construed as, or may be used as, an  
18 admission by or against Plaintiff as to the merits or lack thereof of the claims they asserted.

19 9. Denial of Wrongdoing. Defendant denies all of the claims, contentions, each and  
20 every allegation made by Plaintiff in the Action, including any allegation that class certification  
21 is warranted or proper or that they are liable on the merits on any of Plaintiff's claims in the  
22 Action. In addition, nothing herein shall be deemed to waive any of Defendant's objections or  
23 defenses to class certification or any other issue relating to or arising from the allegations set  
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1 forth in the Action. Defendant denies that, for any purpose other than settlement, the Action is  
2 appropriate for class or representative treatment.

3 (a) With respect to Plaintiff's claims, Defendant contends, *inter alia*, that at  
4 all times relevant to the Action it met or exceeded their obligations under the California Labor  
5 Code, the Fair Labor Standards Act, the California Business and Professions Code, and all other  
6 laws, statutes, orders or regulations alleged in the Action. Defendant's counsel performed a  
7 thorough analysis of the law and facts relating to the claims asserted by Plaintiff in the Action.  
8 Nonetheless, Defendant has taken into account the uncertainty and risks inherent in any  
9 litigation and concluded that further litigating the Action would be undesirable. Defendant has  
10 entered into this Settlement with the intention to avoid further disputes and the expense and  
11 inconvenience of continued litigation.  
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14 (b) Nothing in this Settlement, the documents referenced in this Settlement,  
15 or any action taken to carry out this Settlement is, may be construed as, or may be used as, an  
16 admission, concession or other indication by or against Defendant of any fault, wrongdoing, or  
17 liability whatsoever.  
18

19 (c) Defendant will stipulate to the certification of the Class Claims for  
20 settlement purposes only. Defendant disputes that certification is proper for the purposes of  
21 litigating the Class Claims proposed in or flowing from the Class Action Complaint.  
22

23 10. The Mediation. On October 15, 2019, the Parties attended and participated in  
24 good faith, arms' length settlement discussions at a mediation session with Lynn Frank, a highly  
25 experienced professional mediator. This Settlement was reached after substantial exchanges of  
26 data, information and documents before and during the mediation, and is a result of extensive  
27 arms-length negotiations. Defendant agrees not to oppose Plaintiff's representation to the Court  
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1 that that this Settlement is a fair, adequate, and reasonable resolution of the Action, taking into  
2 account all relevant factors, present and potential.

3 11. The Settlement Class. The “Settlement Class Members” (collectively referred to  
4 as the “Settlement Class”) shall mean those Class Members who do not timely and validly  
5 exclude themselves from the non-PAGA portion of the Settlement in accordance with the  
6 requirements set forth herein.  
7

8 12. Investigation. The Parties conducted significant investigation of the facts and law  
9 applicable to the Action, including, *inter alia*, extensive review and analysis of voluminous  
10 documents including Defendant’s employment policies, and procedures, interviews of potential  
11 witnesses, data analysis including records of time worked and work performed by counsel and  
12 experts, meetings and conferences between counsel for the Parties before, during and after  
13 mediation, and have diligently pursued investigation of claims alleged against Defendant.  
14 Counsel for the Parties have further investigated the applicable law as applied to the facts  
15 discovered regarding Plaintiff’s claims, the defenses thereto, and the damages and penalties  
16 claimed by Plaintiff in the Action, and exchanged extensive data, documents and information  
17 regarding the claims prior to the mediation and negotiating the Settlement. Based on their own  
18 independent investigation and evaluation, Plaintiff and Class Counsel believe that this  
19 Settlement is fair, reasonable, and adequate and is in the best interest of the Class in light of all  
20 known facts and circumstances, including the risks of significant delay, denial of a motion for  
21 class certification, decertification, defenses asserted by Defendant, and potential appellate  
22 issues.  
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1           13.    Cooperation. The Parties and their counsel agree to cooperate with each other  
2 and to use their best efforts to effect the implementation of this Settlement pursuant to its terms.

3 **II.    TERMS OF SETTLEMENT**

4           14.    Purpose of the Parties. The Parties agree that this Action and any claims arising  
5 out of the dispute described in this Settlement be settled on the terms described herein as  
6 between the Settlement Class and Defendant, subject to the approval of the Court.

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8           15.    Stipulation for Conditional Certification of the Class. Solely for purposes of  
9 consummation and fulfillment of this Settlement, the Parties each agree to the conditional  
10 certification of the Class. However, if, for whatever reason, the Settlement does not become  
11 final, the Parties' stipulation to conditional class certification shall become null and void *ab*  
12 *initio* and this Settlement shall have no bearing on, and shall not be admissible in connection  
13 with, the issue of whether or not certification would be appropriate in the Action or in any non-  
14 settlement context. The Parties each agree the terms of the Settlement are conditioned on  
15 payment of all amounts required to be paid by Defendant under the terms of this Settlement and  
16 to the extent approved by the Court.  
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19           16.    Application for Preliminary Approval. Counsel for Plaintiff shall request a  
20 hearing before the Court to seek preliminary approval of the Settlement on the earliest practical  
21 date. In conjunction with such hearing, Plaintiff will provide the Court with this Settlement, and  
22 any other documents necessary to implement the Settlement. Simultaneously with the filing of  
23 this Settlement, and solely for purposes of this Settlement, Counsel for Plaintiff will request that  
24 the Court enter a preliminary approval order, preliminarily approving the proposed Settlement,  
25 conditionally certifying the Class and approving the Class Period for settlement purposes only,  
26 approving appointment of the Settlement Administrator, and setting a date for a final approval  
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1 hearing. Defendant will not oppose these requests. The preliminary approval order shall also  
2 provide for notice of the Settlement and related matters to be disseminated to Class Members as  
3 specified herein or as may otherwise be ordered by the Court, provided that such order is also  
4 acceptable to the Parties and consistent with the terms of this Settlement.

5  
6 17. Settlement Effective Date. The “Effective Date” of the Settlement shall be the  
7 latest of the following dates: (i) sixty-five calendar days after entry of the order granting final  
8 approval, to provide for the potential appeal by a timely or untimely objector; (ii) if any appeal  
9 is taken for any reason, ten (10) calendar days after all appeals are withdrawn or after any and  
10 all avenues of appeal have been exhausted and no further appellate review is permitted or  
11 possible and the Judgment has not been modified, amended, or reversed in any way (unless the  
12 modification is for a reduction of the Fee Award, Expense Award or Enhancement Award).  
13 Defendant shall not be required to fund any portion of the Gross Settlement Fund and the  
14 Settlement Administrator (terms defined below) shall not distribute or pay any monies, unless  
15 and until the Effective Date of the Settlement. It is the intention of the Parties that this  
16 Agreement shall not become effective until the Court’s order approving this Agreement is  
17 completely final as defined herein.  
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20 18. Gross Settlement Fund. Provided this Settlement is finally approved by the  
21 Court, and in consideration for the general release of all claims (as described more fully in  
22 Section V, below), Defendant agrees to pay an amount not to exceed One Million Six Hundred  
23 Thousand Dollars (\$1,600,000) (the “Gross Settlement Fund”), as a full and complete settlement  
24 of all claims arising from the Action. The Gross Settlement Fund is the total maximum amount  
25 Defendant shall be required to pay under this Settlement for all purposes, including, as approved  
26 by the Court, the Individual Settlement Awards, Administration Costs, Expense Award, Fee  
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1 Award, Enhancement Award, and PAGA Payment (terms defined below) and any other fees  
2 and expenses (other than Defendant’s attorneys’ fees and expenses) incurred in implementing  
3 the terms and conditions of this Agreement and securing the Final Order and Judgment to be  
4 entered by the Court. With the exception of “Employer Taxes” (defined below) and Defendant’s  
5 attorneys’ fees and costs which Defendant will pay in addition to the Gross Settlement Fund,  
6 the Gross Settlement Fund is all-inclusive and under no circumstances will Defendant be  
7 required to pay more than the Gross Settlement Fund.  
8

9       19.     Net Settlement Fund. The “Net Settlement Fund” shall mean the funds available  
10 for distribution to Settlement Class Members (as defined in paragraph 20) after deducting from  
11 the Gross Settlement Fund the following, as approved by the Court: (i) Administration Costs;  
12 (ii) Expense Award; (iii) Fee Award; (iv) Enhancement Award; and (v) PAGA Payment (as  
13 each of these terms are defined below).  
14

15       20.     Individual Settlement Awards. Each Class Member will be entitled to a *pro rata*  
16 distribution from the Net Settlement Fund as set forth herein. “Settlement Class Members” shall  
17 mean those Class Members who do not exclude themselves from the Settlement by having  
18 submitted a valid and timely written request for exclusion from the non-PAGA portion of the  
19 Settlement in accordance with the requirements set forth in the Notice of Settlement (“Notice”)  
20 in the form of **Exhibit 1** attached hereto and incorporated herein by reference. “Individual  
21 Settlement Award” shall mean the total gross amount (subject to applicable payroll taxes and  
22 withholdings) each Settlement Class Member is entitled to receive from the Net Settlement Fund  
23 calculated pursuant to the formula in Paragraph 22, below. Only Settlement Class Members are  
24 eligible to receive Individual Settlement Awards. Any Class Members who do not exclude  
25 themselves from the non-PAGA portion of the Settlement in accordance with the requirements  
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1 set forth in the Notice shall be deemed Settlement Class Members and shall be bound by this  
2 Settlement and any order or judgment entered by the Court approving this Settlement. Class  
3 Members who submit timely written requests for exclusion pursuant to the Notice are not  
4 Settlement Class Members, and therefore are not entitled to any Individual Settlement Award  
5 and will not be bound by this Settlement or any order or judgment entered by the Court  
6 approving this Settlement except as noted below in Paragraph 50.  
7

8 21. Estimate of Individual Settlement Awards. The estimated payment to each Class  
9 Member shall be determined as follows. “Qualifying Pay Period” shall mean each pay period  
10 within which a Class Member was considered actively employed by Defendant in California  
11 during the Class Period. Any pay period during which a Class Member was employed by  
12 Defendant but not actively employed (e.g., while classified as exempt, while on leave of  
13 absence, etc.) will not be included as a Qualifying Pay Period.)  
14

15 22. Calculation of Settlement Class Members’ Individual Settlement Awards.  
16 Settlement Class Members shall have their Individual Settlement Awards calculated as follows:  
17 (a) each Settlement Class Member’s total number of Qualifying Pay Periods; (b) divided by the  
18 aggregate number of Qualifying Pay Periods of all Class Members; (c) multiplied by the value  
19 of the Net Settlement Fund.  
20

21 23. Guaranteed Payout of Net Settlement Fund. The Parties agree that the total  
22 amount actually distributed to all Settlement Class Members shall equal 100% of the Net  
23 Settlement Fund (the “Guaranteed Minimum Payout”).  
24

25 24. Deposit of Gross Settlement Fund. Defendant shall deposit, in an account created  
26 by the Settlement Administrator for disbursement as set forth below, the Gross Settlement Fund  
27 as follows. Within five (5) business days following the Effective Date, the Settlement  
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1 Administrator shall provide counsel for Defendant routing instructions to wire transfer funds for  
2 deposit. Within ten business days following the Effective Date or within five business days after  
3 the Settlement Administrator provides Defendant's counsel with routing instructions to wire  
4 transfer funds, whichever occurs later, Defendant shall deposit 50% of the Gross Settlement  
5 Fund and Employer Taxes; and on June 15, 2021, Defendant shall deposit the remaining 50%  
6 of the Gross Settlement Fund and Employer Taxes. In the event that the Gross Settlement Fund  
7 and Employer Taxes are not paid as required by the Settlement within thirty days of the dates  
8 required by this paragraph, at Plaintiff's option, the Settlement, Final Approval Order and  
9 Judgment will be set aside, terminated, and shall have no force or effect, and no Party to the  
10 Settlement shall be bound by any of its terms. Additionally, any order approving or enforcing  
11 the Settlement shall be vacated. The Settlement Agreement and all negotiations, statements and  
12 proceedings relating thereto shall be without prejudice to the rights of the parties to the  
13 Settlement, each of whom shall be restored to their respective positions in the lawsuit before the  
14 Settlement. Plaintiff shall notify Defendant of his exercise of this option in writing for it to be  
15 effective within ten business days of Defendant's failure to deliver the Gross Settlement Fund  
16 as set forth in this paragraph. To effectively exercise this option, Plaintiff will be required to  
17 return any Gross Settlement Fund amounts deposited by Defendant.

21           25.     Attorneys' Expenses. Class Counsel will apply to the Court for, and Defendant  
22 will not oppose, payment of Class Counsel's expenses from the Gross Settlement Fund, in an  
23 amount according to proof, but not to exceed Fifteen Thousand Dollars (\$15,000.00) (the  
24 "Expense Award"). The Expense Award may include, but is not limited to, any costs and  
25 expenses incurred by Plaintiff in the prosecution of this action, including filing fees, travel costs,  
26 and mediation fees, as approved by the Court. If the Court approves less than the amount  
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1 requested by Class Counsel, the remainder shall remain in the Net Settlement Fund for  
2 distribution to Settlement Class Members.

3         26.     Attorneys' Fees. Class Counsel will apply to the Court for, and Defendant will  
4 not oppose, payment of attorneys' fees from the Gross Settlement Fund in an amount up to one-  
5 third of the Gross Settlement Fund, not to exceed Five Hundred Thousand Three Hundred and  
6 Thirty Three Dollars (\$533,333.00) (the "Fee Award"). If the Court approves less than the  
7 amount requested by Class Counsel, the remainder shall remain in the Net Settlement Fund for  
8 distribution to Settlement Class Members.  
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10         27.     Enhancement Award. Class Counsel will apply to the Court for, and Defendant  
11 will not oppose, payment of Twenty Thousand Dollars (\$20,000) to Plaintiff as consideration  
12 for his service to the Class as a class representative and the general release of all claims as set  
13 forth herein (the "Enhancement Award"). This amount shall be paid in addition to Plaintiff's  
14 *pro rata* share of the Net Settlement Fund as a Settlement Class Member. If the Court approves  
15 less than the amount requested by Class Counsel, the remainder shall remain in the Net  
16 Settlement Fund for distribution to Settlement Class Members. The Enhancement Award  
17 approved by the Court shall be paid from the Gross Settlement Fund, and shall be distributed to  
18 Plaintiff by the Settlement Administrator reported on an IRS Form 1099.  
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21         28.     Settlement Administration Costs. The reasonable costs of settlement  
22 administration through and beyond final approval, estimated not to exceed Forty Thousand  
23 Dollars (\$40,000.00) (the "Administration Costs"), shall be paid to the Settlement Administrator  
24 from the Gross Settlement Fund. If the Administration Costs approved by the Court are less than  
25 the requested amount, the remainder shall remain in the Net Settlement Fund for distribution to  
26 Settlement Class Members. If actual Administration Costs exceed the above estimate, then any  
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1 such additional fees and costs may be paid from the Gross Settlement Fund only as approved by  
2 the Court.

3 29. PAGA Payment. The total sum of Fifty Thousand Dollars (\$50,000.00) from the  
4 Gross Settlement Fund is allocated to settle claims brought pursuant to the Private Attorneys  
5 General Act, California Labor Code Section 2698 *et seq.*, as approved by the Court, which shall  
6 be distributed by the Settlement Administrator to the California Labor and Workforce  
7 Development Agency (“LWDA”) and Class Members as set forth herein (the “PAGA  
8 Payment”). Of this amount, seventy five percent (75%) or Thirty-Seven Thousand Five Hundred  
9 Dollars (\$37,500.00) shall be distributed to the LWDA. The remaining twenty-five percent  
10 (25%) shall be paid *pro rata* to Class Members on a Qualifying Pay Period basis, based on the  
11 same allocation method as set forth above in paragraphs 21 and 22 above except that the PAGA  
12 Period (defined in Paragraph 6) and not the Class Period shall be used to establish the Qualifying  
13 Pay Periods. Because the PAGA Payment is in the nature of a penalty pursuant to Labor Code  
14 section 2699(i), these payments shall not be subject to withholding.

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18 30. Allocation of Wages, Interest, and Penalties. The Parties agree that twenty  
19 percent (20%) of each Individual Settlement Award is allocated to disputed wages, subject to  
20 all applicable wage laws, including federal, state and local tax withholding and payroll taxes,  
21 reported on Form W-2. The remaining eighty percent (80%) of each Individual Settlement  
22 Award shall be allocated to disputed interest, penalties and other non-wage damages sought in  
23 the Action. Payments allocated to disputed penalties, non-wage damages and interest shall be  
24 subject to all authorized and required withholdings other than tax withholdings customarily  
25 made from employees’ wages, and will be reported on Form 1099. The Settlement  
26 Administrator shall be responsible for issuing all payments and calculating and withholding any  
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1 required federal, state and local taxes. The Parties recognize and agree that the precise amounts  
2 of compensation claimed in this Action are extremely difficult to determine with any certainty  
3 for any given year, if at all, and may be subject to different calculations and formulas. The  
4 Parties agree that the formula for allocating the Individual Settlement Awards to Settlement  
5 Class Members provided herein is reasonable and that the payments provided herein are  
6 designed to provide a fair settlement to such persons, in light of the uncertainties regarding the  
7 calculation of alleged compensation to each Settlement Class Member.  
8

9         31.     Taxes. All payroll taxes will be computed by the Settlement Administrator based  
10 on the amounts awarded to Settlement Class Members as wages, as set forth herein. “Employer  
11 Taxes” shall mean Defendant’s share of applicable payroll taxes, such as FICA and FUTA, for  
12 that portion of the Individual Settlement Awards attributed to wages. Defendant will pay to the  
13 appropriate taxing authorities the Employer Taxes it owes as a result of the Individual Settlement  
14 Awards to Settlement Class Members in addition to the Gross Settlement Fund. “Employee  
15 Taxes” shall mean Settlement Class Members’ share of all applicable payroll taxes and  
16 withholdings. The Settlement Administrator shall timely and properly withhold from the  
17 Individual Settlement Awards payable to Settlement Class Members all applicable Employee  
18 Taxes. Payments to Settlement Class Members and Plaintiff pursuant to this Settlement shall be  
19 reported by the Settlement Administrator on IRS Forms W-2 (for payments representing wages)  
20 or 1099 (for all other payments), and provided to the respective Settlement Class Members and  
21 governmental authorities as required by law. The Settlement Administrator shall issue all reports  
22 required by federal, state, and local tax agencies to document all payments made pursuant to  
23 this Settlement. Notwithstanding the withholding of Employee Taxes, each Settlement Class  
24 Member shall be responsible for paying all applicable state, local, and federal income taxes,  
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1 interest or penalties arising from any payment received pursuant to this Settlement. Should any  
2 taxing authority or agency challenge the allocation of Individual Settlement Awards and/or  
3 Employee Taxes, Settlement Class Members shall cooperate with Defendant and provide  
4 documentation as requested to demonstrate such payment and the appropriateness of any  
5 withholding. Settlement Class Members who receive an Individual Settlement Award agree to  
6 indemnify and hold Defendant and the Released Parties, as defined below, harmless from any  
7 and all liability which may hereafter be asserted against them by any federal, state or local  
8 agency for any taxes claimed in connection with any payments received pursuant to this  
9 Settlement together with interest and penalties thereon. Neither Plaintiff's counsel nor  
10 Defendant's Counsel intend anything contained herein (including the Notice) to constitute legal  
11 advice regarding the taxability of any amount paid hereunder, nor shall it be relied upon as such.  
12 The tax issues for each Settlement Class Member are unique, and each Settlement Class Member  
13 is advised to obtain tax advice from his or her own tax advisor with respect to any payments  
14 resulting from the Individual Settlement Awards.  
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18 32. Tax Liability. Defendant makes no representation as to the tax treatment or legal  
19 effect of the payments called for hereunder, and Plaintiff and Settlement Class Members are not  
20 relying on any statement, representation, or calculation by Defendant or by the Settlement  
21 Administrator in this regard.

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23 33. Circular 230 Disclaimer. Each Party to this Agreement acknowledges and agrees  
24 that (1) no provision of this Agreement, and no written communication or disclosure between  
25 or among the Parties or their attorneys and other advisers, is or was intended to be, nor will any  
26 such communication or disclosure constitute or be construed or be relied upon as, tax advice  
27 within the meaning of United States Treasury Department circular 230 (31 CFR part 10, as  
28

1 amended); and (2) (a) has relied exclusively upon his, her, or its own, independent legal and tax  
2 counsel for advice (including tax advice) in connection with this agreement, (b) has not entered  
3 into this Agreement based upon the recommendation of any other party or any attorney or  
4 advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure  
5 by any attorney or adviser to any other party to avoid any tax penalty that may be imposed. .  
6

7       34.     No Effect on Employee Benefits. The Individual Settlement Awards available to  
8 Class Members and the Enhancement Award paid to Plaintiff shall not be deemed to be  
9 “pensionable” earnings and shall not have any effect on the eligibility for, or calculation of, any  
10 employee benefits (*e.g.*, vacations, holiday pay, leave or illness policies, retirement plans, etc.)  
11 of Plaintiff or Class Members. The Parties agree that any Individual Settlement Awards or  
12 Enhancement Award paid under the terms of this Settlement do not represent any modification  
13 of Settlement Class Members’ previously credited hours of service or other eligibility criteria  
14 under any employee pension benefit plan or employee welfare benefit plan sponsored by  
15 Defendant. Further, any Individual Settlement Award or the Enhancement Award paid  
16 hereunder shall not be considered "compensation" in any year for purposes of determining  
17 eligibility for, or benefit accrual within, an employee pension benefit plan, employee welfare  
18 benefit plan, employee bonuses, or employee past, current, or future compensation levels. The  
19 Parties further agree that Plaintiff and all Settlement Class Members will be deemed to have  
20 waived any claims or benefits under the Employee Retirement Income Security Act of 1974 (29  
21 U.S.C. § 1001, *et seq.*) premised upon any and all amounts they receive under this Settlement  
22 as part of their Released Claims under this Settlement.  
23  
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26       35.     Distribution of Gross Settlement Fund. Following the deposit of the Gross  
27 Settlement Fund, the Settlement Administrator shall distribute the payments provided by this  
28

1 Settlement as follows: Within five (5) calendar days of each Deposit of Settlement Funds (as set  
2 forth in Paragraph 24), the Settlement Administrator shall distribute to the appropriate persons,  
3 as approved by the Court, one-half of: the PAGA Payment, the Individual Settlement Awards,  
4 the Enhancement Award, the Expense Award, the Fee Award, and the Administration Costs.

5           36.     Uncashed Checks. Settlement Class Members and Class Members shall have one  
6 hundred and eighty (180) days from the date of the check's issuance to cash their Individual  
7 Settlement Payment checks or PAGA Payment. After the expiration of the 180-day period, on  
8 Defendant's behalf, the Settlement Administrator shall remit any amounts from settlement  
9 checks that remain uncashed and otherwise unclaimed (the "Residue"), to the California  
10 Unclaimed Property Fund, with an identification of the Settlement Class Member or Class  
11 Member to whom the funds belong. The Settlement, including its release, will be binding on  
12 any Settlement Class Member and Class Member who does not cash his or her check within the  
13 one hundred and eighty (180) days from the date of the check's issuance and does not contact  
14 Settlement Administrator concerning the check.  
15  
16

17           The Settlement Administrator shall provide weekly reports to Class Counsel and  
18 Defendant's Counsel regarding the number of checks cashed and the total value of Settlement  
19 Payments remaining uncashed.  
20

21           37.     Waiver of Liability. No person shall have any claim against the Parties or the  
22 Settlement Administrator based on mailings, distributions, and payments made in accordance  
23 with this Settlement or any order of the Court. The Settlement Administrator is not and shall not  
24 be deemed to be an employee or agent of any Party.  
25

26 **III.     SETTLEMENT ADMINISTRATION**  
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1           38.    Appointment of Third Party Administrator. The Parties have agreed to petition  
2 the Court for appointment of CPT Group, Inc. to administer the Settlement of the Action under  
3 the terms of this Settlement (the “Settlement Administrator”). The Parties each represent that  
4 they do not have any financial interest in the Settlement Administrator or otherwise have a  
5 relationship with the Settlement Administrator that could create a conflict of interest. The  
6 Settlement Administrator shall be responsible for:

7  
8           (a)    Mailing the Notice Packet in English and Spanish to the Class Members  
9 as directed by the Court;

10           (b)    Consulting with counsel for the Parties concerning any relevant issue,  
11 including (without limitation) the estimated amounts of approximate Individual Settlement  
12 Awards, and the acceptance of any late or deficient Notices;

13           (c)    Keeping track of timely and proper requests for exclusion;

14           (d)    Notifying counsel for the Parties in writing of the number of valid Claims,  
15 deficient Claims, and late Claims on a regularly weekly basis;

16           (e)    Calculation and distribution of Individual Settlement Awards and PAGA  
17 Payments to each Settlement Class Member and the California Labor and Workforce  
18 Development Agency;

19           (f)    Providing weekly status reports to counsel for the Parties, including: (i)  
20 the number of Notice Packets mailed; (ii) the number of Notice Packets remailed (with updated  
21 address information provided only to Defendant’s Counsel), (iii) the number of valid Notices  
22 received; (iv) the number of objections received; (v) the number of requests for exclusion  
23 received; (vi) the aggregate amount of Individual Settlement Awards claimed by Settlement  
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1 Class Members; and (vii) weekly reports to Class Counsel and Defendant's Counsel regarding  
2 the number of checks cashed and the total value of Settlement Payments remaining uncashed.

3 (g) No later than ten (10) business days before the final approval hearing  
4 preparing and serving on counsel for the Parties, for filing with the Court in support of Plaintiff's  
5 motion for final approval, a declaration of due diligence setting forth its compliance with its  
6 obligations under this Settlement;  
7

8 (h) Notifying Counsel for Defendant in a timely manner of the wiring  
9 instructions for the Deposit of the Gross Settlement Funds, as approved by the Court, which  
10 shall be paid by Defendant to the Settlement Administrator pursuant to the terms of Paragraph  
11 24;  
12

13 (i) Distributing and reporting the Individual Settlement Awards, PAGA  
14 Payment, Enhancement Award, Fee Award, Expense Award, Administration Costs, and  
15 Employer Taxes, as may be ordered by the Court or as otherwise necessary;  
16

17 (j) Issuing a W-2 Form to each Settlement Class Member for the wage  
18 portion of each Individual Settlement Award, a 1099 Form to each Settlement Class Member  
19 for the interest, penalties, and non-wage portion of each Individual Settlement Award, including  
20 PAGA Payments, a 1099 Form to Plaintiff for the Enhancement Award, a 1099 Form to Class  
21 Counsel for the Fee Award and Expense Award, and a 1099 Form to the Settlement  
22 Administrator for the Administration Costs;  
23

24 (k) Within ten business days of completion of administration of the  
25 Settlement, the Settlement Administrator will provide a written declaration under oath to certify  
26 such completion to the Court and counsel for all Parties. The Settlement Administrator will be  
27  
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1 solely responsible for that filing, and the Settlement Administrator's failure to comply with this  
2 requirement will not affect the settlement's validity; and

3 (l) Such other tasks as the Parties mutually agree or the Court orders the  
4 Settlement Administrator to perform, including responding to questions from Class Members

5 39. Resolution of Disputes. All disputes relating to the Settlement Administrator's  
6 duties may be referred to the Court, if necessary, which will have continuing jurisdiction over  
7 this Settlement until all obligations contemplated by this Settlement have been fully carried out.  
8

9 **IV. NOTICE TO THE CLASS**

10 40. Class List. Within ten (10) business days following the date of preliminary  
11 approval, Defendant will provide the Settlement Administrator with the names, most recent  
12 known mailing address, telephone number, and social security number of each Class Member,  
13 dates of employment and the total number of Qualifying Pay Periods of each Class Member  
14 during the Class Period and PAGA Period (collectively the "Class List"). Each Class Member's  
15 total Qualifying Pay Periods will be derived from Defendant's records. Based on the information  
16 provided by Defendant, the Settlement Administrator shall estimate/calculate: (a) the Net  
17 Settlement Fund, (b) the Individual Settlement Payment for each Settlement Class Member  
18 based on the formula set forth in Paragraph 22, (c) the amount of the Individual Settlement  
19 Payment to be allocated to wages and interest and penalties based on the formula specified in  
20 Paragraph 30, (d) the PAGA Payment amount for each Class Member; (e) the employer share  
21 of the payroll taxes applicable to the Net Settlement Fund allocated to wages; and (f) the  
22 employee tax withholding amount based on the allocation of each Individual Settlement  
23 Payment to wages.  
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1           The Class List will be treated as confidential by the Settlement Administrator and will  
2 not be disclosed by the Settlement Administrator to anyone, except as may be required to  
3 applicable tax authorities, pursuant to the express written consent of Defendant, by order of the  
4 Court, or as may be necessary to carry out the reasonable steps described in this Settlement to  
5 locate missing Class Members. In no event will the Settlement Administrator provide the Class  
6 List to Class Counsel unless specifically authorized in writing by Defense Counsel.

7  
8           41.    Notice of Settlement: Within thirty (30) calendar days after preliminary approval,  
9 the Settlement Administrator shall mail a copy of the Notice Packet in English and Spanish, in  
10 the form approved by the Court in its preliminary approval order, to all persons shown by  
11 Defendant's records to be Class Members, *via* first class U.S. mail, using the most current  
12 mailing address available. The Notice Packet shall state the total approximate amount each Class  
13 Member is estimated to be entitled to receive as his or her Individual Settlement Award under  
14 the Settlement as set forth above in Paragraph 22. Any Notice Packets returned to the Settlement  
15 Administrator as undelivered and bearing a forwarding address shall be re-mailed by the  
16 Settlement Administrator within three days following receipt of the returned mail. For any  
17 Notice Packets returned to the Settlement Administrator without a forwarding address, the  
18 Settlement Administrator shall first conduct a National Change of Address search as required  
19 for undeliverable notices, followed by a computer/SSN and "skip trace" search to obtain an  
20 updated address, and shall promptly re-mail the Notice Packets to any newly-found address or  
21 addresses. The re-mailed Notice Packet shall be identical to the original Notice Packet. The time  
22 period to request exclusion or object shall not be extended on account of a returned or  
23 undeliverable Notice Packet. The Settlement Administrator and counsel for the Parties shall  
24 undertake all reasonable efforts to locate and verify the addresses of Class Members and send a  
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1 copy of the Notice Packet to all Class Members. It is the intent of the Parties that reasonable  
2 means be used to locate Class Members and that the Claim Administrator be given discretion to  
3 take steps in order to facilitate notice of the Settlement to the Class and delivery of the Individual  
4 Settlement Payments to Settlement Class Members and the PAGA payment to Class Members.  
5 If after any re-mailing, the Notice of Settlement is again returned undeliverable, the process will  
6 end and such Class Member will be deemed to have elected to participate in the Settlement  
7 without any objection to the Settlement. Any costs incurred by having the Settlement  
8 Administrator handle these administrative tasks shall be included in the Administration Costs  
9 approved by the Court. In the event that the Court does not grant final approval of the Settlement,  
10 the Parties agree to split 50% of all costs incurred by the Settlement Administrator.  
11

12  
13 42. Class Member Disputes. If a Class Member disputes the number of Qualifying  
14 Pay Periods listed on the Notice, the Class Member may produce evidence to the Settlement  
15 Administrator indicating the Pay Periods the Class Member contends were actually worked  
16 during the Class Period. All challenges must be postmarked no later than the last day of the  
17 Objection/Exclusion Period. The Settlement Administrator may reject any challenge not  
18 supported by such evidence. If a dispute arises over the number of Qualifying Pay Periods listed  
19 in the Notice based on evidence produced by a Class Member, Defendant will be asked to  
20 manually review their payroll and personnel records to verify the correct number of Qualifying  
21 Pay Periods. The records of Defendant shall have a rebuttable presumption of correctness and  
22 will be presumed determinative. The Settlement Administrator's determination shall be final  
23 and binding. The Court will not review any such disputes.  
24  
25

26 43. Deficiency Notice. The Settlement Administrator shall send a Deficiency Notice  
27 to Class Members for any irregularities in their completed Notices, which will provide the Class  
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1 Members with no more than fifteen (15) calendar days from the date of mailing the Deficiency  
2 Notice to cure the deficiency, even if after the Objection/Exclusion Period. This 15-day period  
3 shall not be extended or waived by the Settlement Administrator unless mutually agreed to in  
4 writing by the Parties or as ordered by the Court.

5 44. Procedure for Objecting or Requesting Exclusion. The Parties agree that Plaintiff  
6 may not opt out of the Settlement Class or file an objection to the Settlement, but that any other  
7 Class Member or person purporting to act on behalf of a Class Member who wishes to object to  
8 the Settlement, or to be excluded from the non-PAGA portion of the Settlement must submit a  
9 timely written objection or request for exclusion using the following procedures:  
10

11 (a) The Notice shall provide that any Class Member or person purporting to  
12 act on behalf of any Class Member, who does not timely submit a request for exclusion, and  
13 wishes to object to the Settlement must serve the Settlement Administrator a written statement  
14 objecting to the Settlement postmarked no later than sixty (60) calendar days from the date the  
15 Notice Packet is mailed by the Settlement Administrator (the Objection/Exclusion Period). If a  
16 Class Member's notice is re-mailed, the Class Member shall have sixty (60) days from the date  
17 of the initial mailing, in which to postmark a request for exclusion, a challenge, or objection.  
18 Class Members shall not be required to submit claim forms in order to receive a proportional  
19 share of the Net Settlement Fund.  
20

21 (b) The Settlement Administrator shall be responsible for sending copies of  
22 any written comments or objections to Class Counsel and Defendant's counsel within three (3)  
23 days of receipt and Class Counsel and Defendant's counsel shall be responsible for ensuring  
24 copies of all written comments or objections received by them from the Settlement  
25 Administrator are filed with the Court. In order for a Class Member to object to this Agreement,  
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1 or any term of it, he or she must not submit a request for exclusion (i.e., must not opt-out).  
2 Anyone who objects to this Agreement or Settlement or any portion thereof shall be bound by  
3 the order of the Court. Counsel for the Parties shall file any response to the objections submitted  
4 by objecting Class Members at least five (5) court days before the date of the Final Fairness and  
5 Approval Hearing. The Court retains final authority with respect to the consideration and  
6 admissibility of any objections.  
7

8 (c) A Class Member who fails to serve a written objection in the manner  
9 specified above may be deemed to have waived any objections and may be foreclosed from  
10 making any objection to the Settlement, whether by appeal or otherwise. Regardless of a Class  
11 Member's failure to comply with these objection procedures, the Court may permit a Class  
12 Member to comment on the Settlement at the Final Approval Hearing. Further, as recent  
13 government quarantine orders may make it difficult or impossible for Class Members to attend  
14 the final fairness hearing in person, Class Members may attend by telephone, as set forth in the  
15 Notice.  
16

17  
18 (d) The Notice shall also provide that Class Members who wish to exclude  
19 themselves from the non-PAGA portion of the Settlement must serve the Settlement  
20 Administrator with a timely written statement requesting exclusion from the Settlement Class.  
21 Such written request for exclusion should contain the name, address, and telephone number of  
22 the person requesting exclusion, the signature of the person, and state, in effect, the following:  
23 I WISH TO BE EXCLUDED (OPT OUT) FROM THE NON-PAGA PORTION OF THE  
24 SETTLEMENT IN THE CLASS ACTION LAWSUIT AGAINST DEFENDANT. I  
25 UNDERSTAND BY REQUESTING EXCLUSION (OPTING OUT) FROM THE  
26 SETTLEMENT, I WILL NOT RECEIVE ANY CLASS ACTION SETTLEMENT  
27  
28

1 PROCEEDS. The written request to be excluded must be sent to the Settlement Administrator  
2 via U.S. Mail and postmarked no later than sixty (60) calendar days from the date the Notice  
3 Packet is mailed by the Settlement Administrator. The Settlement Administrator shall provide  
4 Defendant's Counsel the names of individuals who make timely requests for exclusion. No  
5 request for exclusion will be accepted by the Settlement Administrator if postmarked after the  
6 last day of the Objection/Exclusion Period.  
7

8 (e) Class Members who properly and timely submit a request for exclusion  
9 to the non-PAGA portion of the Settlement will not be bound by the Settlement except as set  
10 forth in Paragraph 50 and subsection (f) of this Paragraph will not receive a *pro rata* distribution  
11 from the Net Settlement Fund but will receive their *pro rata* share of the PAGA portion of the  
12 Settlement as set forth in Paragraph 29, above, and will not have standing to object to and/or  
13 appeal: (i) the Settlement, (ii) the Class Representative's motion for preliminary and final  
14 approval of the Settlement, and (iii) Defendant will retain all of its rights to defend against such  
15 Class Members' claims.  
16

17 (f) Class Members who timely submit a request for exclusion to the non-  
18 PAGA portion of the Settlement will be bound by the order of the Court, to the extent it  
19 addresses and releases all PAGA claims.  
20

21 (g) Class Members who fail to submit a valid and timely request for  
22 exclusion in the manner described herein shall automatically become Settlement Class Members  
23 and be bound by all terms of the Settlement and final approval order regardless of whether they  
24 have otherwise requested exclusion from the Settlement.  
25

26 (h) No later than fourteen (14) days before the Final Approval Hearing, the  
27 Settlement Administrator shall file a declaration under penalty of perjury advising the Court  
28

1 with a complete list of all members of the Class who have timely and validly requested exclusion  
2 from Settlement.

3 (i) If any Class Member who timely submits an objection, as determined by  
4 the Court, files a notice of appeal of the final approval order within the time period permitted  
5 by law, Defendant shall not be required to fund any portion of the Gross Settlement Fund, and  
6 the Settlement Administrator shall not distribute or pay any monies, until any such appeal(s)  
7 affirm the Settlement without modification (unless the modification only relates to a reduction  
8 of the Fee Award, Expense Award or Enhancement Award) or are dismissed with prejudice.  
9

10 45. Reminder Notice. Fifteen (15) calendar days following the initial mailing of the  
11 Notice Packet to the Class, the Settlement Administrator will mail to each Class Member who  
12 has not requested exclusion from the settlement a postcard in English and Spanish reminding  
13 them of the deadline to request exclusion from the Settlement.  
14

15 46. No Solicitation of Class Members. The Parties agree to use their best efforts to  
16 carry out the terms of this Settlement. Neither the Parties nor their counsel or agents will contact  
17 Class Members for the purpose of attempting to influence them to participate or not to participate  
18 in this Settlement. However, if contacted by a Class Member, counsel for the Parties and  
19 representatives of Defendant may provide information or assistance regarding any aspect of the  
20 Settlement requested by the Class Member. At no time shall any of the Parties or their counsel,  
21 agents, or representatives solicit or otherwise encourage Class Members or any other persons  
22 (including but not limited to the LWDA) to submit written objections to the Settlement or  
23 requests for exclusion from the Settlement, or encourage Class Members or any other person to  
24 appeal from the final approval order.  
25  
26

27 **V. RELEASES**  
28

1           47.     Release by Plaintiff and the Settlement Class Members. As of the Effective Date,  
2 Plaintiff and all Settlement Class Members (on behalf of themselves and their respective agents,  
3 representatives, attorneys, heirs, executors, administrators, successors in interest, and assigns)  
4 irrevocably and unconditionally fully release and forever discharge Defendant and all of their  
5 respective former, present, and future owners, parents, subsidiaries, affiliates, divisions, related  
6 entities including but not limited to Neal T. Baker Enterprises, Inc., joint venturers, partners,  
7 corporations in common control, co-employers, service providers, predecessors, successors, and  
8 assigns, and past, present, and future officers, directors, employees, partners, shareholders,  
9 agents, associates, representatives, attorneys, insurers, and any other successors, assigns, or legal  
10 representatives of any of them (collectively the “Released Parties”), from claims alleged in the  
11 Action and any and all other claims, causes of action, demands, injuries, grievances, obligations,  
12 losses, damages penalties, interest, fines, debts, liens, liabilities, attorneys' fees, costs, and any  
13 other form of relief or remedy in law or equity, of any type whatsoever, whether known, should  
14 have been known or unknown, foreseen, should have been foreseen or unforeseen, anticipated,  
15 should have been anticipated or unanticipated, suspected, should have been suspected or  
16 unsuspected or latent, that occurred on or before the Effective Date of the Settlement that could  
17 reasonably have been brought based on, related to, or arising out of facts alleged in the Action  
18 or any theory that could have been brought based on facts in the Action, including without  
19 limitation, any claims under any California statute, regulation, rule or common law, or any other  
20 legal or equitable theory alleging any failure to comply with any wage and hour requirements,  
21 pay wages, overtime, travel time, and/or minimum wages for all hours worked, provide meal  
22 and rest breaks, pay premium pay for missed meal and rest breaks, pay all wages within the  
23 required time period upon discharge/termination, timely pay all wages during employment, pay  
24 all wages during employment, provide complete and accurate wage statements, keep complete  
25 and accurate payroll records, as well as any and all claims for liquidated or punitive damages,  
26 statutory and civil penalties, attorneys' fees or costs and expenses associated therewith, whether  
27 at common law, pursuant to statute, ordinance or regulation, in equity or otherwise, and whether  
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1 arising under federal, state or other applicable law; including, but not limited to, California  
2 Labor Code sections 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194,  
3 1194.2, 1197, 1197.1, 1198, and 2698, *et seq.*, and Business and Professions Code section  
4 17200, *et seq.*, and any applicable IWC Wage Orders (“Released Claims”). Released Claims  
5 also include any claim against Defendant for attorneys' fees or costs/expenses associated with  
6 Class Counsel's representation of the Plaintiff and Class. The Parties will meet and confer in  
7 good faith if the Court requires changes to the scope of the Released Claims.

8         48. No Assignment. Plaintiff and Settlement Class Members acknowledge that they  
9 have not heretofore assigned or transferred to or purported to assign or transfer to any person or  
10 entity the Released Claims or any part or portion thereof. Plaintiff and Settlement Class  
11 Members agree to indemnify and hold harmless the Released Parties from and against any claim,  
12 demand, controversy, damage, debt, liability, account, reckoning, obligation, cost, expense, lien,  
13 action or cause of action (including the payment of attorneys’ fees and costs actually incurred  
14 whether or not litigation commenced) based on, in connection with, or arising out of any  
15 assignment or transfer or claimed assignment or transfer thereof.

16         49. Labor Code Section 206.5. Plaintiff, on behalf of himself and the Settlement Class  
17 Members, acknowledge and agree that the claims for unpaid wages in the Action, and untimely  
18 payment of wages in the Action, are disputed, and that the payments set forth herein constitute  
19 payment of all sums allegedly due to them. Plaintiff, on behalf of himself and the Settlement  
20 Class Members, acknowledges and agrees that California Labor Code Section 206.5 is not  
21 applicable to the Parties hereto. That section provides in pertinent part as follows:  
22

23                 An employer shall not require the execution of any release of any claim or  
24 right on account of wages due, or to become due, or made as an advance on  
25 wages to be earned, unless payment of those wages has been made.

26         50. Release of PAGA Claims. As of the Effective Date, Class Members who timely  
27 and validly exclude themselves from the non-PAGA portion of the Settlement, on behalf of each  
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1 of them and each of their respective agents, representatives, attorneys, heirs, executors,  
2 administrators, successors in interest, and assigns) irrevocably and unconditionally fully release  
3 and forever discharge the Released Parties from the PAGA claims (Labor Code section 2698, et  
4 seq., alleged in the Action whether known, should have been known or unknown, foreseen,  
5 should have been foreseen or unforeseen, anticipated, should have been anticipated or  
6 unanticipated, suspected, should have been suspected or unsuspected or latent, that occurred on  
7 or before the Effective Date of the Settlement that could reasonably have been brought based  
8 on, related to or arising out of facts alleged in the Action (“PAGA Released Claims”).  
9

10           51.     Additional General Release of All Claims by Plaintiff. As of the Effective Date,  
11 Plaintiff (on his own behalf and on behalf of his agents, representatives, attorneys, heirs,  
12 executors, administrators, successors in interest, and assigns) knowingly and voluntarily  
13 releases and forever discharges the Released Parties from any and all claims, obligations,  
14 demands, causes of action, and liabilities of whatever kind and nature, character, and  
15 description, whether in law or equity, whether sounding in tort, contract, federal, state and/or  
16 local law, statute, ordinance, regulation, common law, or other source of law, whether known  
17 or unknown, and whether anticipated or unanticipated, including unknown claims covered by  
18 Civil Code § 1542, by Plaintiff, arising during the period from the beginning of Plaintiff’s dates  
19 of employment with Defendant to the Effective Date, for any type of relief, including, without  
20 limitation, claims for wages, damages, unpaid costs, penalties (including civil and waiting time  
21 penalties), liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs,  
22 restitution, or equitable relief with the sole exception of any claims which cannot be released as  
23 a matter of law (“Plaintiff’s Released Claims”). Plaintiff’s Released Claims include, but are not  
24 limited to, the Released Claims (as defined above in Paragraph 47), breaches of contract,  
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1 whether written, oral or implied; violations of any public policy; tort claims, including but not  
2 limited to intentional infliction of emotional distress and negligent infliction of emotional  
3 distress, defamation, misrepresentation, and fraud; retaliation claims; common law claims; any  
4 other claims for damages, costs, fees, or other expenses, including attorneys' fees; and any  
5 violations of the following statutes, laws, and regulations: Title VII of the Civil Rights Act of  
6 1964, as amended; The Civil Rights Act of 1991; Sections 1981 through 1988 of Title 42 of the  
7 United States Code, as amended; The Americans with Disabilities Act of 1990, as amended; the  
8 Employment Retirement Income Security Act of 1974, as amended; the Occupational Safety  
9 and Health Act, as amended; the Sarbanes-Oxley Act of 2002; the Family and Medical Leave  
10 Act of 1993, as amended; the Fair Labor Standards Act; the California Fair Employment and  
11 Housing Act – Cal. Gov't Code § 12900, *et seq.*; the California Family Rights Act – Cal. Govt.  
12 Code §12945.2 *et seq.*; the California Unruh Civil Rights Act – Civ. Code § 51, *et seq.*; the  
13 California Whistleblower Protection Law – Cal. Lab. Code §1102-5(a) to (c); the California  
14 Occupational Safety and Health Act, as amended, California Labor Code § 6300, *et seq.*, and  
15 any applicable regulations thereunder; the California Labor Code; the Labor Code Private  
16 Attorneys General Act of 2004 – Cal. Lab. Code §§ 2698, *et seq.*; California Labor Code § 132a;  
17 and any other federal, state, or local civil employment law, statute, regulation, or ordinance  
18 capable of being released by Plaintiff, excluding any claims that cannot be released as a matter  
19 of law.  
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23

24 52. California Civil Code section 1542. To effect a full and complete general release  
25 as described above, Plaintiff expressly waives and relinquishes all rights and benefits of  
26 California Civil Code section 1542, and does so understanding and acknowledging the  
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1 significance and consequence of specifically waiving rights under Civil Code section 1542,  
2 which states as follows:

3 **A general release does not extend to claims which the creditor**  
4 **or releasing party does not know or suspect to exist in his or**  
5 **her favor at the time of executing the release, which if known**  
6 **by him or her must have materially affected his or her**  
7 **settlement with the debtor or released party.**

8 Thus, notwithstanding the provisions of Civil Code section 1542, and to implement a  
9 full and complete release and discharge, Plaintiff expressly acknowledges this Settlement is  
10 intended to include in its effect, without limitation, all known and unknown claims, including  
11 any claims that he does not know or suspect to exist in his favor against the Released Parties at  
12 the time of signing this Settlement, and that this Settlement contemplates the extinguishment of  
13 any such claim or claims. Plaintiff acknowledges he may later discover facts different from or  
14 in addition to those he now knows or believes to be true regarding the matters released or  
15 described in this Settlement, and nonetheless agrees that the releases and agreements contained  
16 in this Settlement shall remain fully effective in all respects notwithstanding any later discovery  
17 of any different or additional facts. Plaintiff assumes any and all risks of any mistake in  
18 connection with the true facts involved in the matters, disputes, or controversies described in  
19 this Settlement or with regard to any facts now unknown to Plaintiff relating to those matters.

20  
21 Plaintiff acknowledges that he has not heretofore assigned or transferred to or purported  
22 to assign or transfer to any person or entity Plaintiff's Released Claims or any part or portion  
23 thereof. Plaintiff agrees to indemnify and hold harmless the Released Parties from and against  
24 any claim, demand, controversy, damage, debt, liability, account, reckoning, obligation, cost,  
25 expense, lien, action or cause of action (including the payment of attorneys' fees and costs  
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1 actually incurred whether or not litigation commenced) based on, in connection with, or arising  
2 out of any assignment or transfer or claimed assignment or transfer thereof.

3 The Parties will meet and confer in good faith if the Court requires changes to the scope  
4 of the release.

5 **VI. JUDICIAL APPROVALS**

6 53. Duties of Parties Prior to Preliminary Approval. Plaintiff shall request a hearing  
7 before the Court to seek preliminary approval of the Settlement on the earliest practical date  
8 following execution of this Settlement. In conjunction with such hearing, Plaintiff will provide  
9 the Court with this Settlement, and any other documents necessary to implement the Settlement.  
10 Simultaneously with the filing of this Settlement, and solely for purposes of this Settlement,  
11 Plaintiff will request that the Court enter a Preliminary Approval Order (substantially in the  
12 form attached hereto as **Exhibit 2**) for the purpose of:

- 15 (a) Preliminarily approving the proposed Settlement;
- 16 (b) Provisionally certifying the Class and approving the Class Period for  
17 settlement purposes only;
- 18 (c) Approving The Spivak Law Firm and United Employees Law Group to  
19 serve as Class Counsel and Plaintiff David Jaimes as Class Representative;
- 20 (d) Providing Notice of the Settlement and related matters, including the  
21 Notice, to be disseminated to Class Members as specified herein or as may otherwise be ordered  
22 by the Court, provided that such order is also acceptable to the Parties and consistent with the  
23 terms of this Settlement; and
- 24 (e) Scheduling a final approval hearing.
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1 Defendant will not oppose these requests so long as they are consistent with this Settlement  
2 Agreement.

3 54. Duties of Parties Following Preliminary Approval. Following preliminary  
4 approval, notice to the Class and an opportunity for objection, a final approval hearing shall be  
5 held on a date set by the Court. In connection with the final approval hearing, the Parties shall  
6 file such papers with the Court as either their counsel or the Court may determine to be  
7 necessary. Plaintiff's counsel shall file proof of notice to the Class before the final approval  
8 hearing and will submit a proposed final approval order and judgment for review by the Court  
9 (substantially in the form attached hereto as **Exhibit 3**) for the purpose of:

10  
11 (a) Approving the settlement, adjudging the terms to be fair, reasonable and  
12 adequate, and directing consummation of its terms and provisions;

13  
14 (b) Approving Class Counsel's application for the Expense Award, the Fee  
15 Award, the Enhancement Award, the PAGA Payment, and Administration Costs as set forth  
16 herein; and

17  
18 (c) Entering a final approval order and judgment as final disposition of the  
19 Action in its entirety, intended to be immediately appealable. Upon entry of the final approval  
20 order and judgment, each and every Settlement Class Member shall be deemed to have  
21 conclusively released and forever discharged the Released Parties for any and all Released  
22 Claims, and shall be permanently barred and enjoined from the institution or prosecution of any  
23 and all Released Claims against the Released Parties, except as to such rights or claims as may  
24 be created by the Settlement. It is expressly agreed by the Parties that the Court will retain  
25 jurisdiction over the Action only: (i) to enforce the terms of this Settlement; (ii) address any  
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1 settlement administration matters that may arise; and (iii) address such post-Judgment matters  
2 as may be appropriate under the Court's rules or applicable law.

3 55. Right to Void Settlement. A Party will have the right but not the obligation to  
4 reject the Settlement as follows:

5 (a) If the Court declines to approve any material term or condition of this  
6 Settlement, including without limitation the provision that any amounts not awarded for the Fee  
7 Award and Expense Award or Enhancement Award shall be and remain in the Net Settlement  
8 Fund for distribution to Settlement Class Members, then this entire Settlement shall be void and  
9 unenforceable as to all Parties herein, at the option of any Party, within thirty (30) calendar days  
10 of mailing notice of the Court's action;  
11

12 (b) If five percent (5%) or more of the total number of all Class Members  
13 timely complete and serve valid requests for exclusion from the settlement (opt out), then  
14 Defendant will have the right to void the Settlement within thirty (30) calendar days of receiving  
15 notice of the number of exclusions and Defendant will have no further obligations under the  
16 Settlement, including any obligation to pay the Gross Settlement Amount, or any amounts that  
17 otherwise would have been owed under the Settlement, except that Defendant will pay the  
18 Settlement Administrator's reasonable fees and expenses incurred as of the date that Defendant  
19 exercises its right to void the Settlement;  
20

21 (c) If the Court does not grant final approval of the Settlement or grants final  
22 approval conditioned on any material change to the terms of the Settlement with respect to  
23 increasing the payments to be made to Qualified Claimants, and/or decreasing the scope of the  
24 release of claims, then Defendant will have the right to void this Settlement and the Parties will  
25 have no further obligations under the Settlement, including any obligation by Defendant to pay  
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1 the Gross Settlement Amount or any amounts that otherwise would have been owed under the  
2 Settlement. In this event, Defendant and Class Counsel will each pay one-half of the Settlement  
3 Administrator's reasonable fees and expenses incurred as of the void date. An award by the  
4 Court of a lesser amount than that sought by Plaintiffs and Class Counsel for the Enhancement  
5 Payment, Class Counsel Attorneys' Fees or Litigation Costs, will not constitute a material  
6 modification to the Settlement; or  
7

8 (d) If after a notice of appeal, a petition for review, or a petition for certiorari,  
9 or any other motion, petition, or application, the reviewing court vacates, reverses, or modifies  
10 the Judgment such that there is a material modification to the Settlement, and that court's  
11 decision is not completely reversed and the Judgment is not fully affirmed on review by a higher  
12 court, then either Party will have the right to void the Settlement and neither Party will have any  
13 further obligations under the Settlement/Agreement, including any obligation by Defendant to  
14 pay the Gross Settlement Amount or any amounts that otherwise would have been owed under  
15 the Settlement. In such event, Defendant and Class Counsel will each pay one-half of the  
16 Settlement Administrator's reasonable fees and expenses incurred as of the void date. A  
17 vacation, reversal, or modification of the Court's award of the Enhancement Payment or Class  
18 Counsel Attorneys' Fees or Litigation Costs will not constitute a vacation, reversal, or material  
19 modification of the Judgment.  
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22 If either Plaintiff or Defendant decide to exercise their rights under (a) – (d), such  
23 Party must notify the other Party's Counsel and the Court no later than fourteen (14) court days  
24 after the triggering event.  
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1           The Parties agree that before either Party elects to exercise its right to void the  
2 agreement, the Party must meet and confer in good faith with the other Party to determine if an  
3 agreement can be reached modifying the Settlement to the mutual satisfaction of the Parties.

4           56.     If the Settlement does not become final for any reason, this Settlement shall be  
5 null and void *ab initio*, no Party shall be bound by the terms thereof, and this Settlement shall  
6 not be admissible or offered into evidence in the litigation or any other action for any purpose  
7 whatsoever, and any order or judgment entered by the Court in furtherance of this Settlement  
8 shall be treated as withdrawn or vacated by stipulation of the Parties. In such case, the Parties  
9 shall be returned to their respective positions as of the date immediately prior to the execution  
10 of this Settlement, and the Parties shall proceed in all respects as if this Settlement had not been  
11 executed, and Defendant shall have no obligation to make any payments to Plaintiff, Counsel  
12 for Plaintiff, the LWDA, the Settlement Administrator or any Class Member. Notwithstanding  
13 the foregoing, an appeal of, a modification of, a reversal on appeal, or the reduction of any Fee  
14 Award and Expense Award or Enhancement Award shall not constitute grounds for cancellation  
15 and termination of this Settlement.  
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19 **VII. MISCELLANEOUS PROVISIONS**

20           57.     Voluntary Nature. The Parties acknowledge they have entered into this  
21 Settlement voluntarily, on the basis of their own judgment and without coercion, duress, or  
22 undue influence of any Party, and not in reliance on any promises, representations, or statements  
23 made by the other Parties other than those contained in this Settlement. Each of the Parties hereto  
24 expressly waives any right he/it might ever have to claim that this Settlement was in any way  
25 induced by fraud.  
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1           58.    Informed Consent. Prior to execution of this Settlement, each Party has read this  
2 entire Settlement and been given the opportunity to consult with independent counsel of their  
3 choosing and to have such independent counsel advise as to the meaning of this Settlement and  
4 its legal effect.

5           59.    Authority. The signatories hereby represent that they are fully authorized to enter  
6 into this Settlement and to bind the Parties hereto to the terms and conditions hereof.  
7

8           60.    Cooperation. The Parties agree to fully cooperate with each other to accomplish  
9 the terms of this Settlement, including but not limited to, execution of such documents and to  
10 take such other action as may reasonably be necessary to implement the terms of this Settlement.  
11 The Parties shall use their reasonably best efforts, including all efforts contemplated by this  
12 Settlement and any other efforts that may become necessary by order of the Court, or otherwise,  
13 to effectuate this Settlement and the terms set forth herein.  
14

15           61.    No Admissions. Nothing contained herein is to be construed or deemed an  
16 admission of liability on the part of Defendant. Defendant denies any liability or wrongdoing of  
17 any kind associated with the claims alleged by Plaintiff, and further contend that, for any purpose  
18 other than settlement, this Action is not appropriate for class treatment. Defendant contends,  
19 among other things, that it complied at all times with all applicable state and federal laws, rules,  
20 regulations and orders. Plaintiff believes he filed a meritorious action, and that the requisites for  
21 class certification can be satisfied in this case. Each Party hereto has entered into this Settlement  
22 with the intention to avoid further disputes and the expense and inconvenience of continued  
23 litigation.  
24  
25

26           62.    Publicity. The Parties and their counsel agree that they will not, unless required  
27 by law, issue any press releases or have any communications with the press concerning this  
28

1 litigation, one another, and/or Defendant's business practices. Plaintiff and Plaintiff's counsel  
2 will not publicize the Settlement and will not communicate the terms of the Settlement to any  
3 other person outside the Action, including members of the press, news media, etc. (including  
4 organizations that publicize verdicts and settlements). Plaintiff and Class Counsel further agree  
5 that they shall not promote, or publicize the Settlement with anyone other than the Court, and in  
6 particular agree that they will not issue any press releases, engage in any communications, or  
7 take any other action that would provide the press or media or any litigation reporting service  
8 with information about this Action or the Settlement, or otherwise enable or allow the press or  
9 other media or any litigation reporting service to learn or obtain such information. Plaintiff and  
10 Plaintiff's counsel further agree that if contacted regarding this case, they will state only that the  
11 matter is resolved. Nothing herein shall be interpreted as preventing any good-faith  
12 communications by any Counsel for the Parties and/or any Parties with the Court, Class  
13 Members, or the Settlement Administrator for the sole purpose of facilitating the Settlement of  
14 the Action.

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18 63. Construction. The Parties agree that this Settlement is the result of lengthy,  
19 intensive arms-length negotiations between the Parties and that this Settlement shall not be  
20 construed in favor of or against any Party by reason of the extent to which that Party has  
21 participated in the drafting of this Settlement.

22  
23 64. Captions and Interpretations. Paragraph titles or captions contained herein appear  
24 as a matter of convenience and for reference, and in no way define the scope of this Settlement  
25 or any provision hereof.

26  
27 65. Modifications. This Settlement may not be changed, altered, or modified, except  
28 in writing and signed by the Parties hereto as approved by the Court. This Settlement may not



1 be discharged except by performance in accordance with its terms or by a writing signed by the  
2 Parties hereto as approved by the Court.

3 66. Waiver. No waiver of any of the terms of this Settlement shall be valid unless in  
4 writing and signed by the Party to this Settlement against whom such waiver is sought to be  
5 enforced. The waiver by any Party to any provision of this Settlement shall not operate or be  
6 construed as a waiver of any subsequent breach by any Party, nor shall any waiver operate or be  
7 construed as a rescission of this Settlement.  
8

9 67. Integration. This Settlement and its Exhibits constitute the entire Settlement of  
10 the Parties with respect to the matters discussed herein, and no oral or written representations,  
11 warranties, or inducements have been made to any Party concerning this Settlement or its  
12 Exhibits other than the representations, warranties, and covenants contained and memorialized  
13 in such documents. All prior or contemporaneous negotiations, agreements, understandings, and  
14 representations, whether written or oral, are expressly superseded hereby and are of no further  
15 force and effect. Each of the Parties acknowledges that it has not relied on any promise,  
16 representation, or warranty, express or implied, not contained in this Settlement.  
17  
18

19 68. No Prior Assignments. This Settlement shall be binding upon and inure to the  
20 benefit of the Parties hereto and their respective heirs, trustees, executors, administrators and  
21 successors. The Parties hereto represent, covenant, and warrant they have not directly or  
22 indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to  
23 any person or entity any portion of any liability, claim, demand, action, cause of action or rights  
24 herein released and discharged except as set forth herein.  
25

26 69. Governing Law. This Settlement is made and entered into under the laws of the  
27 State of California, and shall be interpreted, applied and enforced under those laws (including  
28

1 California Code of Civil Procedure section 664.6), and any litigation concerning this Settlement  
2 shall be in the Superior Court of the State of California for the County of San Bernardino.

3 70. Execution. This Settlement may be executed in one or more counterparts, each  
4 of which shall be an original, provided that counsel for the Parties shall exchange among  
5 themselves original signed counterparts.

6  
7 71. Meet and Confer Regarding Disputes. Should any dispute arise among the  
8 Parties or their respective counsel regarding the implementation or interpretation of this  
9 Agreement, a representative of Class Counsel and a representative of Defendant's Counsel shall  
10 meet and confer in an attempt to resolve such disputes prior to submitting such disputes to the  
11 Court.

12  
13 72. Agreement Binding on Successors. This Agreement will be binding upon, and  
14 inure to the benefit of, the successors in interest of each of the Parties.

15  
16 73. Cooperation in Drafting. The Parties have cooperated in the negotiation and  
17 preparation of this Agreement. This Agreement will not be construed against any Party on the  
18 basis that the Party, or the Party's counsel, was the drafter or participated in the drafting of this  
19 Agreement.

20  
21 74. Fair Settlement. Plaintiff, Defendant, Class Counsel, and Defendant's Counsel  
22 believe that this Agreement reflects a fair, reasonable, and adequate settlement of the Action  
23 and have arrived at this Agreement through arm's-length negotiation, taking into account all  
24 relevant factors, current and potential, and is consistent with public policy, and fully complies  
25 with applicable provisions of law.

1           75.    Headings.   The descriptive heading of any section or paragraph of this  
2 Agreement is inserted for convenience of reference only and does not constitute a part of this  
3 Agreement and shall not be considered in interpreting this Agreement.

4           76.    Notice.   All notices, demands, or other communications given under this  
5 Agreement must be in writing and addressed as follows:  
6

7           To Plaintiff and the Class:

8           David Spivak  
9           Carl Kaplan  
10          THE SPIVAK LAW FIRM  
11          16530 Ventura Blvd., Ste 203  
12          Encino, CA 91436  
13          Telephone (818) 582-3086  
14          Facsimile (818) 582-2561

15          And

16          To Defendant:

17          Veronica M. Gray  
18          Allison Callaghan  
19          NOSSAMAN LLP  
20          18101 Von Karman Avenue, Suite 1800  
21          Irvine, CA 92612  
22          Telephone: (949) 833-7800  
23          Facsimile: (949) 833-7878

24          And

25          Tyler Woods  
26          FISHER & PHILLIPS LLP  
27          2050 Main Street, Suite 1000  
28          Irvine, CA 92614  
            Telephone (949) 798-2117  
            Facsimile (949) 851-0152

77.    Authorization to Act.   Class Counsel warrants and represents that they are  
authorized by Class Representatives/Plaintiffs, and Defense Counsel warrants that they are

1 authorized by Defendant, to take all appropriate action required to effectuate the terms of this  
2 Agreement, except for signing the documents, including but not limited to this Agreement, that  
3 are required to be signed by the Parties.

4       78. No Reliance on Representations. The Parties have made such investigation of  
5 the facts and the law pertaining to the matters described herein and to this Agreement as they  
6 deem necessary, and have not relied, and do not rely, on any statement, promise, or  
7 representation of fact or law, made by any of the other Parties, or any of their agents, employees,  
8 attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard  
9 to the advisability of making and executing this Agreement, or with respect to any other matters.  
10 No representations, warranties, or inducements have been made to any Party concerning this  
11 Agreement.  
12 Agreement.

13       79. Injunction Against Duplicative Claims. Upon Preliminary Approval of the  
14 Settlement Agreement, all Class Members who do not opt out of the Settlement Class shall be  
15 enjoined from filing, joining, or becoming a party, member or representative in any actions,  
16 claims, complaints, or proceedings in any state or federal court on an individual, representative,  
17 collective or class action basis, or with the California Department of Industrial Relations'  
18 Division of Labor Standards Enforcement ("DLSE") or the United States Department of Labor  
19 ("DOL"), or from initiating any other proceedings, regarding any of the Released Claims defined  
20 hereinabove. Further, any related pending actions, claims, complaints, or proceedings in any  
21 state or federal court or with the DLSE or DOL, shall be stayed until the Class Members have  
22 had an opportunity to decide to participate, object or file a request for exclusion from this  
23 Settlement. In addition, upon Preliminary Approval of the Settlement Agreement, all Class  
24 Members (regardless of whether they opt-out) shall be enjoined from filing, joining, or  
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1 becoming a party, member or representative in any actions, claims, complaints, or proceedings  
2 in any state or federal court on an individual, representative, collective or class action basis, or  
3 with the DLSE or the DOL, or from initiating any other proceedings, regarding any of the  
4 Released Claims defined hereinabove to the extent the such actions, claims, complaints, or  
5 proceedings are based on the PAGA claims released via this Settlement. This Agreement is  
6 conditioned upon the full release by all Settlement Class Members, other than those who submit  
7 a valid request for exclusion, as described hereinabove; and a full release of all PAGA claims  
8 covered by this Settlement regardless of whether a Class Member validly excludes himself or  
9 herself from the non-PAGA portion of this Settlement.  
10

11           80.     Collateral Attack and Res Judicata. This Agreement shall not be subject to  
12 collateral attack by any Settlement Class and PAGA Member or any recipient of the Notice of  
13 Settlement under this Agreement after the Judgment is entered. Such prohibited collateral  
14 attacks shall include but are not limited to claims that the procedures for claims administration  
15 were incorrect, or the Settlement Class Member failed for any reason to receive timely notice of  
16 the procedure to dispute the calculation of Qualifying Pay Periods.  
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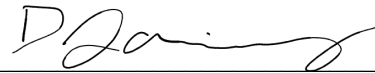
19           81.     Non-Evidentiary Use. Whether or not the Final Effective Date occurs, neither  
20 this Agreement nor any of its terms nor the Settlement itself will be: (a) construed as, offered,  
21 or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to  
22 Defendant or any other of the Defendant's Released Parties, including but not limited to,  
23 evidence of a presumption, concession, indication, or admission by any of the Defendant's  
24 Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b)  
25 disclosed, referred to, or offered in evidence against any of the Defendant's Released Parties in  
26 any further proceeding in the Action, except for the purposes of effectuating the Settlement  
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1 pursuant to this Agreement or for Defendant to establish that a Settlement Class Member has  
2 resolved any of his/her claims released through this Agreement.

3 82. Signatories. The Parties agree that, because the Class Members are so numerous,  
4 it is impossible or impractical to have each Settlement Class Member execute this Settlement.  
5 Therefore, the Notice Packet will inform all Class Members of the binding nature of the releases  
6 contained in this Settlement and shall have the same force and effect as if this Settlement were  
7 executed by each Settlement Class Member.  
8

9  
10 IN WITNESS WHEREOF: the undersigned have duly executed this Settlement as of the  
11 date set forth below:

12  
13 Dated: 08 / 25 / 2020  
14 \_\_\_\_\_



15 David Jaimes  
16 Plaintiff and Class Representative

17 Baker's Burgers, Inc., a California  
18 corporation

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

20 By: \_\_\_\_\_  
21 Jason Talley, Chief Executive Officer,  
22 for Baker's Burgers, Inc., Defendant

23 THE SPIVAK LAW FIRM

08 / 26 / 2020

24 Dated: \_\_\_\_\_, 2019

25 By:  \_\_\_\_\_

26 DAVID SPIVAK  
27 Attorneys for Plaintiff,  
28 DAVID JAIMES

THE UNITED EMPLOYEES LAW GROUP

1 pursuant to this Agreement or for Defendant to establish that a Settlement Class Member has  
2 resolved any of his/her claims released through this Agreement.

3 82. Signatories. The Parties agree that, because the Class Members are so numerous,  
4 it is impossible or impractical to have each Settlement Class Member execute this Settlement.  
5 Therefore, the Notice Packet will inform all Class Members of the binding nature of the releases  
6 contained in this Settlement and shall have the same force and effect as if this Settlement were  
7 executed by each Settlement Class Member.  
8


9  
10 IN WITNESS WHEREOF: the undersigned have duly executed this Settlement as of the  
11 date set forth below:

12  
13 Dated: \_\_\_\_\_

14 \_\_\_\_\_  
15 David Jaimes  
16 Plaintiff and Class Representative

17 Baker's Burgers, Inc., a California  
18 corporation

19 Dated: August 25, 2020

20 By:  \_\_\_\_\_  
21 Jason Talley, Chief Executive Officer,  
22 for Baker's Burgers, Inc., Defendant

23 THE SPIVAK LAW FIRM


24 Dated: \_\_\_\_\_, 2019

25 By: \_\_\_\_\_  
26 DAVID SPIVAK  
27 Attorneys for Plaintiff,  
28 DAVID JAIMES

THE UNITED EMPLOYEES LAW GROUP

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Dated: August 25, 2020

By:   
WALTER HAINES  
Attorneys for Plaintiff,  
DAVID JAIMES

NOSSAMAN LLP

Dated: \_\_\_\_\_, 2020

By: \_\_\_\_\_  
VERONICA M. GRAY  
Attorneys for Defendant,  
BAKER'S BURGERS, INC.

FISHER & PHILLIPS LLP

Dated: \_\_\_\_\_, 2020

By: \_\_\_\_\_  
TYLER J. WOODS  
Attorneys for Defendant,  
BAKER'S BURGERS, INC.



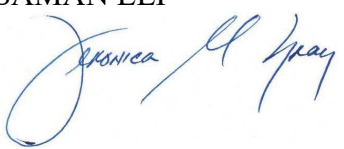
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Dated: \_\_\_\_\_, 2020

By: \_\_\_\_\_

WALTER HAINES  
Attorneys for Plaintiff,  
DAVID JAIMES

NOSSAMAN LLP



Dated: August 25, 2020

By: \_\_\_\_\_

VERONICA M. GRAY  
Attorneys for Defendant,  
BAKER'S BURGERS, INC.

FISHER & PHILLIPS LLP

Dated: \_\_\_\_\_, 2020

By: \_\_\_\_\_

TYLER J. WOODS  
Attorneys for Defendant,  
BAKER'S BURGERS, INC.

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Dated: \_\_\_\_\_, 2020

By: \_\_\_\_\_

WALTER HAINES  
Attorneys for Plaintiff,  
DAVID JAIMES

NOSSAMAN LLP


Dated: \_\_\_\_\_, 2020

By: \_\_\_\_\_

VERONICA M. GRAY  
Attorneys for Defendant,  
BAKER'S BURGERS, INC.

FISHER & PHILLIPS LLP

Dated: August 25, 2020

By:  \_\_\_\_\_

TYLER J. WOODS  
Attorneys for Defendant,  
BAKER'S BURGERS, INC.

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**EXHIBIT 1:  
NOTICE OF CLASS  
ACTION  
SETTLEMENT**



**SPIVAK LAW**  
Employee Rights Attorneys  
16530 Ventura Bl. Ste 203  
Encino CA 91436  
(818) 582-3086 Tel  
(818) 582-2561 Fax  
SpivakLaw.com



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denies that it did anything wrong and maintains it complied at all times with all applicable laws, rules, and regulations.

- There is no money available now, and no guarantee there will be. However, your legal rights are affected whether you act or do not act. **Read this notice carefully. NO RETALIATION: Defendant will not fire, punish, retaliate, or otherwise discriminate against any person because you choose to participate in this Settlement, choose not to participate, or object to the Settlement.**

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT**

<b>DO NOTHING</b>	You will be paid your Individual Settlement Payment and you will give up any rights to bring the same claims against Defendant. California law protects employees from retaliation based on their decision to participate in a class action settlement.
<b>DISPUTE/CHALLENGE THE NUMBER OF QUALIFYING PAY PERIODS</b>	Challenge/Dispute the number of pay periods listed in this Notice. The Settlement Administrator may accept or reject your dispute. Receive your Individual Settlement Payment and give up any rights to sue for the same claims.
<b>EXCLUDE YOURSELF</b>	If you do not want to participate in the non-PAGA portion of the Settlement and receive an Individual Settlement Payment, you may opt-out of any connection with this Action and retain any rights you may have against Defendant, except with respect to PAGA, as explained below.
<b>OBJECT</b>	If you do not exclude yourself you may object to the settlement by submitting an objection explaining why you do not agree with the Settlement. The Court may or may not agree with your objection.

- Your options - **and the deadlines to exercise them** - are explained in this Notice.
- The Court in charge of this case still has to decide whether to grant final approval of the Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved. **Please be patient.**
- **Any questions? Read on or call the Court-approved Settlement Administrator, \_\_\_\_\_ at (000) 000-0000**

**WHAT THIS NOTICE CONTAINS**

**BASIC INFORMATION..... Page 3**

1. Why did I get this notice package?
2. What is this lawsuit about?
3. What is a class action and who is involved?
4. Why is there a settlement?

**WHO IS IN THE CLASS SETTLEMENT ..... Page 4**

5. How do I know if I am part of the settlement?
6. Are there exceptions to being included?
7. I'm still not sure if I am included.



1 **THE SETTLEMENT BENEFITS - WHAT YOU GET** ..... Page 4

2       8.     What does the settlement provide?

3       9.     What am I giving up to get a payment or stay in the Class?

4       10.    How do I get a payment?

5       11.    When would I get my payment?

6       12.    How much will my payment be?

7 **EXCLUDING YOURSELF FROM THE SETTLEMENT** ..... Page 6

8       13.    How do I get out of the settlement?

9       14.    If I do not exclude myself, can I sue Defendant for the same thing later?

10      15.    If I exclude myself, can I get money from this lawsuit?

11 **OBJECTING TO THE SETTLEMENT** ..... Page 7

12      16.    How do I tell the Court that I do not like the settlement?

13      17.    What's the difference between objecting and excluding?

14 **IF YOU DO NOTHING** ..... Page 7

15      18.    What happens if I do nothing at all?

16 **THE LAWYERS REPRESENTING YOU** ..... Page 7

17      19.    Do I have a lawyer in this case?

18      20.    Should I get my own lawyer?

19      21.    How will the lawyers be paid?

20 **THE COURT'S FAIRNESS HEARING** ..... Page 8

21      22.    When and where will the court decide whether to approve the settlement?

22      23.    Do I have to come to the hearing?

23      24.    May I speak at the hearing?

24 **GETTING MORE INFORMATION** ..... Page 8

25      25.    Are more details available?

26

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28



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 (818) 582-2561 Fax  
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1 **BASIC INFORMATION**

2 **1. Why did I get this notice package?**

3 Defendant’s records show that you currently work, or previously worked, for Defendant as a non-  
4 exempt employee in California during the Class Period of December 22, 2014 to <<preliminary  
5 approval date or 90 days from October 15, 2020, whichever occurs first>>.

6 The San Bernardino County Superior Court (the “Court”) preliminarily approved the Settlement  
7 on behalf of the Class. The Court has not entered judgment and has not determined that there is  
8 any merit to Plaintiff’s claims or that Defendant engaged in any wrongdoing in this Action. The  
9 Court still has to decide whether to grant final approval of the Settlement. If the Court grants  
10 final approval of the Settlement, and after any objections and appeals are resolved, a Settlement  
11 Administrator appointed by the Court will make the payments that the Settlement allows.

12 Plaintiff and Defendant, and their respective counsel, have concluded that the Settlement is fair  
13 and in the best interests of the Class Members considering the risks and uncertainties to each side  
14 of continued litigation. Because the Settlement will affect your legal rights, the Court ordered  
15 that this Notice be sent to you. This Notice will provide you with a brief description of the  
16 Action; inform you of the terms of the Settlement; and advise you of your legal rights.

17 On <<preliminary approval order date>>, the Court approved the Plaintiff’s motion for an order  
18 that does the following:

- 19 1.) conditionally certifies the Class for settlement purposes only;
- 20 2.) grants preliminary approval of the proposed Settlement;
- 21 3.) approves this Notice, which includes setting a schedule and procedure for filing  
22 objections and exclusion requests; and
- 23 4.) schedules a final fairness determination hearing for consideration of final Court approval  
24 of the Settlement on \_\_\_\_\_, 2020, \_\_\_\_\_.m. in Dept. S26 of the Superior Court of  
25 California, County of San Bernardino, located at 247 West Third Street, San Bernardino, CA  
26 92415 (the “Final Approval Hearing”).

27 The Court file contains the Settlement documents with more information about the lawsuit. The  
28 Court does not provide case information *via* the Internet. On-site public access information  
terminals are available for researching cases at the Court.

29 **2. What is this lawsuit about?**

30 The lawsuit is entitled *JAIMES V. BAKER’S BURGERS, INC., et al.*, Civil No. CIV DS 1933423  
31 (the “Action”). The lawsuit alleges Defendant failed to provide lawful meal periods and rest  
32 breaks, failed to pay wages (including claims for time allegedly worked but not compensated,  
33 off-the-clock work, and unpaid minimum or overtime wages), failed to timely pay all wages due  
34 and owing at the time of termination, failed to provide or maintain accurate wage statements and  
35 records, and other violations of California law. There has been no finding that Defendant violated  
36 the law, or that any of the allegations made in the lawsuit are true. Defendant denies that it did



1 anything wrong and maintains it complied at all times with all applicable laws, rules, and  
2 regulations.

3 **3. What Is Defendant’s Position?**

4 Defendant denies Plaintiff’s claims and believes that it does not have any liability to the Class  
5 under the claims asserted in the Action, or that, but for the Settlement, the Class should be  
6 certified in the Action. In particular, Defendant asserts that if not for its voluntary agreement to  
7 this Settlement, no Class could be certified because all or virtually all Class Members signed  
8 arbitration agreements as part of their employment and arbitration does not allow for class  
9 actions. Nonetheless, this Settlement is entered into solely for the purpose of compromising  
highly-disputed claims. Nothing in this Settlement is intended or will be construed as an  
admission of liability or wrongdoing by Defendant or an admission by Plaintiff that any of the  
claims were non-meritorious or any defense asserted by Defendant was meritorious.

10 **4. What is a class action and who is involved?**

11 In a class action lawsuit, a person called a “Class Representative” (in this case Plaintiff David  
12 Jaimes) sues on behalf of other people alleged to have similar claims. The people together are a  
13 “Class” or “Class Members.” The individual who sued is called the Plaintiff. The company sued  
14 (in this case Baker’s Burgers, Inc.) is called the Defendant. One court resolves the issues for  
15 everyone in the Class—except for those people who choose to exclude themselves from the  
Settlement (also called “opting-out”), as described in Question 13 below.

16 **5. Why is there a settlement?**

17 The Court has not decided whether Plaintiff or Defendant is correct. By conditionally certifying  
18 this class action for settlement purposes only, granting preliminary approval of the proposed  
19 Settlement, and issuing this Notice, the Court is not suggesting that Plaintiff would win or lose  
this case if it proceeded to trial.

20 There has been no finding that Defendant violated the law, or that any of the allegations made in  
21 the lawsuit are true. Defendant denies that it did anything wrong and maintains it complied at all  
22 times with all applicable laws, rules, and regulations.

23 However, the parties have agreed to settle this lawsuit. By agreeing to resolve the lawsuit, all  
24 parties avoid the risks and cost of a trial and affected employees can receive compensation.

25 The Plaintiff as the Class Representative and his attorneys believe the Settlement is fair,  
26 reasonable and adequate and in the best interests of all Class Members.

27 **WHO IS IN THE CLASS SETTLEMENT?**

28 **6. How do I know if I am part of the settlement?**



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1 The Court decided that all current and former non-exempt employees employed by Defendant in  
2 California from December 22, 2014 to <<the date the Court grants preliminary approval of this  
3 Settlement or 90 days from October 15, 2020, whichever occurs first>> are Class Members. The  
4 Court also decided that all current and former non-exempt employees employed by Defendant in  
5 California from December 22, 2017 to <<the date the Court grants preliminary approval of this  
6 Settlement or 90 days from October 15, 2020, whichever occurs first>> are PAGA Members. It  
7 was determined that you fit within one or both of these descriptions through Defendant’s business  
8 records.

6 **7. I'm still not sure if I am included.**

7 If you are still not sure whether you are included, you can get free help by calling or writing to  
8 the Settlement Administrator using the contact information provided in Questions 16 and 25.

9 **THE SETTLEMENT BENEFITS - WHAT YOU GET**

10 **8. What does the Settlement provide?**

11  
12 Provided the Settlement is finally approved by the Court, Defendant agrees to establish a “Gross  
13 Settlement Fund” of up to One Million Six Hundred Thousand Dollars (\$1,600,000) to resolve  
14 the claims of all Settlement Class Members. The Gross Settlement Fund includes (a) expenses  
15 and fees of the Settlement Administrator up to \$40,000; (b) an Enhancement Award up to  
16 \$20,000 to the Class Representative; (c) attorneys’ fees up to \$533,333 and litigation expenses  
17 up to \$15,000 to Class Counsel; (d) \$50,000 allocated to settle claims brought pursuant to the  
18 Private Attorneys General Act, California Labor Code Section 2698, *et seq.* (“PAGA”). The  
19 Settlement Administrator will allocate and distribute 75% of the \$50,000 (\$37,500) to the  
20 California Labor and Workforce Development Agency (“LWDA”) and the remaining 25%  
(\$12,500) to the Class. The Settlement Administrator will distribute the \$12,500 to Class  
Members regardless of whether they choose to participate in the non-PAGA portion of the  
Settlement) on a pro-rata basis as described below. The Settlement Administrator will also pay  
any other fees and/or expenses (other than attorneys’ fees and expenses) incurred in  
implementing the terms and conditions of the Settlement and securing a judgment.

21 Defendant also agrees to pay their employer-side payroll taxes (“Employer Taxes”) in addition  
22 to the Gross Settlement Fund. The Court must approve these payments at the Final Approval  
23 Hearing.

24 The net sum remaining after deducting these Court-approved payments (called the “Net  
25 Settlement Fund”) will be available for distribution to Class Members (“Settlement Class  
26 Members”), as described in Question 10 below. The total amount actually distributed to all  
27 Settlement Class Members shall equal 100% of the Net Settlement Fund (the “Guaranteed  
28 Minimum Payout”). The Settlement Administrator shall remit any unclaimed amounts to the  
California Unclaimed Property Fund, with an identification of the Settlement Class Member to  
whom the funds belong.

Provided the Settlement is finally approved by the Court, Defendant will deposit fifty percent



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1 (50%) of the Gross Settlement fund and its Employer Taxes with the Settlement administrator  
2 within ten business days following the Effective Date. Defendant will deposit the remaining fifty  
3 percent (50%) of the Gross Settlement Fund and Employer Taxes on June 15, 2021. The actual  
4 amount distributed to all Participating Settlement Class Members shall be based on the value of  
5 valid claims timely received from Settlement Class Members.

6 Please Note: Twenty percent (20%) of your Individual Settlement Award will be allocated to  
7 disputed wages, subject to all applicable wage laws, including federal, state and local tax  
8 withholding and payroll taxes, reported on Form W-2. The remaining eighty percent (80%) of  
9 your Individual Settlement Award shall be allocated to disputed interest, penalties and other  
10 non-wage damages sought in the Action and may be subject to local, state, or federal tax  
11 withholdings and will be reported to the IRS and state tax authorities. You should rely on your  
12 own tax advisors as to the tax consequences of your Individual Settlement Award. Neither  
13 Plaintiff nor Defendant have made any representations or warranties regarding the taxation of  
14 your Individual Settlement Award. Nothing within this notice or any other communication shall  
15 constitute or be construed or relied upon as tax advice within the meaning of United States  
16 Treasury Department Circular 230 (31 C.F.R.. Part 10, as amended). Enclosed are the  
17 appropriate tax forms pertaining to your payment.

18 **9. What am I giving up to get a payment or stay in the Class?**

19 Unless you exclude yourself, you are staying in the Class, and that means that you cannot sue,  
20 continue to sue, or be part of any other lawsuit asserting the legal issues that were or could have  
21 been brought in *this* case through the date the Court grants preliminary approval of this  
22 Settlement, or 90 days from October 15, 2020, whichever occurs first. It also means that all of  
23 the Court's orders will apply to you and legally bind you. See Question 13 if you want to find  
24 out how to exclude yourself from participation in the Class. All Class Members who do not  
25 exclude themselves are "Settlement Class Members." Unless you exclude yourself, you will  
26 release Defendant and all of its respective former, present, and future owners, parents,  
27 subsidiaries, affiliates, divisions, related entities including but not limited to Neal T. Baker  
28 Enterprises, Inc., joint venturers, partners, corporations in common control, co-employers,  
service providers, predecessors, successors, and assigns, and past, present, and future officers,  
directors, employees, partners, shareholders, agents, associates, representatives, attorneys,  
insurers, and any other successors, assigns, or legal representatives of any of them (the "Released  
Parties") for all claims alleged in the Action and any and all other claims, causes of action,  
demands, injuries, grievances, obligations, losses, damages penalties, interest, fines, debts, liens,  
liabilities, attorneys' fees, costs, and any other form of relief or remedy in law or equity, of any  
type whatsoever, whether known, should have been known or unknown, foreseen, should have  
been foreseen or unforeseen, anticipated, should have been anticipated or unanticipated,  
suspected, should have been suspected or unsuspected or latent, that occurred on or before the  
Effective Date of the Settlement that could reasonably have been brought based on, related to or  
arising out of facts alleged in the Action, or any theory that could have been brought based on  
the facts alleged in the Action, including without limitation, any claims under any California  
statute, regulation, rule or common law, or any other legal or equitable theory alleging any failure  
to comply with any wage and hour requirements, pay wages, overtime, travel time, and/or



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1 minimum wages for all hours worked, provide meal and rest breaks, pay premium pay for missed  
2 meal and rest breaks, pay all wages within the required time period upon discharge/termination,  
3 timely pay all wages during employment, pay all wages during employment, provide complete  
4 and accurate wage statements, keep complete and accurate payroll records, as well as any and all  
5 claims for liquidated or punitive damages, statutory and civil penalties, attorneys' fees or costs  
6 and expenses associated therewith, whether at common law, pursuant to statute, ordinance or  
7 regulation, in equity or otherwise, and whether arising under federal, state or other applicable  
8 law; including, but not limited to, California Labor Code sections 201, 202, 203, 204, 226, 226.3,  
9 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 2698, *et seq.*, and  
10 Business and Professions Code section 17200, *et seq.*, and any applicable IWC Wage Orders.  
11 Released Claims also includes any claim against Defendant for attorneys' fees or costs/expenses  
12 associated with Class Counsel's representation of the Plaintiff and Class.

13 Even if you exclude yourself from the non-PAGA portion of the Settlement, you will still be  
14 releasing Defendant and all of its respective former, present, and future owners, parents,  
15 subsidiaries, affiliates, divisions, related entities, including but not limited to Neal T. Baker  
16 Enterprises, Inc., joint venturers, partners, corporations in common control, co-employers,  
17 service providers, predecessors, successors, and assigns, and past, present, and future officers,  
18 directors, employees, partners, shareholders, agents, associates, representatives, attorneys,  
19 insurers, and any other successors, assigns, or legal representatives of any of them (the "Released  
20 Parties") for all PAGA claims alleged in the Action whether known, should have been known or  
21 unknown, foreseen, should have been foreseen or unforeseen, anticipated, should have been  
22 anticipated or unanticipated, suspected, should have been suspected or unsuspected or latent, that  
23 occurred on or before the Effective Date of the Settlement that could reasonably have been  
24 brought based on the or related to or arising out of facts alleged in the Action.

25 The Court file contains the complete Settlement documents with more information about the  
26 lawsuit. The Court does not provide case information via the Internet. On-site public access  
27 information terminals are available for researching cases at the Court. Information about the case  
28 may also be obtained by contacting the attorneys or Settlement Administrator using the contact  
information provided in Question 25.

#### 20 10. How do I get a payment?

21 If you choose to participate in the Settlement, you don't need to do anything. The Settlement  
22 Administrator is in charge of mailing payments to Settlement Class Members. It is your  
23 responsibility to **keep a current address on file** with the Settlement Administrator to ensure that  
24 you receive your settlement payment should the Court order final approval of the Settlement. **If**  
25 **you move and the Settlement Administrator cannot locate a current address for you, you**  
26 **will not receive a payment.**

#### 26 11. When would I get my payment?

27 The Settlement Administrator will distribute Individual Settlement Awards only after the Court  
28 enters an order granting final approval of the Settlement following the Final Approval Hearing.  
If there is an appeal of an order granting final approval of the Settlement, payments will be



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1 delayed until all appeals are resolved in favor of the Settlement. Within ten (10) days following  
2 the Effective Date of the Settlement, Defendant will pay 50% of the Gross Settlement Fund and  
3 Employer Taxes, as approved by the Court. On June 15, 2021, Defendant will pay the remaining  
4 50% of the Gross Settlement Fund and Employer Taxes, as approved by the Court. The first  
5 distribution of one-half of the Individual Settlement Awards to Settlement Class Members may  
6 not occur until after <<anticipated first distribution date>>, and the second distribution of the  
7 remaining one-half of the Individual Settlement Awards may not occur until after <<anticipated  
8 second distribution date>>. Please be patient. **Because Defendant will not fund the Settlement  
9 until after the Effective Date which is after the deadline for submission of requests for  
10 exclusion and objections, and time for appeal, it is important that you advise the Settlement  
11 Administrator of any changes to your mailing address and other contact information  
12 should they change after the deadline for requests for exclusion, objections,, or appeal.**

12. How much will my payment be?

10 The distribution formula set forth in the Settlement, as conditionally approved by the Court, is  
11 based on a ratio of pay periods you received from Defendant in eligible positions during the Class  
12 Period and PAGA Period (“Qualifying Pay Periods”) to the Qualifying Pay Periods of other Class  
13 Members for the same period. You are therefore eligible to receive a share of the Net Settlement  
14 Fund calculated in proportion to the time you worked for Defendant. Your Qualifying Pay  
15 Periods were determined from Defendant’s records. If you disagree with the number of  
16 Qualifying Pay Periods set forth in the attached Notice, you may complete Section B of the  
17 Notice and submit any records to the Settlement Administrator to support the number of pay  
18 periods you contend you worked for Defendant.

16 The Settlement Administrator calculated the estimated amount of your Individual Settlement  
17 Award and PAGA Payment, as shown on the first page of this Notice. However, the final amount  
18 will not be known until after time has expired for all Class Members to return their requests  
19 exclusion from the Settlement. Class Members who request exclusion will have their share of the  
20 Settlement reapportioned as available for distribution to Settlement Class Members (subject to  
21 the Guaranteed Minimum Payout described in Question 8), possibly resulting in adjustments to  
22 the Individual Settlement Awards prior to distribution by the Settlement Administrator.

21 Any settlement checks distributed by the Settlement Administrator shall remain valid and  
22 negotiable for 180 calendar days from the date of its issuance, but if not cashed within that time  
23 will be deemed null and void and of no further force and effect, and the amount of any uncashed  
24 checks shall be paid to the California Unclaimed Property Fund. However, if you fail to timely  
25 cash a settlement check, you nevertheless remain a member of the Settlement Class and shall be  
26 bound by all terms of the Settlement and the Court’s final approval order.

**EXCLUDING YOURSELF FROM THE SETTLEMENT**

26 If you do not want a payment from this Settlement, but you want to keep the right to sue  
27 Defendant, at your own expense, about the legal issues in this case, then you must take steps to  
28 get out. This is called excluding yourself – or is sometimes referred to as “opting out” of the  
Settlement.



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13. How do I get out of the settlement?

To exclude yourself from the Settlement, you must send a letter setting forth your name, address, telephone number, and your signature. In the letter, you must state that you wish to exclude yourself from the *Jaimes v. Baker's Burgers Class Action* settlement and that you understand that by doing so you will not receive any payment from the Settlement. You must mail your exclusion request postmarked no later than <<date>> to:

*Jaimes v. Baker's Burgers Class Action Claims Administration*  
c/o \_\_\_\_\_  
[ADDRESS]  
[TELEPHONE NUMBER]

14. If I do not exclude myself, can I sue Defendant for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Defendant for the claims this Settlement resolves. If you have a pending lawsuit against Defendant, speak to your lawyer in that case immediately. You may need to exclude yourself from *this* Class to continue your own lawsuit. Remember, the exclusion deadline is <<date>>.

If you start your own lawsuit against Defendant after you exclude yourself, you'll have to hire and pay your own lawyer for that lawsuit, and you'll have to prove your claims.

If you exclude yourself, you may not object to the Settlement.

15. If I exclude myself, can I get money from this Settlement?

No. If you exclude yourself, you will not receive any money from this Settlement and will not release the "Released Claims" as defined in Section X of this Notice.

**OBJECTING TO THE SETTLEMENT**

16. How do I tell the Court that I do not like the Settlement?

As a Class Member, provided that you have not submitted a request to be excluded, you may object to the Settlement if you do not like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you should send your objection or an intent to appear and object to the settlement to the Settlement Administrator no later than <<last date of the Objection/Exclusion Period>>, stating why you object to the Settlement in *Jaimes v. Baker's Burgers*, Case No. CIV DS 1933423. Be sure to include your name, address, telephone number, your signature, and the reasons you object to the Settlement.

The names and address of the Settlement Administrator are:  
<<name and address of Settlement Administrator>>



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**17. What is the difference between objecting and excluding?**

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

**IF YOU DO NOTHING**

**18. What happens if I do nothing at all?**

By doing nothing you are choosing to stay in the Class and received an Individual Settlement Payment provided the Court grants final approval of the Settlement. Keep in mind that if you do nothing now, you will release the “Released Claims” as described in Section X of this Notice. You will also be legally bound by all orders and judgments of the Court in this class action.

**THE LAWYERS REPRESENTING YOU**

**19. Do I have a lawyer in this case?**

The Court decided that The Spivak Law Firm, 16530 Ventura Boulevard, Suite 203 Encino, California 91436, is qualified to represent you and all Class Members. The law firm is referred to as “Class Counsel.” It is experienced in handling similar cases against other employers. You will not be charged for these lawyers.

**20. Should I get my own lawyer?**

You do not need to hire your own lawyer because Class Counsel is working on your behalf. But, if you want your own lawyer, you will have to pay that lawyer. For example, you can ask him or her to appear in Court for you if you want someone other than Class Counsel to speak for you.

**21. How will the lawyers be paid?**

Class Counsel will ask the Court to approve payment of attorneys' fees up to \$533,333, and litigation expenses estimated to be up to \$15,000.

**THE COURT'S FAIRNESS HEARING**

The Court will hold a Final Approval Hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, although you do not have to.

**22. When and where will the court decide whether to approve the settlement?**



1 The Final Approval Hearing is scheduled to occur on \_\_\_\_\_, 2020, \_\_\_\_ a.m. in  
2 Dept. S26 of the Superior Court of California, County of San Bernardino, located at 247 West  
3 Third Street San Bernardino, CA 92415. The Court may continue or adjourn the Final Approval  
4 Hearing without further notice to the Class. At this hearing the Court will consider whether the  
5 Settlement is fair, reasonable and adequate. If there are objections, the Court will consider them.  
6 The Court will listen to people who ask to speak at the hearing. The Court may also decide how  
7 much to pay Class Counsel. After the hearing, the Court will decide whether to approve the  
8 Settlement. We do not know how long these decisions will take.

6 **23. Do I have to come to the Final Approval Hearing?**

7 No. Class Counsel will answer any questions the Court may have. But, you are welcome to come  
8 at your own expense. If you file an objection, you are not required to come to Court to talk about  
9 it. As long as you timely filed and mailed your written objection or notice of intent to appear, the  
10 Court will consider your objection or may allow you to speak at the hearing regardless. You may  
11 also pay your own lawyer to attend, but it is not necessary.

11 Notwithstanding the above-described objection procedure, you may also appear and the Court  
12 may permit you to discuss your objections with the Court and the Parties at the Final Approval  
13 Hearing set for \_\_ at \_\_ in Department \_\_ of the San Bernardino Superior Court, located at 247  
14 West Third Street San Bernardino, CA 92415.

14 Recent government quarantine orders may make it difficult or impossible for you to attend the  
15 final fairness hearing in person. If you are unable to appear for the final fairness hearing in person,  
16 you may attend by telephone by calling (xxx) xxx-xxxx five minutes before <<the hearing's  
17 scheduled start time>>. An operator will ensure that you are able to communicate with the Court  
18 and counsel for the Parties during the hearing. At such time you should identify yourself to the  
19 operator as a class member in the matter of <<case title>> identified above.

19 **24. May I speak at the Final Approval Hearing?**

20 You may ask the Court for permission to speak at the Final Approval Hearing. The Parties  
21 recommend that you send a letter saying that it is your "Notice of Intention to Appear in *JAIMES*  
22 *V. BAKER'S BURGERS, INC.*, Case No. CIV DS 1933423." Be sure to include your name,  
23 address, telephone number, and your signature. Your Notice of Intention to Appear should be  
24 postmarked no later than <<Objection/Exclusion Period deadline>>, and sent to the Settlement  
25 Administrator at the addresses provided in Question 16. You cannot speak at the hearing if you  
26 excluded yourself.

25 **GETTING MORE INFORMATION**

27 **25. Are more details available?**

28 The Court-appointed Settlement Administrator for this Settlement is as follows:



*Jaimes v. Baker's Burgers Class Action Claims Administration*  
c/o \_\_\_\_\_

[ADDRESS]

[TELEPHONE NUMBER]

If you have questions, you may call the Settlement Administrator toll free at [TELEPHONE NUMBER]. Ask about the *Jaimes v. Baker's Burgers Class Action*.

You may also contact counsel for the Parties

Counsel for Plaintiff

David Spivak

The Spivak Law Firm

16530 Ventura Blvd., Ste 203

Encino, CA 91436

(877) 203-9010

(877) 233-1676 for Spanish

[david@MyWorkMyWages.com](mailto:david@MyWorkMyWages.com)

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18101 Von Karman Avenue, Suite 1800

Irvine, CA 92612

(949) 833-7800

And

Tyler J. Woods

Fisher & Phillips LLP

2050 Main Street, Suite 1000

Irvine, CA 92614

(949) 798-2117

**26. Important Deadlines**

The deadline to submit any of the following is <<**DATE, 2020**>>:

- Challenge (along with documentation) of number of pay periods
- Request for Exclusion from Participating in Settlement; or
- Notice of Objection to Settlement.



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**PLEASE DO NOT CALL THE COURT WITH QUESTIONS ABOUT THE SETTLEMENT.**

You can also view and obtain copies of the documents filed in this case by going to the Clerk's office located at Superior Court of California, County of San Bernardino, 247 West Third Street San Bernardino, CA 92415. The Court file contains the complete Settlement documents with more information about the lawsuit. The Court does not provide case information via the Internet. On-site public access information terminals are available for researching cases at the Court. Information about the case may also be obtained by contacting the attorneys or Settlement Administrator using the contact information provided in Question 25.



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# EXHIBIT 2: PRELIMINARY APPROVAL ORDER



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

DAVID JAIMES, on behalf of himself, all others similarly situated, and the general public, and as an “aggrieved employee” on behalf of other “aggrieved employees” under the Labor Code Private Attorneys General Act of 2004,

*Plaintiff(s),*

vs.

BAKER’S BURGERS, INC., a California corporation; and DOES 1 through 50, inclusive,

*Defendant(s).*

Case No. CIV DS 1933423

[Hon. David Cohn, Dept. S26]

**[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL OF CLASS  
ACTION AND PAGA SETTLEMENT**

**Date:** \_\_\_\_\_

**Time:** \_\_\_\_\_ .m.

**Dept:** 26

Action Filed: November 7, 2019

Trial Date: None Set

Plaintiff DAVID JAIMES’S (“Jaimes” or “Plaintiff”) unopposed Motion for Preliminary Approval of a Class Action and PAGA Settlement was scheduled for hearing before the Court on \_\_\_\_\_, at \_\_\_\_\_ .m., before the Honorable David Cohn, Judge presiding. The Court having considered the papers submitted in support of the motion, HEREBY ORDERS THE FOLLOWING:

1. The Court grants preliminary approval of the Settlement and the Class based upon the terms set forth in the Stipulation of Class Action Settlement and Release (the Settlement)



1 filed herewith. All capitalized terms used herein shall have the same meaning as defined in the  
2 Settlement. The Court finds that the terms of the Settlement are fair, adequate, and reasonable to  
3 the Class. The Settlement falls within the range of reasonableness and appears to be  
4 presumptively valid, subject only to any objections that may be raised at the final hearing and  
5 final approval by this Court.

6 2. For purposes of this Order, the Class is defined as follows: All current and former  
7 non-exempt employees Defendant employed in California at any time during the Class Period.  
8 The Class is preliminarily certified for settlement purposes only.

9 3. The Court hereby preliminarily finds that the Settlement was the product of  
10 serious, informed, non-collusive negotiations conducted at arm's length by the Parties. In making  
11 this preliminary finding, the Court considered the nature of the claims set forth in the pleadings,  
12 the amounts and kinds of benefits which shall be paid pursuant to the Settlement, the allocation  
13 of Settlement proceeds to the Class, and the fact that the Settlement represents a compromise of  
14 the Parties' respective positions. The Court further preliminarily finds that the terms of the  
15 Settlement have no obvious deficiencies and do not improperly grant preferential treatment to  
16 any individual Class member. Accordingly, the Court preliminarily finds that the Settlement was  
17 entered into in good faith.

18 4. The Court finds that the dates set forth in the Settlement Agreement for mailing  
19 and distribution of the Notice and Notice meet the requirements of due process and provide the  
20 best notice practicable under the circumstances, and constitute due and sufficient notice to all  
21 persons entitled thereto, and directs the mailing of the Notice Packet by first class mail to the  
22 Class as set forth in the Settlement. Accordingly, the Court orders the following implementation  
23 schedule for further proceedings:

24 a. Within ten (10) business days following the date of this Preliminary  
25 Approval Order, Defendant shall provide CPT Group, Inc., the appointed Settlement  
26 Administrator, the Class List consisting of the names, most recent known mailing addresses,  
27 telephone numbers, social security numbers, dates of employment and the total number of  
28



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1 Qualifying Pay Periods for all Class Members during the Class Period (the “Class List”);

2           b.       Within thirty (30) calendar days following the date of this Preliminary  
3 Approval Order, the Settlement Administrator shall mail the Notice and Notice (collectively, the  
4 Notice Packet) along with a pre-printed postage paid return envelope, to all Class members  
5 pursuant to the terms of the Settlement, by First Class U.S. Mail, postage prepaid using the most  
6 current mailing address information available. The Notice Packet shall be in English and Spanish.  
7 Any Notice Packets returned to the Settlement Administrator as undelivered and bearing a  
8 forwarding address shall be re-mailed by the Settlement Administrator within three days  
9 following receipt of the returned mail. For any Notice Packets returned to the Settlement  
10 Administrator without a forwarding address, the Settlement Administrator shall first conduct a  
11 National Change of Address search as required for undeliverable notices, followed by a  
12 computer/SSN and "skip trace" search to obtain an updated address, and shall promptly re-mail  
13 the Notice Packets to any newly-found address or addresses.  
14

15           c.       Within sixty (60) calendar days following the initial mailing of the Notice  
16 Packet, all requests to be excluded from the non-PAGA portion of the Settlement must be  
17 returned to the Settlement Administrator postmarked by U.S. Mail, as set forth in the Settlement.

18           d.       Within fifteen (15) calendar days following the mailing of the Notice  
19 Packet, the Settlement Administrator shall mail to each Class Member who has not requested  
20 exclusion from the non-PAGA portion of the Settlement a postcard in English and Spanish  
21 reminding them of the deadline to request exclusion from the Settlement.

22           e.       The Court will consider any written and may consider any oral objections  
23 or comments from Class Members at the time of the Final Approval Hearing, as set forth in the  
24 Notice. Written objections to the proposed settlement should state the basis for the objection and  
25 be mailed together with copies of all papers and briefs in support thereof to the Settlement  
26 Administrator within sixty (60) calendar days following the mailing of the Notice.

27           5.       The Court approves, as to form and content, the Notice (in substantially the form  
28 attached as Exhibit 1 to the Settlement). The Court also approves the procedure for members of



1 the Class to object to the Settlement set forth in the Notice.

2 6. The Court approves, for settlement purposes only, David Spivak of The Spivak  
3 Law Firm and Walter Haines of the United Employees Law Group as Class Counsel.

4 7. The Court approves, for settlement purposes only, David Jaimes as the Class  
5 Representative.

6 8. The Court approves CPT Group, Inc. as the Settlement Administrator.

7 9. A Final Approval Hearing shall be held at \_\_\_\_\_m. on  
8 \_\_\_\_\_, 2020 in Department 26 of the Superior Court for the State of California,  
9 County of San Bernardino, located at 247 West Third Street  
10 San Bernardino, CA 92415, to consider the fairness, adequacy and reasonableness of the  
11 proposed Settlement preliminarily approved by this Order, and to consider the application of  
12 Class Counsel for an award of reasonable attorneys' fees and costs incurred and the Enhancement  
13 Award. All briefs and materials in support of the Motion for an Order of Final Approval and  
14 Judgment and Application for Attorneys' Fees and Costs shall be filed with this Court on or  
15 before \_\_\_\_\_.

16 10. If for any reason the Court does not execute and file an Order of Final Approval  
17 and Judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason,  
18 the proposed Settlement that is the subject of this Order, and all evidence and proceedings had in  
19 connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the  
20 litigation, as more specifically set forth in the Settlement.

21 11. Pending further Order of this Court, all proceedings in this matter except those  
22 contemplated herein and in the Settlement are hereby stayed.

23 12. The Court further ORDERS that to facilitate administration of this Settlement, all  
24 Class members, including Plaintiff, are hereby enjoined from filing or prosecuting any claims,  
25 cases, suits or administrative proceedings (including filing or pursuing claims with the California  
26 Division of Labor Standards Enforcement) regarding claims released by the Settlement, unless  
27 and until such Class members have filed valid and timely written requests for exclusion with the  
28



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Settlement Administrator.

13. The Court expressly reserves the right to adjourn or continue the Final Approval Hearing from time to time without further notice to members of the Class.

**IT IS SO ORDERED.**

Date: \_\_\_\_\_

\_\_\_\_\_  
Honorable David Cohn  
Judge of the San Bernardino Superior Court



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# EXHIBIT 3: FINAL APPROVAL ORDER AND JUDGMENT



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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF SAN BERNARDINO**  
**(UNLIMITED JURISDICTION)**

DAVID JAIMES, on behalf of himself, all others similarly situated, and the general public, and as an “aggrieved employee” on behalf of other “aggrieved employees” under the Labor Code Private Attorneys General Act of 2004,

*Plaintiff(s),*

vs.

BAKER’S BURGERS, INC., a California corporation; and DOES 1 through 50, inclusive,

*Defendant(s).*

Case No.: CIV DS 1933423  
[Assigned For All Purposes To  
Hon. David Cohn, Dept. S26]

**[PROPOSED] FINAL ORDER AND  
JUDGMENT APPROVING CLASS  
ACTION AND PAGA SETTLEMENT**

Hearing Date: \_\_\_\_\_  
Hearing Time: \_\_\_\_\_ .m.  
Hearing Dept.: 26



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1 This matter came on for hearing on \_\_\_\_\_ at \_\_\_\_\_ a.m. in Department 26 of the  
2 above-captioned court on Plaintiff’s unopposed Motion for Final Approval of a Class Action and  
3 PAGA Settlement pursuant to California Rules of Court, Rule 3.769, as set forth in the Stipulation  
4 of Class Action and PAGA Settlement and Release (the Settlement) filed herewith. All  
5 capitalized terms used herein shall have the same meaning as defined in the Settlement.

6 In accordance with the Court’s prior Preliminary Approval Order, Class Members have  
7 been given notice of the terms of the Settlement and the opportunity to request exclusion,  
8 comment upon or object to it or to any of its terms. Having received and considered the  
9 Settlement, the supporting papers filed by the Parties, and the evidence and argument received  
10 by the Court in conjunction with the motions for preliminary and final approval of the Settlement,  
11 and having conducted a Final Approval and Fairness Hearing (“Fairness Hearing”), the Court  
12 grants final approval of the Settlement and HEREBY ORDERS, ADJUDGES, DECREES AND  
13 MAKES THE FOLLOWING DETERMINATIONS:

14 1. The Court has and retains jurisdiction over the subject matter of the Action and  
15 over all Parties to the Action, including all Settlement Class Members. Pursuant to this Court’s  
16 Preliminary Approval Order of <<preliminary approval order date>>, the Notice and Notice were  
17 sent to each Class Member by First Class U.S. mail with a pre-printed, postage paid return  
18 envelope. The Notice informed Class Members of the terms of the Settlement, their right to  
19 receive their proportional share of the Settlement, their right to request exclusion, their right to  
20 comment upon or object to the Settlement, and their right to appear in person or by counsel at the  
21 final approval hearing and be heard regarding final approval of the Settlement. Adequate periods  
22 of time were provided by each of these procedures. **No member of the Class presented written  
23 objections to the proposed Settlement as part of this notice process, stated an intention to appear,  
24 or actually appeared at the final approval hearing.**

25 2. For purposes of this Order and Judgment, the “Class Period” shall mean  
26 December 22, 2014 through <<the date the Court grants preliminary approval of this Settlement  
27 or ninety days from October 15, 2020, whichever occurs first>> and the Class is defined as all  
28 current and former non-exempt employees Defendant employed in California at any time during  
the Class Period. For purposes of this Order and Judgment, the “PAGA Period” shall mean that  
December 22, 2017 through <<the date the Court grants preliminary approval of this Settlement  
or 90 days from October 15, 2020, whichever occurs first>>.



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1           3.       In accordance with California Code of Civil Procedure Section 382, California  
2 Rule of Court 3.769 and the requirements of due process, all Class Members have been given  
3 proper and adequate Notice of the Settlement. Based upon the evidence submitted by the parties,  
4 the Settlement Agreement, the arguments of counsel, and all the files, records and proceedings  
5 in this case, the Court finds that the Notice Packet and Notice methodology implemented  
6 pursuant to the Settlement Agreement and the Court's Preliminary Approval Order: (a)  
7 constituted the best practicable notice under the circumstances; (b) constituted notice that was  
8 reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the  
9 litigation, their right to object to the Settlement, and their right to appear at the Fairness Hearing;  
10 (c) was reasonable and constituted due, adequate and sufficient notice to all persons entitled to  
11 notice; and (d) met all applicable requirements of California Code of Civil Procedure Section  
382, California Rule of Court 3.769, and any other applicable law.

12           4.       The Court further finds and determines that the terms of the Settlement are fair,  
13 reasonable and adequate, to those it affects, and resulted from vigorously contested litigation,  
14 substantial discovery, motion practice, and extensive good-faith arm's length negotiations  
15 between the parties, and is in the public interest considering the following factors:

- 16           (a)     the strength of the Plaintiff's case;
- 17           (b)     the risk, expense, complexity and likely duration of further litigation;
- 18           (c)     the risk of maintaining class action status throughout the trial;
- 19           (d)     the amount offered in settlement;
- 20           (e)     the extent of discovery completed, and the stage of the proceedings;
- 21           (f)     the experience and views of counsel; and
- 22           (g)     the reaction of the class members to the proposed settlement.

23  
24           Accordingly the Settlement is ordered finally approved, and that all terms and provisions  
25 of the Settlement, including the release of claims contained therein, should be and hereby are  
26 ordered to be consummated, and directs the Parties to effectuate the Settlement according to its  
27 terms. As of the Effective Date, all Settlement Class Members are hereby deemed to have waived  
28 and released all Released Claims and are forever barred and enjoined from prosecuting the  
Released Claims against the Released Parties as fully set forth in the Settlement. As of the Effective



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1 Date, all Class Members are hereby deemed to have waived and released all PAGA Released Claims and  
2 are forever barred and enjoined from prosecuting the PAGA Released Claims against the Released Parties  
3 as fully set forth in the Settlement. **No objections** were received by the Parties or the Court through  
4 the date of this Final Order and Judgment. The Court finds that \_\_\_ Class Members  
5 (\_\_\_\_\_names to be inserted\_\_\_\_\_) timely submitted a valid request for exclusion from  
6 the non-PAGA portion of the Settlement as determined by the Settlement Administrator and  
7 therefore they are not Settlement Class Members.

8 5. The Court finds and determines that (a) the Individual Settlement Awards to be  
9 paid to Settlement Class Members and (b) the PAGA Payment as civil penalties under the  
10 California Labor Code Private Attorneys General Act of 2004, as amended, California Labor  
11 Code sections 2699 et seq., as provided for by the Settlement are fair and reasonable. The Court  
12 hereby grants final approval to, and orders the payment of, those amounts be made to the  
13 Settlement Class Members, Class Members, and to the California Labor & Workforce  
14 Development Agency, in accordance with the terms of the Settlement.

15 6. The Court further grants final approval to and orders that the following payments  
16 be made in accordance with the terms of the Settlement:

17 a. \$533,333.00 Fee Award and \$\_\_\_\_\_ Expense Award to Class  
18 Counsel;

19 b. \$20,000 as an Enhancement Award payable to Plaintiff, David Jaimes, for  
20 his services as Class Representative; and

21 c. \$\_\_\_\_\_ in Administration Costs payable to CPT Group, Inc.  
22 for its services as the Settlement Administrator.

23 7. The Settlement shall proceed as directed in the implementation schedule in the  
24 Preliminary Approval Orders consistent with the Settlement, and no payments pursuant to the  
25 Settlement shall be distributed until after the Effective Date or \_\_\_\_\_. Without affecting the  
26 finality of this Order and Judgment in any way, the Court retains jurisdiction of all matters  
27 relating to the interpretation, administration, implementation, effectuation and enforcement of  
28 this Order and the Settlement pursuant to California Rule of Court 3.769(h).

8. Defendant shall deposit the Gross Settlement Fund as follows. Within ten (10)  
business days following the Effective date or within five (5) days of receiving wire instructions  
from the Settlement Administrator, which ever occurs last, Defendant shall deposit, as outlined



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1 in the Settlement, fifty percent (50%) of the Gross Settlement Fund and Employer Taxes. On  
2 June 15, 2021, Defendant shall deposit the remaining 50% of the Gross Settlement Fund and  
3 Employer taxes to effectuate the terms of this Settlement.

4 9. Nothing in this Final Approval Order and Judgment shall preclude any action to  
5 enforce the Parties' obligations under the Settlement or hereunder, including the requirement that  
6 Defendant deposit funds for distribution by the Settlement Administrator to Settlement Class  
7 Members in accordance with the Settlement.

8 10. The Court hereby enters final Judgment in this case in accordance with the terms  
9 of the Settlement, Order Granting Preliminary Approval, and this Final Approval Order and  
10 Judgment.

11 11. The Parties are hereby ordered to comply with the terms of the Settlement.

12 12. The Parties shall bear their own costs and attorneys' fees except as otherwise  
13 provided by the Settlement and this Final Approval Order and Judgment.

14 13. The Settlement is not an admission by Defendant nor is this Order and Final  
15 Judgment a finding of the validity of any claims in the Action or of any wrongdoing by  
16 Defendant. Furthermore, the Settlement is not a concession by Defendant and shall not be used  
17 as an admission of any fault, omission, or wrongdoing by Defendant. Neither this Order and Final  
18 Judgment, Settlement, any document referred to herein, any exhibit to any document referred to  
19 herein, any action taken to carry out the Settlement, nor any negotiations or proceedings related  
20 to the Settlement are to be construed as, or deemed to be evidence of, or an admission or  
21 concession with regard to, the denials or defenses of Defendant, and shall not be offered in  
22 evidence in any proceeding against the Parties hereto in any Court, administrative agency, or  
23 other tribunal for any purpose whatsoever other than to enforce the provisions of this Order and  
24 Final Judgment. This Order and Final Judgment, the Settlement and exhibits thereto, and any  
25 other papers and records on file in the Action may be filed in this Court or in any other litigation  
26 as evidence of the settlement by Defendant to support a defense of res judicata, collateral  
27 estoppel, release, or other theory of claim or issue preclusion or similar defense as to the Released  
28 Claims.

14 14. This document shall constitute a Judgment for purposes of California Rule of  
15 Court 3.769(h).



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15. Per California Rules of Court, Rule 3.771(b), Simpluris is directed to post the final judgment, once entered, on its website.

16. This Court finds that there is no just reason for delay and expressly directs entry by the Clerk of the Court of Final Judgment.

**IT IS SO ORDERED, ADJUDGED AND DECREED.**

Date: \_\_\_\_\_

\_\_\_\_\_  
Honorable David Cohn  
Judge of the San Bernardino Superior Court

