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6 Attorneys for Defendant,
CATCH A WAVE BY BLUE NAMI INC.
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SACRAMENTO

10

11 VICTOR MARTINEZ, III, individually and
on behalf of all others similarly situated.

12

Plaintiffs,

13

vs.

14

15 CATCH A WAVE BY BLUE NAMI INC, a
California Corporation Does 1-20
inclusive,

16

Defendants.

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19 Subject to Court approval, this Stipulation and Settlement Agreement ("Agreement")
20 is entered into by and among Plaintiff, VICTOR MARTINEZ, III (known as "Plaintiff" or
21 "Class Representative"), on behalf of himself and as representative of a class, which is
22 stipulated to and for purposes of this settlement only, by and through his attorneys, Eason
23 & Tambornini, ALC ("Class Counsel"), and Defendant CATCH A WAVE BY BLUE NAMI,
24 INC. ("Defendant") by and through its attorneys, Murchison & Cumming, LLP. Plaintiff and
25 Defendant are collectively referred to herein as "the Parties." This Settlement resolves the
26 class and representative claims asserted in the above-entitled action.

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CASE NO. 34-2015-00184485

**STIPULATION AND SETTLEMENT
AGREEMENT**

Action Filed: September 18, 2015
Trial Date: March 25, 2019

I.

RECITALS

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3 1. On September 18, 2015, Plaintiff filed his Class Action Complaint, initiating a
4 class action lawsuit against Defendant in the Superior Court for the State of California,
5 County of Sacramento, entitled *Victor Martinez, III vs. Catch A Wave By Blue Nami, Inc.*,
6 Case No. 34-2015-00184485. Plaintiff alleged a claim for a failure to engage in a proper tip
7 pooling program. Plaintiff sought to represent a class consisting of "all persons who at any
8 time four (4) years prior to the filing of this action through the date of trial were employees
9 of the Defendant, employed in California as a "Server;" and

10 2. Plaintiff is a former server who was employed by Defendant from May 1,
11 2014 (becoming a server on July 27, 2014) through February 14, 2015 and then again May
12 24, 2015 through August 24, 2015. Plaintiff was employed for a period of time during the
13 Class Period and is a Class Representative for purposes of this Stipulation.

14 3. This Stipulation applies only to individuals who satisfy the Class Definition.

15 4. The Parties are represented by competent counsel and have had the
16 opportunity to consult with counsel prior to the submission of this Stipulation to the Court.

17 5. The Parties expressly acknowledge that nothing in this Stipulation, not the
18 fact of the Stipulation itself, shall be construed or deemed an admission of liability,
19 culpability, negligence or wrongdoing of any kind by Defendant, nor shall it constitute an
20 admission on behalf of Defendant of any fact or allegation against it, including any
21 allegation that this matter is suitable for class treatment. Defendant specifically denies any
22 liability.

23 6. Defendant believes that its actions have been proper, that it is not liable for
24 the claim asserted, and that it has valid defenses to the claim brought in the Action, it has
25 nevertheless agreed to enter into this Agreement to avoid further expense, inconvenience
26 and the burden of protracted litigation. Defendant has taken into account the uncertainty
27 and risks inherent in litigation and concluded that it is desirable that the Action be settled in
28 the manner and upon the terms and conditions set forth in this Stipulation.

1 7. The Class Representative and Class Counsel believe that the claims
2 asserted in this Action have merit. The Class Representative and Class Counsel, however,
3 recognize and acknowledge the significant expense and length of continued proceedings
4 necessary to prosecute the litigation of the Released Claims against Defendant through
5 trials and through appeals. The Class Representative and Class Counsel are also mindful
6 of the inherent problems of proof and possible defenses of the Released Claims and to
7 class certification. After careful consideration, the Class Representative and Class Counsel
8 have concluded that it is desirable that this Action be settled in the manner and upon the
9 terms and conditions set forth in this Stipulation. Both the Class Representatives and
10 Class Counsel believe that the settlement set forth in this Stipulation is fair, reasonable
11 and adequate, and confers substantial benefits upon the Class.

12 8. The Parties recognize the inherent risk in proceeding with litigation and agree
13 that the settlement set forth herein adequately balances the risk of proceeding with the
14 Action against any potential recovery for the Class Members, and therefore the Stipulation
15 represents a fair and just compromise of the Released Claims.

16 9. Pursuant to California Evidence Code section 1152 and 1154, this Stipulation
17 and any related documents filed or created in connection with it shall be inadmissible in
18 evidence in any proceeding, except as necessary to approve, interpret or enforce this
19 Stipulation.

20 10. The Parties and their respective counsel of record deem the Stipulation to be
21 fair and reasonable and have arrived at the Stipulation in arms-length negotiations taking
22 into account all relevant factors, present or potential.

23 11. NOW THEREFORE, in consideration of the covenants, agreements and
24 releases set forth herein and for other good and valuable consideration, and subject to the
25 approval of this Court, it is agreed by and among the undersigned that the Action be
26 settled, compromised, and dismissed on the merits with prejudice, on the following terms
27 and conditions:

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1 II.

2 DEFINITIONS

3 12. The "Action" or "Litigation" means *Victor Martinez, III vs. Catch A Wave By*
4 *Blue Nami, Inc.*, Case No. 34-2015-00184485 pending in the Superior Court for the State
5 of California, County of Sacramento.

6 13. "Administrative Costs" means all cost payable from the Gross Settlement
7 Amount to the Claims Administrator for its actual costs relating to the administration of this
8 Stipulation, up to a maximum of \$10,000.00, which may include: notice; the processing of
9 opt outs; processing Claim Forms; calculating, administrating and distributing Settlement
10 Payments; and all other responsibilities and activities to be performed in connection with
11 the administration of class benefits provided for in this Agreement. The Claims
12 Administration Costs are presently estimated to be \$7,500.00.

13 14. The "Agreement" or "Settlement" means this Stipulation and Settlement
14 Agreement.

15 15. "Catch A Wave" or "Defendant" means Catch A Wave By Blue Nami, Inc., its
16 parent and subsidiary companies, affiliates, joint venturers; and successors, together with
17 each of their respective officers, directors, employees, stockholders, investors, attorneys,
18 insurers, representatives, contractors and agents.

19 16. "Claims Administrator" as used herein means the third-party class action
20 settlement claims administrator agreed to by the Parties and approved by the Court for the
21 purpose of the administration of the claims of the Settlement Class Members set forth in
22 this Settlement Agreement and any related matters.

23 17. "Claim Form" as used herein means the document to be mailed to each
24 Class Member which the member may submit to the Claims Administrator, along with the
25 proper Written Documentation to make a claim for settlement relief set forth in Paragraph
26 36 herein during the Claims Period. The Claim Form shall be in the form attached as
27 Exhibit A and subject to approval by the Court.

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1 18. "Claims Period" means the forty five (45) day period starting from the
2 Effective Date during which Class Members may submit a claim for settlement relief as
3 more fully set forth in Paragraph 61.

4 19. "Class Counsel" are Eason and Tambornini, ALC.

5 20. "Class List" means the list of Class Members and their addresses, contact
6 information, and dates of employment in Class Member jobs during the Class Period, that
7 Defendant will compile from its business records and provide to the Claims Administrator
8 within twenty one (21) calendar days after Preliminary Approval of this Stipulation.

9 21. "Class members" and "Class Definition" means all Persons employed by
10 Defendant as a server in California during the Class Period who do not properly exclude
11 themselves from the terms of this Agreement.

12 22. "Class Period" means the period from September 18, 2011 to February 9,
13 2020.

14 23. "Class Representative" means Victor Martinez, III.

15 24. "Complaint" means the operative complaint in the Action.

16 25. "Court" means the Superior Court of the State of California, County of
17 Sacramento, or any other court having jurisdiction over the litigation.

18 26. "Defendant" means Catch A Wave By Blue Nami, Inc., including their present
19 and former parent and subsidiary companies, related or affiliated companies,
20 predecessors, fiduciaries, shareholders, partners, owners, and joint venturers, together
21 with each of their respective officers, directors, managers, assistant managers, employees,
22 stockholders, investors, attorneys, insurers, representatives, contractors and agents, and
23 any individual or entity which could be jointly liable with Defendant or any of them.

24 27. "Defendant's Counsel" means Murchison & Cumming, LLP.

25 28. "Effective Date" means: (i) the date after the Court grants Final Approval
26 when the statute of limitations for appeal or review of Final Approval expires and no appeal
27 has been filed; or (ii) if any appeal is filed and not dismissed, when the Final Approval
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1 order is upheld on appeal in all material respects and is no longer subject to review upon
2 appeal or review by writ of certiorari.

3 29. "Enhancement Award" means the sum of five thousand dollars (\$5,000.00) to
4 be paid to the Class Representative in recognition of his efforts and work in prosecuting
5 the Released Claims on behalf of Class Members.

6 30. "Final Approval" means final approval of the Stipulation by the Court or, if the
7 order granting Final Approval is appealed, the final order of any appellate court affirming or
8 upholding the Court's Final Approval order in all material respects.

9 31. "Final Approval Hearing" means the hearing at which the Court considers
10 whether to grant Final Approval of the Stipulation.

11 32. "Gross Settlement Amount" means the total amount of One Hundred Fifty
12 Thousand dollars (\$150,000) that Defendant agrees to pay by this Stipulation (subject to
13 Final Approval and exhaustion of any and all appeals) to satisfy the Individual Payments to
14 Participating Class members, the Class Representative Enhancement Award, the Claims
15 Administration Costs, the Class Counsel Award, Actual Costs, and any other obligations of
16 the Parties under this Stipulation.

17 33. "Individual Settlement Payment" means each Participating Class members'
18 share of the Net Settlement Amount, less any applicable taxes or withholdings, as
19 calculated by the Claims Administrator in accordance with the terms of the Stipulation.

20 34. "Initial Mailing" means the Claims Administrator's sending of the Notice of
21 Class Action Settlement via U.S. Mail to each Class Member, which is required within
22 seven (7) business days following receipt of the Class List from Defendant.

23 35. "Net Settlement Amount" means the amount of the Gross Settlement Amount
24 available for distribution to Participating Class members after subtracting the Class
25 Representative Enhancement Awards, the Claims Administration Costs, the Class Counsel
26 Award, Actual Costs, and any other obligation of the Parties under this Stipulation.

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1 36. "Notice of Class Action Settlement" means the notice advising Class
2 Members of their rights under this Stipulation. Each Class Members' Notice of Class Action
3 Settlement will include, without limitation: (1) on an enclosed Estimated Payment Form, the
4 Class Member's Individual Settlement Payment; (2) the Opt-Out Deadline; (3) information
5 regarding the procedure for opting-out; and, (4) for formerly employed Class Members, a
6 Claim Form (collectively the "Notice of Class Action Settlement").

7 37. "Notice of Objection" means the notice a Class Member must timely file with
8 the Court to have his/her objection heard by the Court at the Final Approval Hearing.

9 38. "Opt-Out" means to be excluded from this Stipulation by submitting a written
10 statement requesting exclusion from this Stipulation on or before the Opt-Out Deadline.

11 39. "Opt-Out Deadline" means the deadline by which Class Members must mail
12 a written statement requesting exclusion from this Stipulation to the Claims Administrator.

13 40. "Participating Class Members" means all Class Members who submit a
14 Claim Form and do not submit timely and valid request for exclusion from this Stipulation
15 by the Opt-Out Deadline.

16 41. "Parties" means Plaintiff, Victor Martinez, III and Defendant, Catch A Wave
17 By Blue Nami, Inc., collectively.

18 42. "Preliminary Approval" means the Court order granting Preliminary Approval
19 of the Stipulation.

20 43. "Release" and "Released Claim" shall have the meaning set forth in
21 Paragraph 66.

22 44. "Released Parties" means Catch A Wave By Blue Nami, Inc., including their
23 present and former parent and subsidiary companies, related or affiliated companies,
24 predecessors, fiduciaries, shareholders, partners, owners, and joint venturers, together
25 with each of their respective officers, directors, managers, assistant managers, employees,
26 stockholders, investors, attorneys, insurers, representatives, contractors and agents, and
27 any individual or entity which could be jointly liable with Defendant or any of them.

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1 45. "Request for Exclusion" means the written statement requesting exclusion
2 from this Stipulation to be submitted by Class Members who wish to Opt-Out.

3 46. "Stipulation" means this Stipulation for Class Action Settlement and Release,
4 which is made and entered into by and between Plaintiff Victor Martinez, III, individually
5 and on behalf of all others similarly situated, and Defendant.

6 47. "Unknown Claims" means any Released Claims which the Class Member
7 does not know or suspect to exist in his or her favor at the time of the Released Claims
8 which, if known by him or her, might have affected his or her decision to enter into this
9 Stipulation with and Release of the Released Parties or might have affected his or her
10 decision not to object to this Settlement.

11 **III.**

12 **INVESTIGATION**

13 48. The Class Representative and Defendant have conducted significant
14 investigation of the facts and law during the prosecution of this Action. Such investigations
15 have included the exchange of information and documents between the Parties, numerous
16 conferences between representatives of the Parties, interviews of potential witnesses and
17 depositions. Counsel for the Parties have further investigated the applicable law as applied
18 to the facts discovered regarding the alleged claims of the Class and potential defenses
19 thereto, and the damages that could be claimed by the Class.

20 **IV.**

21 **FAIRNESS OF SETTLEMENT**

22 49. The Class Representative recognizes the expense and length of continued
23 proceedings that would be necessary to continue the litigation against Defendant through
24 trial and through any possible appeals. The Class Representatives have also taken into
25 account the uncertainty and risk of the outcome of further litigation, and the difficulties and
26 delays inherent in such litigation. The Class Representative is also aware of the burdens of
27 proof necessary to establish liability for the claims asserted in the Action, Defendant's
28 defenses thereto, and the difficulties in proving damages for the Class. The Class

1 Representative has also taken into account the extensive settlement negotiations
2 conducted. Based on the foregoing, the Class Representative has determined that the
3 Settlement set forth in this Agreement is a fair, adequate and reasonable settlement, and
4 is in the best interests of all Class Members.

5 50. Defendant adamantly denies all of Plaintiff's claims and allegations.
6 Defendant specifically denies any wrongdoing or legal liability arising out of any of the facts
7 or conduct alleged in the Action, and believes that it has valid defenses to the Class
8 claims. Neither this Agreement, nor any document referred to or contemplated herein, nor
9 any action taken to carry out this Agreement is, or may be construed as or used as, an
10 admission, concession or indication by or against Defendant of any fault, wrongdoing or
11 liability whatsoever, including any concession that certification of a class would be
12 appropriate in this or in any other case.

13 **V.**

14 **TERMS OF THE AGREEMENT**

15 51. The Parties stipulate and agree that subject to the conditions precedent set
16 forth in this Stipulation, the Released Claims shall be finally and fully compromised,
17 released, resolved, relinquished, discharged and settled, and without any adverse findings
18 or conclusions against Defendant or anyone else, upon and subject to the terms and
19 conditions of this Stipulation.

20 52. Conditions Precedent to Effectiveness of Stipulation. The Parties enter into
21 this Stipulation of a conditional basis. This Stipulation will become final and effective only
22 upon the occurrence of all of the following events: (i) the Court enters an order granting
23 Preliminary Approval of the Stipulation for Class Action Settlement and Release, (ii) the
24 Court enters an order granting Final Approval of the Stipulation for Class Action Settlement
25 and Release; and (iii) the Effective Date occurs. Unless the Court orders otherwise, this
26 Stipulation shall be deemed null and void upon the failure of any of these three conditions
27 to occur.

28 // 53. Conditional Class Certification.

1 53.1 The Parties agree to the certification of the Class, the appointment of
2 Named Plaintiff as Class Representative, the appointment of Class Counsel, and the
3 appointment of the Claims Administrator for purposes of Settlement only. The Class
4 Representative and Class Counsel shall apply to the Court for approval of the Stipulation
5 and for class certification of the Class only for purposes of effectuating this Stipulation. If
6 the Court does not grant Preliminary Approval or Final Approval, the Parties agree that
7 class certification will automatically be deemed not to have been granted.

8 53.2 The Parties further agree that the fact that the Parties were willing to
9 stipulate to class certification as part of the Settlement shall have no bearing on, and shall
10 not be admissible in connection with the issue of whether a class should be certified in a
11 non-settlement context in this or any other action. Defendant expressly reserves its right to
12 oppose class certification should this Settlement not become final.

13 54. Settlement Consideration. Subject to the notice procedures set forth below
14 and Final Approval by the Court, Defendant agrees to pay each Participating Class
15 Member his or her Individual Settlement Payment as consideration for settlement of the
16 Released Claims. The Gross Settlement Amount shall not exceed the aggregate sum of
17 One Hundred Thousand Fifty dollars (\$150,000). The Gross Settlement Amount shall be
18 allocated as follows, subject to Final Approval by the Court: (i) up to \$50,000 for an award
19 of attorneys' fees; (ii) up to \$2,000 for reimbursement of any Actual Costs associated with
20 Class Counsel's litigation and settlement of the Released Claims; (iii) up to \$5,000 for
21 Class Representative Enhancement Award; (iv) up to \$10,000.00 for Claims Administration
22 Costs; and (v) any other obligations of the Parties under this Stipulation.

23 54.1 After deduction of the amounts enumerated above, the remaining sum
24 shall constitute the Net Settlement Amount, which shall be used to make Individual
25 Settlement Payments to Participating Class Members.

26 54.2 Notwithstanding any other provisions in this Stipulation, in no event
27 will Defendant be obligated to pay more than the Gross Settlement Amount as
28 consideration for settlement of the Released Claims, including all Individual Settlement

1 Payments, Claims Administration Costs, Class Representative Enhancement Awards,
2 Class Counsel Award, Actual Costs, and any other obligations of the Parties under this
3 Stipulation.

4 55. Each Participating Class member shall receive an Individual Settlement
5 Payment which is based on his or her number of compensable shifts as a percentage of
6 the total number of compensable shifts during the Class Period. The Claims Administrator
7 shall divide the total number of compensable shifts for each Participating Class Member by
8 the total number of shifts of the Participating Class Members during the Class Period to
9 determine the percentage of the Net Settlement Fund to be paid to each Participating
10 Class member. That percentage will then be multiplied by the Net Settlement Fund to
11 determine each Participating Class Member's payment.

12 56. It is understood that no party, nor attorney for any party, makes any
13 representation or warranty regarding taxability of said payments to Participating Class
14 Members. The Parties represent and agree that none of them has received and/or relied
15 upon any advice and/or representations from the other parties and/or its attorneys as to
16 the necessity for withholding or the taxability of the consideration paid pursuant to this
17 Stipulation, whether pursuant to federal, state or local income tax statutes or otherwise.
18 Participating Class Members are responsible for payment of appropriate taxes due.

19 57. Claims Administrator. The Parties designate ILYM Group, Inc. as the Claims
20 Administrator. Claims Administration Costs will be paid from the Gross Settlement Amount.
21 The Claims Administrator shall agree to indemnify the parties for any losses and/or fees
22 incurred by the negligence of the Claims Administrator.

23 57.1 Responsibilities of Claims' Administrator. The Claims Administrator will
24 be responsible for administering this Stipulation, including but not limited to, the following:
25 providing Notices of Class Action Settlement; tracking and processing Request for
26 Exclusions and Claims Forms received from Class Members; calculating, administering
27 and distributing Individual Settlement Payments, Class Representative Enhancement
28 Awards, Class Counsel Award, and any other obligations of the Parties under this

1 Stipulation; responding to inquiries from Class Members; and providing necessary reports
2 and declarations, as requested by the Parties. During the administration of the Stipulation,
3 the Claims Administrator will provide written weekly notice to counsel for all Parties
4 concerning its progress with respect to all of its responsibilities, and a summary of any
5 responses and/or questions provided by Class Members. Included in that information may
6 be a weekly report to the parties by email including information about numbers of opt-outs,
7 claims filed, and an estimate of the total percentage of the settlement fund that will be paid
8 out based on the settlement terms and the claims submitted. The Claims Administrator's
9 determination of eligibility for, and the amount of any Settlement award under the terms of
10 this Stipulation shall be conclusive, final and binding on all Parties, including all Class
11 Members.

12 57.2 Class List. Not later than twenty one (21) calendar days following the
13 date of Preliminary Approval, Defendant will provide to the Claims Administrator, but not
14 Class Counsel, the Class List and information about each class members' compensable
15 shifts and the total compensable shifts of all class members. The Claims Administrator
16 shall keep all information contained in the Class List completely confidential, shall not
17 share such information with any other person or entity, and shall not use such information
18 for any purposes other than those expressly described in this Stipulation.

19 57.3 Mailing of Notice of Class Action Settlement. Not later than 30
20 calendar days following receipt of the Class List, the Claims Administrator shall send the
21 Notice of Class Action Settlement, via U.S. Mail, to each of the Class Members. The
22 Notice of Class Action Settlement shall advise class members of the terms of the
23 settlement and how the settlement will be calculated.

24 57.4 Re-Mailing of Notice of Class Action Settlement. Unless a Notice of
25 Class Action Settlement is returned as undeliverable to the Claims Administrator from the
26 U.S. Postal Service, or the Class Member directly informs the Claims Administrator of a
27 current or corrected mailing address, the Notice of Class Action Settlement shall be
28 deemed mailed and received by the Class Member to whom it was sent.

1 57.6 In the event that a Notice of Class Action Settlement is returned to the
2 Claims Administrator with a forwarding address, the Claims Administrator will re-send the
3 Notice of Class Action Settlement to the forwarding address affixed thereto, and the
4 forwarding address will be deemed the last known address for that Class Member.

5 57.7 In the event that the first mailing of the Notice of Class Action is
6 returned without a forwarding address, the Claims Administrator will immediately conduct a
7 standard skip trace in an effort to ascertain the current address for the particular Class
8 Member in question. If a more recent or accurate address is found by this method, the
9 Claims Administrator will resend the Notice of Class Action Settlement to the new address
10 within three (3) business days of identifying the new address information.

11 57.8 If no new information is ascertained by means of a skip trace, or if the
12 Notice of Class Action Settlement is returned to the Claims Administrator after using an
13 address obtained from a standard skip trace, the Claims Administrator will immediately
14 perform a manual "in-depth skip trace" to locate a more recent or accurate address. If a
15 more recent or accurate address is found by this method, the Claims Administrator will
16 resend the Notice of Class Action Settlement to the new address within three (3) business
17 days of identifying the new address information.

18 57.9 Re-mailing of the Notice of Class Action Settlement does not extend
19 the Opt-Out Deadline for any Class member.

20 57.10 All of the costs incurred relating to the skip traces described above
21 shall fall within the definition of Claims Administration Costs.

22 58. In the event that the procedures set forth herein are followed and the
23 intended recipient of a Notice of Class Action Settlement still does not receive the Notice of
24 Class Action Settlement, or any portion thereof, and does not submit a timely and valid
25 Form, the intended recipient will nevertheless be deemed a Participating Class Member
26 and will be bound by this Stipulation and the order of Final Approval entered by the Court.

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1 59. Exclusion ("Opting-Out") From Stipulation.

2 59.1 Procedure for Exclusion. The Notice of Class Action Settlement shall
3 provide Class Members with instructions on how to exclude themselves from this
4 Stipulation. Class Members may exclude themselves by signing and mailing to the Claims
5 Administrator a statement containing their name, address, and telephone number, and
6 requesting exclusion from the settlement. Class Counsel will recommend participation in
7 the Stipulation to the Class and any Class Member that they represent.

8 59.2 Deadline to Request Exclusion From Settlement. To be valid, the
9 statement requesting exclusion must be mailed to the Claims Administrator by the Opt-Out
10 Deadline, which subject to Court approval, shall be 45 calendar days after the Initial
11 Mailing of the Notice of Class Action Settlement. The date of mailing of the written
12 statement requesting exclusion from this Stipulation is deemed to be the date the
13 statement is deposited in the U.S. Mail, postage prepaid, as evidenced by the postmark. If
14 the last day of the Notice Period falls on a Sunday or legal holiday, the Opt-Out Deadline
15 will be extended to the next day on which the U.S. Postal Service is open. Class Members
16 who do not properly and/or timely submit the request for exclusion become Participating
17 Class Members and shall be bound by the terms of this Stipulation. Class Members who
18 submit a timely and valid Request of Exclusion from this Stipulation shall receive no
19 settlement payment under this Stipulation.

20 59.3 Notification of Opt-Outs. Within 5 business days after the expiration of
21 the Notice Period, the Claims Administrator shall notify Class Counsel and Defendant's
22 Counsel of the Class Members (by employee identification number only) who have opted
23 out of the Stipulation. No party or their counsel shall advise or attempt to persuade any
24 Class Member to rescind a decision to opt out of the Stipulation.

25 59.4 Defendant's Option to Terminate Stipulation. If five percent (5%) or
26 more of the Class members Opt-Out of the Stipulation, then Defendant shall have the right,
27 in its sole discretion, to rescind the Stipulation and revoke conditional class certification.

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1 Defendant must exercise its right to rescind in writing to Class Counsel within twenty (20)
2 calendar days after receipt of notification of Opt-Outs from the Claims Administrator.

3 60. Objections to Stipulation.

4 60.1 Procedure for Objection to the Stipulation. A Class Member may
5 object to this Stipulation. To object to the Stipulation, a Class Member must file with the
6 Claims Administrator a notice of objection, signed by the Class Member, stating: (i) the
7 Class Member's name; (ii) current address; (iii) telephone number; (iv) last 4-digits of his or
8 her social security number; and (v) basis of the objection ("Notice of Objection"). The Class
9 Member must serve a copy of his or her objection on Counsel for the Parties by the Opt-
10 Out Deadline.

11 60.2 Deadline to Submit Objection. The Notice of Objection must be filed
12 and served by mail no later than 45 calendar days after the Initial Mailing of the Notice of
13 Class Action Settlement. The date of filing and service of the Notice of Objection is
14 deemed to be the date it is deposited in the U.S. Mail, postage pre-paid, as evidenced by
15 the postmark. Class Members who fail to file and serve a Notice of Objection in the
16 manner specified above shall be deemed to have waived any objections and shall be
17 foreclosed from making any objections (whether by appeal or otherwise) to the Stipulation.
18 Class Members who timely file and serve a Notice of Objection will have a right to appear
19 at the Final Approval Hearing to have their objections heard by the Court.

20 60.3 At no time shall any of the Parties or their counsel seek to solicit or
21 otherwise encourage Class Members to submit a Notice of Objection to the Stipulation or
22 appeal from the order of Final Approval. Class Counsel shall not represent any Class
23 Members with respect to any such objections to this Stipulation.

24 60.4 Notification of Objections. Within five (5) calendar days after the
25 expiration of the Notice Period, the Claims Administrator shall notify Class Counsel and
26 Defendant's Counsel of the Class Members (by employee identification number only) who
27 have objected to the settlement, and of any statements or information provided by the
28 objecting Class Member(s).

1 61. Payment Procedure. The Claims Administrator, on Defendant's behalf, shall
2 have the authority and obligation to make all payments, credits and disbursements,
3 calculated in accordance with the methodology set out in this Stipulation and by Final
4 Approval order of the Court. No person shall have any claim against Released Parties or
5 its Counsel, Plaintiff, Class Members, Class Counsel or the Claims Administrator based on
6 distributions and payments made in accordance with this Stipulation.

7 61.1 Creation of Gross Settlement Amount Fund. Due to the COVID-19
8 pandemic and its impact on the restaurant industry including Defendant, the Gross
9 Settlement Amount will be paid in installments under a payment plan. Within thirty (30)
10 calendar days of the Effective Date, Defendant will wire or deposit the first installment of
11 the Gross Settlement Amount in the amount of \$55,000 into an interest-bearing account
12 created by the Claims Administrator. Defendant will deposit the remainder of the Gross
13 Settlement Amount in installments over four years. In the event that any interest is earned
14 on any portion of the Gross Settlement Amount prior to distribution to Participating Class
15 Members, Class Counsel, the Class Representative, and/or the Class Administrator, such
16 interest shall revert to Defendant and shall not be included in the Gross Settlement
17 Amount. In the event of a timely appeal from an order of Final Approval, the Final Approval
18 will be stayed and all payments required under this Stipulation will not be paid pending the
19 completion and final resolution of the appeal, and any payments thereafter will: (i) only
20 occur if the order of Final Approval is upheld after all appeals, and (ii) be distributed in a
21 manner that is provided for in this Stipulation and in the order of Final Approval.

22 61.2 Class Members who do not Opt-Out or file and serve a Notice of
23 Objection to the Stipulation upon receiving a Notice of Class Action Settlement, must
24 complete and return a Claim Form within forty-five (45) days of being issued a Notice of
25 Class Action Settlement to receive their Individual Settlement Payment after the Court
26 grants final Approval or, if there is an appeal, after Final Approval is affirmed on appeal.
27 Named Plaintiff / Class Representative who is a former employee of Defendant need not
28 submit a claim form to receive all payments due to him under this Agreement.

1 62. Mailing of Individual Settlement Payment Checks. The Claims Administrator
2 shall be responsible for calculating and mailing Individual Settlement Payments to
3 Participating Class Members. Not later than 30 days following the Effective Date, the
4 Claims Administrator shall mail to each Participating Class Member a check in the amount
5 of his or her Individual Settlement Payment. A release of all claims against the Released
6 Parties will be incorporated into a restrictive endorsement on the back of all Individual
7 Settlement Payments checks. That restrictive endorsement shall read as follows: "This
8 check is issued in full and final settlement of all claims made by the plaintiffs on behalf of
9 themselves and a class of similarly situated persons in *Victor Martinez, III vs. Catch A*
10 *Wave By Blue Nami, Inc.*, Case No. 34-2015-00184485 pending in the Superior Court for
11 the State of California, County of Sacramento. By endorsing or otherwise negotiating this
12 check, the payee hereby releases Catch A Wave By Blue Nami, Inc. and the Released
13 Parties identified in the Settlement Agreement in that cases, from all claims released in
14 that Settlement Agreement as further specified in that Agreement."

15 63. Returned Settlement Checks. In the event that an Individual Settlement
16 Payment check is returned to the Claims Administrator with a forwarding address, the
17 Individual Settlement Payment check will be forwarded to the forwarding address. In the
18 event an Individual Settlement Payment check is returned to the Claims Administrator
19 without a forwarding address or is otherwise undeliverable, the Claims Administrator will
20 conduct a standard search and re-mail the returned Individual Settlement Payment check,
21 and the expense of such search shall be part of the Claims Administration Costs. If within
22 the ninety (90) calendar day period the Participating Class Member contacts the Claims
23 Administrator or counsel for either Party with a new address, the Individual Settlement
24 Payment check will be reissued and mailed to the new address provided. Any such re-
25 issued Individual Settlement Payment check will indicate on its face that it is void if not
26 negotiated within ninety (90) days of its issuance.

27 64. The Claims Administrator shall set aside from the Settlement Fund a
28 "Reserve Fund" in the amount of \$800.00, to be available to pay any late or disputed

1 payments approved by the Claims Administrator within one year after the entry of the
2 Court's order granting final approval of the Settlement. The Claims Administrator shall hold
3 the Reserve Fund in an interest-bearing account. All interest accrued shall remain in the
4 Reserve Account unless and until expended for such late or disputed payments pursuant
5 to this Settlement Agreement, and any remaining funds not so expended shall be paid to
6 the court-approved *cy pres* beneficiary(ies) as provided in the next paragraph.

7 65. Disposition of Funds From Uncashed Individual Settlement Payment Checks.
8 Individual Settlement Payment checks shall be negotiable for not less than ninety (90)
9 calendar days from issuance. All Individual Settlement Payment checks will indicate on
10 their face that they are void if not negotiated within ninety (90) calendar days of issuance.
11 Those funds represented by Individual Settlement checks returned as undeliverable and
12 those Individual Settlement Payment checks returned as undeliverable and those
13 Individual Settlement Payment checks remaining uncashed for more than ninety (90)
14 calendar days after issuance shall be paid to a *cy pres* beneficiary(ies) to be selected by
15 the Defendant, subject to approval by the Court. The parties have agreed to
16 workplacefairness.org.

17 66. Release of Claims.

18 66.1 Terms of Release. In consideration of the mutual promises contained
19 herein the Class Representative, on behalf of himself, and each of his heirs,
20 representatives, successors, assigns, and attorneys, specifically agree to forever fully and
21 finally release, waive, acquit and discharge, to the fullest extent permitted by law, all
22 claims, charges, complaints, liens, demands, causes of action, obligations, damages and
23 liabilities, whether known or unknown, including but not limited to all claims delineated in
24 the subsequent section below. Further, Class Representative agrees to sign this
25 Stipulation and to be bound by the terms herein stated, and further agree not to request to
26 be excluded from the Stipulation and agree not to object to any of the terms of the
27 Stipulation. Any such request for exclusion or objection by Class Representative shall
28 therefore be void and of no force or effect.

1 66.2 Released Claims. Upon the Effective Date, Class Members who do
2 not Opt-Out during the Notice Period, on behalf of themselves, and each of their heirs,
3 representatives, successors, assigns, and attorneys, agree to compromise, release,
4 resolve, relinquish, discharge, and settle each and all of the Released Parties from each of
5 the Alleged Claims and/or any claims related to or arising out of the same factual predicate
6 of this Action, the Complaint, or the Amended Complaint, whether known or unknown, that
7 exist in their favor through the date of Final Approval. Collectively, the claims released by
8 the Class Members shall be known as the "Released Claims."

9 66.3 The Released Claims include all claims asserted or unasserted, by
10 Class Members arising before or during the Class Period, whether in the nature of claims
11 for damages, liquidated damages, punitive damages, unpaid wages, premium pay,
12 waiting-time penalties, wage statement penalties, interest, attorney's fees, costs or
13 injunctive relief or other penalties or remedies that were or could have been asserted out
14 of, relating to, or in connection with any type of actual or alleged violation of any wage and
15 hour laws or tip pooling violations asserted in the Action, whether known or unknown.

16 66.4 With respect to any and all Released Claims, the Parties stipulate and
17 agree that, upon the Effective Date, the Class Members shall and have, by operation of the
18 judgment, waived and relinquished, to the fullest extent permitted by law, the provisions,
19 rights and benefits of § 1542 of the California Civil Code, which provides:

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

25 Class Members agree that each shall and has, upon the Effective Date and by
26 operation of the Judgment, waived any and all provisions, rights and benefits conferred by
27 any law of any state or territory of the United States, or principal of common law which is
28 similar, comparable or equivalent to § 1542 of the California Civil Code with respect to the

1 Released Claims. Class Members may thereafter discover facts in addition to or different
2 from those which he or she now knows or believes to be true with respect to the subject
3 matter of the Released Claims, but each stipulates and agrees to, upon the Effective Date,
4 fully, finally and forever settle and release any and all Released Claims, known or
5 unknown, suspected or unsuspected, contingent or non-contingent, whether or not
6 concealed or hidden, which now exist, or heretofore have existed upon any theory of law
7 or equity, including, but not limited to, conduct which is negligent, intentional, with or
8 without malice, or a breach of any duty, law or rule without regard to the subsequent
9 discovery or existence of such different or additional facts.

10 66.5 Each Participating Class Member, regardless of whether they
11 submitted a timely claim, will be deemed to have released the Released Parties from the
12 Released Claims, and covenants not to sue any of the Released Parties for any Released
13 Claims.

14 66.6 California Labor Code Section 206.5. In connection with the above
15 Release, and in consideration of Defendant's payments of the sums provided herein, each
16 and every Participating Class Member will be deemed also to have acknowledged and
17 agreed that California Labor Code Section 206.5 is not applicable to the Parties hereto or
18 the Participating Class Members because there is a good faith dispute as to whether any
19 wages are due at all to any Class Member. California Labor Code Section 206.5 provides
20 in pertinent part as follows:

21 "AN EMPLOYER SHALL NOT REQUIRE THE EXECUTION
22 OF A RELEASE OF A CLAIM OR RIGHT ON ACCOUNT OF
23 WAGES DUE, OR TO BECOME DUE, OR MADE AS AN
24 ADVANCE ON WAGES TO BE EARNED, UNLESS PAYMENT
25 OF THOSE WAGES HAS BEEN MADE."

26 66.7 Previously Released Claims. To the extent a Class Member previously
27 settled or released claims covered by this Stipulation (e.g. as part of a separation
28 agreement), after the filing of the Action, this Stipulation shall not impair the enforceability

1 of such release, and the amount of the Individual Settlement Payment otherwise payable
2 to that individual shall be reduced by the amount of consideration received by the
3 individual in exchange for a release encompassing claims covered by this Stipulation.

4 67. Motions for Court Approval.

5 67.1 Preliminary Approval. Within fourteen (14) calendar days after the
6 execution of this Stipulation, the Class Representative and Class Counsel shall submit to
7 the Court: (i) a fully executed copy of this Stipulation; (ii) a noticed motion seeking the
8 Court's Preliminary Approval of this Stipulation; (iii) a proposed order granting such
9 Preliminary Approval; (iv) the proposed Notices of Class Action Settlement; and (v) any
10 other documents consistent with the Stipulation reasonably necessary to obtain the Court's
11 approval of the Stipulation. The Class Representatives and Class Counsel will ask the
12 Court to maintain jurisdiction of this matter for purpose of monitoring compliance with and
13 performance under this Stipulation and any and all orders and judgments, including the
14 Judgement, entered by the Court.

15 67.2 Final Approval. The Class Representative and Class Counsel shall
16 request that a Final Approval hearing be set within a reasonable time after the Opt-Out
17 Deadline expires. No later than twenty (20) calendar days before the Final Approval
18 hearing, the Claims Administrator shall provide Class Counsel and Defendant's Counsel
19 with a "declaration of compliance" with this Stipulation to be filed with the Court by Class
20 Counsel. No later than fourteen (14) calendar days before the Final Approval hearing, the
21 Class Representatives and Class Counsel shall file a Motion for Final Approval,
22 Memorandum of Points and Authorities in Support of the Stipulation, and Motion for
23 Attorney's Fees, Actual Costs and Class Representative Enhancement Awards, and any
24 other documents reasonably necessary to obtain the Court's Final Approval.

25 68. Class Counsel Award. Class Counsel will submit an application for an award
26 of attorneys' fees of up to \$50,000, and an application for reimbursement of any Actual
27 Costs associated with Class Counsel's litigation and settlement of the Released Claims not
28 to exceed \$1,500. The Court shall determine the amount of costs and attorneys' fees to be

1 paid to Class Counsel (the "Class Counsel Award"). Not later than ten (10) calendar days
2 following the Effective Date, the Claims Administrator shall convey the Class Counsel
3 Award to Class Counsel.

4 69. Each Party to Bear Own Costs. Except as is specifically provided herein, the
5 Parties hereto will bear responsibility for their own attorneys' fees and costs, taxable or
6 otherwise, incurred by them or arising out of this Action, and will not seek reimbursement
7 thereof from any Party to this Stipulation.

8 70. Enhancement Award. Class Counsel will submit an application for Plaintiff
9 Victor Martinez for \$5,000 as an Enhancement Award for his time, effort and participation
10 in this Action as Class Representative. Defendant will not oppose a motion for approval of
11 such Enhancement Award. Not less than ten (10) calendar days following the Effective
12 Date, the Claims Administrator shall issue and mail a check in the amount of the
13 Enhancement Award to each Class Representative.

14 71. Severability. If any of the above provisions are found null, void, or
15 inoperative, for any reason, the remaining provisions will remain in full force and effect.
16 Notwithstanding, the invalidation of any material term of this Stipulation, including but not
17 limited to all the terms and provisions specified in the Release of Claims, will invalidate this
18 Stipulation in its entirety unless the Parties subsequently agree in writing that the
19 remaining provisions will remain in force and effect.

20 72. Headings. The descriptive headings of any paragraphs or sections of this
21 Stipulation are inserted for convenience of reference only and do not constitute a part of
22 this Agreement.

23 73. No Precedent. Neither the fact of this Stipulation, the existence of this
24 Stipulation, the terms of this Stipulation, nor any order or action pursuant thereto may be
25 referred to, relied upon, cited, or used as precedent in any case involving Defendant, the
26 Class Representatives, or the Class members. Further, in the event that the terms of this
27 Stipulation do not receive final approval from the Court (or if a final approval order is
28 reversed on appeal), no part of this Stipulation nor any order or action pursuant thereto shall

1 be operable or admissible for any purpose whatsoever in the Action or in any other action
2 or proceeding.

3 74. Amendment or Modification. Unless otherwise provided herein, this
4 Stipulation may be amended or modified only by a written instrument signed by counsel for
5 all Parties or their successors-in-interest.

6 75. Entire Agreement. This Stipulation and any supplemental written agreement
7 subsequently incorporated constitute the entire Stipulation among these Parties, and no
8 oral or written representations, warranties or inducements have been made to any Party
9 concerning this Stipulation other than the representations, warranties and covenants
10 contained and memorialized herein. This Agreement, once it is fully executed, supersedes
11 any and all prior agreements between the parties, whether written or verbal.

12 76. Authorization to Enter Into Stipulation. Each individual signing this
13 Stipulation warrants that he or she has the authority and is expressly authorized to enter
14 into this Stipulation on behalf of the party for which that individual signs.

15 77. Advice of Counsel. The parties to this Stipulation are represented by
16 competent counsel, and they have had an opportunity to consult with counsel. The Parties
17 to this Stipulation agree that it reflect their good faith compromise of the claims raised in
18 this action, based upon their assessment of the mutual risks and costs of further litigation
19 and assessments of their respective counsel.

20 78. Binding on Successors and Assigns. This Stipulation shall be binding upon
21 and inure to the benefit of the successors or assigns of the Parties hereto, as previously
22 defined.

23 79. California Law Governs. All terms of this Stipulation and the exhibits hereto
24 shall be governed by and interpreted according to the laws of the State of California.

25 80. Counterparts. This Stipulation may be executed in one or more counterparts.
26 All executed counterparts and each of them shall be deemed to be one and the same
27 instrument provided that counsel for the Parties to this Stipulation shall exchange among
28 themselves original signed counterparts.

1 81. Class Representative's Waiver of Right to be Excluded and Object. Class
2 Representative agrees to sign this Stipulation and, by signing this Stipulation, is bound by
3 the terms herein stated and further agrees not to request to be excluded from the
4 Stipulation and agrees not to object to any of the terms of this Stipulation. Any such
5 request for exclusion or objection by a Class Representative shall therefore be void and of
6 no force or effect.

7 82. Waiver of Certain Appeals and Reservation of Certain Rights. The Parties
8 agree to waive all appeals with two exceptions. First, either party may appeal any court
9 order that materially alters the terms of this Stipulation. Second, if the Court awards less
10 than the requested attorney's fees and/or costs, Class Counsel reserves the right to
11 appeal that reduction. A denial of the requested fee amount shall not void this Stipulation.

12 83. Request for Dismissal. No later than fourteen (14) calendar days following
13 the Effective Date, the Class Representative and Class Counsel shall dismiss the Action
14 with prejudice by filing a request for dismissal with prejudice with the Court, subject to the
15 Court's retention of jurisdiction to supervise or enforce the implantation of this Stipulation.
16 Class Counsel shall provide Defendant's counsel with a conformed copy of the request for
17 dismissal with prejudice within three (3) court days after the request is entered by the
18 Court. Following dismissal, the Court shall retain jurisdiction to ensure the enforcement of
19 the Settlement Agreement.

20 84. Cooperation. The Parties shall cooperate fully with one another in seeking
21 approval of the Court of this Stipulation (including all exhibits thereto) and to use their
22 respective best efforts to consummate the Stipulation and cause the Final Approval to be
23 entered and to become final. No Party to this Stipulation shall seek to evade his, her or its
24 good faith obligations to seek approval and implementation of the Stipulation by virtue of
25 any ruling, order, or other development, whether in the Action, in any other litigation or
26 otherwise that hereafter might occur and might be deemed to alter the relative strengths of
27 the Parties with respect to any claims or defenses or their relative bargaining power with
28 respect to negotiating.

1 85. Confidentiality. The Parties and their counsel agree that they will not issue
2 any press releases or press statements, post any internet disclosures, have any
3 communications with the press or media about this Stipulation, or otherwise publicize the
4 terms of this Stipulation in any medium, including but not limited to internet blogs or chat
5 rooms, Facebook, or a law firm website, prior to the entry by the Court of an Order granting
6 Preliminary Approval. Thereafter, Plaintiff and their counsel agree not to issue press
7 releases, hold any press conferences, or otherwise actively publicize the settlement.
8 Notwithstanding the foregoing, the Parties shall have the right to disclose this Stipulation
9 as may be required under federal or state tax and/or securities laws or under generally
10 accepted accounting principles, and may disclose in legal proceedings a summary of the
11 terms of this Stipulation.

12 **SIGNATURES**

13 DATED: 07/12/2021

14 PLAINTIFF
15 By: 
16 VICTOR MARTINEZ, III

17 DATED.

18 EASON & TAMBORINI, ALC

19 By: _____
20 Matthew R. Eason
21 Erin M. Scharg
22 Attorneys for Plaintiff VICTOR MARTINEZ, III

23 DATED:

24 CATCH A WAVE BY BLUE NAMI, INC.

25 By: _____

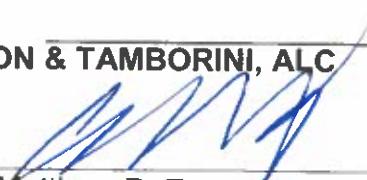
26 DATED:


27 MURCHISON & CUMMING, LLP

1 85. Confidentiality. The Parties and their counsel agree that they will not issue
2 any press releases or press statements, post any internet disclosures, have any
3 communications with the press or media about this Stipulation, or otherwise publicize the
4 terms of this Stipulation in any medium, including but not limited to internet blogs or chat
5 rooms, Facebook, or a law firm website, prior to the entry by the Court of an Order granting
6 Preliminary Approval. Thereafter, Plaintiff and their counsel agree not to issue press
7 releases, hold any press conferences, or otherwise actively publicize the settlement.
8 Notwithstanding the foregoing, the Parties shall have the right to disclose this Stipulation
9 as may be required under federal or state tax and/or securities laws or under generally
10 accepted accounting principles, and may disclose in legal proceedings a summary of the
11 terms of this Stipulation.

12 **SIGNATURES**

13 DATED: PLAINTIFF
14
15 By: _____
16 VICTOR MARTINEZ, III

17 DATED: EASON & TAMBORINI, ALC
18
19 By:  _____
20 Matthew R. Eason
21 Erin M. Scharg
22 Attorneys for Plaintiff VICTOR MARTINEZ, III


23 DATED: CATCH A WAVE BY BLUE NAMI, INC.
24
25 By:  _____

26
27 DATED: MURCHISON & CUMMING, LLP
28

1 DATED: 7/27/71

MURCHISON & CUMMING, LLP

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By: 
William D. Naeve
Heidi C. Quan
Attorneys for Defendant, CATCH A WAVE BY
BLUE NAMI INC.

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EXHIBIT A

CLAIM FORM: COMPLETE AND SIGN FOR MONETARY RECOVERY

<Barcode> Claim #: <First Name> <Last Name> <c/o> <Address> <City>, <State> <Zip> <Country>	Name/Address Changes (if any): _____ _____ _____
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If your name or address is different from those shown above, print the corrections on the lines to the right.

INSTRUCTIONS:

- 1. THIS CLAIM FORM IS FOR THE MARTINEZ CLASS ACTION SETTLEMENT DESCRIBED IN THE ACCOMPANYING NOTICE.**
- 2. YOU MUST TIMELY COMPLETE, SIGN AND MAIL THIS FORM BY FIRST CLASS U.S. MAIL OR EQUIVALENT, POSTAGE PAID, POSTMARKED ON OR BEFORE _____, TO THE CLAIMS ADMINISTRATOR, ILYM GROUP, INC., AT 15331 BARRANCA PARKWAY, IRVINE, CA 92618 TO RECEIVE YOUR SHARE OF THE MONETARY RECOVERY.**
- 3. ACCORDING TO CATCH A WAVE BY BLUE NAMI INC.'S RECORDS YOU WORKED _____ SHIFTS AS A SERVER DURING THE CLASS PERIOD. THE CLAIMS ADMINISTRATOR WILL USE THIS AMOUNT TO DETERMINE THE SETTLEMENT PAYMENT YOU WILL RECEIVE.**

CLAIM FOR MONETARY SETTLEMENT IN THE MARTINEZ SETTLEMENT

I have reviewed the Class Notice and this Claim Form, including the information regarding the released claims included on the Class Notice. My signature constitutes a full and complete release of Catch A Wave By Blue Nami Inc., and any of the Released Parties for any claims released under the Settlement Agreement ("Released Claims"), should the Settlement become final in this matter. Released Claims are defined as any and all claims, causes of action, debts, liabilities, demands, obligations, guarantees or damages, in law or equity, tort or in contract, by statute, pursuant to case law, or otherwise, which have been or could have reasonably been asserted in the Action or in any other state or federal court, administrative tribunal, or in arbitration or similar proceeding, based upon, or arising out of, or related to the allegations in the Action during the Class Period. These claims include, but are not limited to, claims for: failure to engage in proper tip pooling program. This release includes a California Civil Code Section 1542 waiver ("1542 Waiver"). I understand that a 1542 Waiver relates to Section 1542 of the California Code of Civil Procedure, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

I understand and acknowledge that by not excluding myself from this action the significance and consequence of this waiver of California Civil Code Section 1542 is that even if I should eventually suffer injury or damage, I will not be able to make any claim for those injuries. I understand I am providing the Defendant with a full and complete release with respect to the Released Claims.

I declare under penalty of perjury under the laws of the United States and the State of California that the information I have provided on this Claim Form is true and correct.

X _____
(Sign your name here)

Date

X _____
(Please print your first and last name here)

Check this box to verify that the last four digits of your social security number as shown are accurate: XXX - XX - XXXX:

Former Names (if any)

() _____
Telephone Number

- IF YOU MOVE, PLEASE SEND THE CLAIMS ADMINISTRATOR, ILYM GROUP, INC., YOUR NEW ADDRESS.
- IF YOU MAKE A VALID CLAIM, YOU SHOULD NOT EXPECT TO RECEIVE ANY PAYMENT UNTIL THE SETTLEMENT IS FINAL, WHICH LIKELY WILL OCCUR IN _____.

EXHIBIT B

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EXHIBIT C

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NOTICE OF PENDENCY AND SETTLEMENT OF CLASS ACTION; SETTLEMENT HEARING; AND CLAIM, CONSENT, AND EXCLUSION PROCEDURES

Victor S. Martinez III v. Catch a Wave by Blue Nami, Inc.
Sacramento County Superior Court
Case No. 39-2015-00184485

PLEASE READ THIS NOTICE CAREFULLY. PLAINTIFF VICTOR S. MARTINEZ III AND DEFENDANT CATCH A WAVE BY BLUE NAMI, INC., AGREED TO SETTLE THE CLASS ACTION THAT IS DESCRIBED IN THIS NOTICE. CATCH A WAVE BY BLUE NAMI, INC.'S RECORDS SHOW YOU MAY BE ENTITLED TO PARTICIPATE IN THE CLASS ACTION SETTLEMENT AND RECEIVE A SETTLEMENT PAYMENT. YOUR RIGHTS MAY BE AFFECTED BY THE LEGAL PROCEEDINGS IN THIS ACTION.

You are receiving this Notice because you may be a member of the following Class:

All persons who at any time four (4) years prior to the filing of this action through the date of trial were employees of the Defendant, employed in California as a "Server".

YOUR LEGAL RIGHTS, OPTIONS, AND IMPORTANT DEADLINES:

- **File a Claim Form:** If you are eligible and wish to participate in the Settlement and receive a settlement payment, you must mail a completed Claim Form to the address specified on the Claim Form, postmarked on or before _____. Instructions on how to submit the Claim Form are included in this Notice.
- **Do Nothing:** If you are eligible to participate in the Settlement, but do not wish to receive a payment and wish to give up your right to sue Defendant for the claims this Settlement resolves, you need to not take any action.
- **Exclude Yourself:** If you do NOT wish to participate in the Settlement and do NOT wish to receive a settlement payment, you may request exclusion from the Settlement. The request for exclusion must be postmarked on or before _____. Instructions on how to request exclusion from the Settlement are included in this Notice.
- **Object:** If you wish to object to the Settlement, the last day to file your written objection with the Superior Court is _____. Service of written objections on the Claims Administrator, ILYM Group, Inc., and the Parties' counsel must be postmarked on or before _____. Instructions on how to object to the Settlement are included in this Notice.

I. WHY IT IS IMPORTANT TO READ THIS NOTICE:

Judge _____ of the State of California, San Joaquin County Superior Court (the "Superior Court") granted preliminary approval of a proposed class action settlement (the "Settlement") of all claims alleged or that could have been alleged in the following action: *Victor S. Martinez III*

v. *Catch a Wave by Blue Nami, Inc.* Case No. 39-2015-00184485. The Settlement is subject to the approval of the Sacramento County Superior Court.

You are being sent this Notice because Catch A Wave By Blue Nami, Inc.'s records show that you are a member of the Class described below:

All persons who at any time four (4) years prior to the filing of this action through the date of trial were employees of the Defendant, employed in California as a "Server".

The purpose of this Notice is to provide you with a brief description of the class action lawsuit at issue, to inform you of the terms of the proposed Settlement and to discuss your rights and options in connection with the lawsuit and the Settlement. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

II. WHAT THIS CLASS ACTION IS ALL ABOUT:

A class action is a lawsuit brought by one or more representative plaintiffs in which the claims and rights of many people are decided in a single court proceeding. Through the lawsuit at issue here, the Named Plaintiffs sought to be class representatives and recover various forms of relief from Catch A Wave By Blue Nami, Inc. ("Catch A Wave" or the "the Defendant"), on behalf of the Class described above, including for the claims listed below, interest, attorneys' fees, and costs of suit.

Victor S. Martinez III (hereinafter "Named Plaintiff"), former server of Catch A Wave By Blue Nami, Inc. who worked in California, filed a Complaint against the Defendant that alleged the following claims: improper tip pooling. Defendant denies each of the allegations and does not admit any liability, as explained below.

III. THE SETTLEMENT OF THE CLAIMS ALLEGED IN THE LAWSUITS:

Since the inception of the lawsuit, the Parties actively investigated and litigated the claims asserted. Based on a comprehensive investigation of the claims, the Parties and their counsel reached agreement to settle the pending Action.

The Named Plaintiff claim and continue to claim that Catch A Wave By Blue Nami, Inc.'s defenses are without merit. The Named Plaintiff and Class Counsel recognize, however, the expense and length of continued proceedings necessary to pursue the litigation through trial and through any possible appeals. The Named Plaintiffs and Class Counsel also have taken into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation, including the financial ability of the Defendant to respond to any judgment that may be obtained against them if the claims are successful. Based on the foregoing, the Named Plaintiff and Class Counsel believe the Settlement set forth in this Agreement is a fair, adequate and reasonable settlement, and is in the best interests of the Putative Class Members.

Defendant denies and continues to deny each of the claims and contentions alleged by the Named Plaintiffs in this Action. Defendant repeatedly asserted and continues to assert defenses thereto, and expressly deny and continue to deny any wrongdoing or legal liability arising out of any of

the facts or conduct alleged in the Action or that the Plaintiffs and Putative Class Members were harmed by the conduct alleged in the Action. Defendant believes, however, that any further defense of this litigation would be protracted and expensive. Substantial amounts of time, energy and resources of Defendant have been used and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by Named Plaintiff. Defendant, therefore, agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Claims as set forth in the Action. Based on the foregoing, Defendant and Counsel for Defendant believes the Settlement set forth in this Agreement is a fair, adequate and reasonable settlement, and is in the best interests of the Defendant and Putative Class Members.

The Settlement was preliminarily approved by the Superior Court on _____. A summary of the terms of the preliminarily approved Settlement is set forth below. The complete terms of the proposed Settlement are described in the Stipulation and Settlement Agreement (“Settlement Agreement”), copies of which are available for your review as set forth at the end of this Notice.

IV. THE TERMS OF THE PRELIMINARILY APPROVED SETTLEMENT:

The *Martinez* settlement has a potential value of \$150,000 (“Settlement Amount”), allocated as follows: (1) monetary relief (“Net Settlement Fund”) to class members who make a claim (“Settlement Class Members”); (2) attorneys’ fees and reimbursement of costs awarded by the Superior Court to attorneys representing the class; (3) representative incentive payments awarded by the Superior Court to Named Plaintiff (“Representative Incentive Awards”); (4) claims administration expenses, including the costs of mailing this Notice and Claim Form to you and administering the settlement payments should the Settlement be effective (“Administration Costs”).

- (1) The monetary relief to class members, or Net Settlement Fund, has an estimated potential value of \$77,500. To make a claim for your share of this monetary compensation you need to timely submit a valid Claim Form (see Section VI and the Claim Form for instructions).
- (2) The total amount of attorneys’ fees awarded will be subject to the Superior Court’s discretion and approval, but in any event will not exceed \$50,000 or 33.33% of the Settlement Amount. The total amount of costs awarded will be subject to the Superior Court’s discretion and approval, but in any event will not exceed \$7,500. The fees and costs awards are for attorneys’ fees and costs past, present and future, incurred in the lawsuit. As part of the Settlement, you will not be required to pay Class Counsel for their representation of you in the lawsuit.
- (3) The amount of the Representative Incentive Awards to Named Plaintiff will be subject to the Superior Court’s discretion and approval, but in any event will not exceed a collective total of \$5,000.
- (4) The Administration Costs incurred by the Claims Administrator, ILYM Group, Inc., will be subject to the Superior Court’s discretion and approval, but in any event will not exceed \$10,000. These costs and fees are associated with the administration of this Settlement by a neutral third party who is responsible for all mailings required by the Settlement, sending payments to Settlement Class Members and associated recordkeeping obligations.

V. HOW YOUR SHARE WILL BE CALCULATED IF YOU PARTICIPATE:

If you wish to participate in the Settlement and receive monetary compensation, you must sign and return the enclosed Claim Form by _____ to the Claims Administrator, as stated in Section VI. If you are a Class Member, you are entitled to request a settlement payment.

This is a claims-made settlement. If a Putative Class Member does not timely submit a valid Claim Form, their unclaimed share will be reallocated to those putative class members making valid claims.

Although this Settlement is claims-made, the Parties agreed that Catch A Wave will pay at least 50% of the Net Settlement Fund, which equates to at least \$77,500 (or greater if the Court awards less than the projected Attorneys' Cost Award, , Representative Incentive Awards, and/or Administration Costs). In determining whether the 50% minimum has been reached, all Gross Damages Settlement Amounts will be considered. If and only if the total claimed Gross Damages Settlement Amounts of all Settlement Class Members determined by the method described in the Settlement Agreement do not equal or exceed 50% of the Net Settlement Fund), Catch a Wave will direct the Claims Administrator to redistribute on a pro-rata basis the Net Settlement Fund Deficiency to Settlement Class Members in the same manner and time as provided for with respect to their initial payout calculation.

Each Settlement Class Member will receive a Settlement Payment, which is a share of the Net Settlement Fund based on the total _____ Each Class Member's Individual Gross Wages will be stated on the Class Member's claim form. A Settlement Class Member who believes that the Individual Gross Wages used to calculate his/her Settlement Payment is incorrect will have the opportunity to object and provide relevant information and documents to the Claims Administrator prior to the expiration of the claim period. The Claims Administrator's decision on all such disputes will be final and non-appealable.

Each Settlement Class Member's Gross Damages Settlement Amount will be characterized as a as wages subject to withholding for all applicable local, state, and federal taxes owed by the Settlement Class Member thereon.

VI. OPTIONS YOU HAVE REGARDING THE CLASS ACTION SETTLEMENT:

You have four options under this Settlement, each of which is discussed below: You may: (1) remain in the Class and claim money under the Settlement; or (2) remain in the Class and do nothing; or (3) exclude yourself from the Class and the Settlement; or (4) remain in the Class and object to the Settlement.

1. Claim Procedure for Monetary Recovery

If you wish to participate in the Settlement and receive a monetary payment under the terms of the Settlement, you must properly complete and timely submit the enclosed Claim Form to the Claims Administrator, ILYM Group, Inc., located at 15331 Barranca Parkway, Irvine CA 92618, via first class U.S. mail or equivalent, postage paid, postmarked on or before _____. Only Class Members who complete, sign and return the enclosed Claim Form by _____ will become Settlement Class Members who are eligible to receive payment.

Any Claim Form that is postmarked after _____, that is not completely and legibly filled out, or that is not signed by the Class Member, will not constitute a valid claim and will be denied by the Claims Administrator. The Claims Administrator shall review each Claim Form received and shall verify each form to reasonably ensure its validity and accuracy. If your Claim Form is timely but fails to contain: (1) your name; (2) your signature and the date you signed it; (3) a checked box verifying the accuracy of the last four digits of your social security number; and/or (4) your name does not match Catch A Wave By Blue Nami Inc.'s records, your Claim Form will be returned to you notifying you of the defect(s) and inviting you to call the Claims Administrator with any questions or concerns regarding the defect(s). You will be given fourteen (14) business days within which to cure the defect(s) and return your corrected Claim Form to the Claims Administrator. If your Claim Form is not postmarked within that fourteen (14) day period, your claim will be rejected.

If you properly and timely submit a Claim Form, you will be mailed a monetary payment pursuant to the formulas set forth in this Notice, as applicable, within five business days after Catch A Wave By Blue Nami Inc.'s makes its final installment payment which shall occur within thirty (30) calendar days of the Effective Date of the Settlement or April 20, 2016, whichever date is later.

Each Settlement Class Member who submits a valid and timely Claim Form shall be paid by check if the Settlement becomes final. The checks shall remain valid and negotiable for 180 days. Any check that is not negotiated within 180 days of mailing to a Settlement Class Member shall be sent to Workplacefairness.org, an organization that supports projects that would benefit the Settlement Class pursuant to Code of Civil Procedure Section 384.

2. Doing Nothing

If you do nothing and the Court approves the Settlement, you will be bound by the terms of the Settlement, but you will not receive any money under the Settlement.

3. Procedure for Requesting Exclusion from the Settlements

If you do not wish to be bound by the Settlement and do not wish to receive any monetary recovery from the Settlement, you may exclude yourself from the Settlement by mailing a written statement expressing your desire to be excluded from the Settlement to the Claims Administrator, ILYM Group, Inc., located at 15331 Barranca Parkway, Irvine CA 92618 **postmarked on or before _____**. Your request for exclusion shall be deemed valid only if: (1) you provide your name on the request for exclusion; (2) you date and sign the request for exclusion; and (3) the name you provide on the request for exclusion matches Catch A Wave By Blue Nami Inc.'s records. Your written request for exclusion from the Settlement must state as follows:

I wish to be excluded from the Settlement in the pending class action entitled: *Victor S. Martinez III v. Catch a Wave by Blue Nami, Inc.* Case No. 39-2015-00184485. I understand that in asking to be excluded from the Settlement, I will not receive any portion of the Settlement approved by the Superior Court in this case.

Requests for exclusion that do not include all required information, or that are not submitted on a timely basis, will be deemed null, void and ineffective. If you are eligible to and do submit a valid and timely request for exclusion from the Settlement, you will not receive any monetary recovery from the Settlement, nor will you have any right to object, appeal or comment thereon, nor will you be bound by the terms of the proposed Settlement, if it is approved, or bound by the Final Judgment in the Action. If you timely submit a valid request for exclusion from the Settlement, you preserve any right you may have to bring your own action, with respect to claims that were or could have been asserted in the Action against Defendant.

Note: If you do not timely and properly return the Claim Form and do not request exclusion as discussed herein, you will be bound by the Settlement and YOU WILL NOT RECEIVE A MONETARY PAYMENT.

4. Procedure for Objecting To the Settlement

You may appear at the Settlement Hearing in person or through counsel and be heard as to why the proposed Settlement should or should not be approved as fair, adequate and reasonable by the Superior Court, or why a Final Judgment should or should not be entered by the Superior Court. **However, you or any other Putative Class Member will not be entitled to object, and no papers or briefs submitted by you or any Putative Class Member shall be received or considered by the Superior Court, unless a written statement objecting to the Settlement is filed with the Superior Court and served on the Claims Administrator and counsel for the Parties personally on or before _____ or, if by mail, postmarked on or before _____.** The address for the Claims Administrator, ILYM Group, Inc. is 15331 Barranca Parkway, Irvine CA 92618. The addresses for Parties' counsel are as follows:

Class Counsel:	Counsel for the Defendant:
Erin M. Scharg Eason & Tamborini, ALC 1234 H Street Sacramento, CA 95814	Heidi C. Quan Murchison & Cumming, LP 275 Battery Street, Suite 850 San Francisco, CA 94111

If you do not make and serve your written objections in the manner provided above you shall be deemed to have waived such objections and shall be foreclosed from making any objections (by appeal or otherwise) to the Settlement. Any Putative Class Member who is satisfied with the proposed Settlement need not appear at the Settlement Hearing. The location, date and time of the Settlement Hearing is set forth in Section VIII of this Notice.

VII. RELEASE OF CLAIMS BY CLASS MEMBERS:

As of the Effective Date (as defined in the relevant Settlement Agreement), anyone who has not excluded themselves from the Settlement(s) will release Catch A Wave By Blue Nami Inc., all its present and former subsidiaries, affiliates, divisions, related or affiliated companies, parent companies, franchisors, franchisees, shareholders and attorneys and each of their company-sponsored employee benefit plans, and their respective successors, assigns, and predecessors in interest, all of their respective officers, directors, employees, administrators, fiduciaries, trustees and agents, and each of their past, present and future officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers and their counsel of record (the "Released Parties") from the claims described below.

For purposes of the Settlement, the released claims include all claims, demands, rights, liabilities, and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any state or federal constitution, statute, rule or regulation, including state wage and hour laws, pursuant to case law, or otherwise, whether for economic damages, non-economic damages, restitution, penalties or liquidated damages, arising out of, relating to, or in connection with any and all facts, transactions, events, policies, occurrences, acts, disclosures, statements, omissions or failures to act, which are or could be the basis of the claims for wages, benefits and related penalties alleged in the Action, during the relevant Class Period, including: failure to provide meal and rest periods, nonpayment or underpayment of the premium for meal and rest period violations, violation of the Unfair Competition Act, declaratory relief, failure to provide an accounting, and related representative actions under the Private Attorneys' General Act ("PAGA"), and interest, penalties and remedies thereon, including claims under the Labor Code and IWC Wage Orders.

Further, in exchange for the promises made by Defendant contained in the Settlement Agreement, the Named Plaintiffs, Settlement Class Members as well as individuals who do not properly elect to exclude themselves from the Settlement shall be deemed to have expressly waived and relinquished, to the full extent permitted by law, all rights under California Civil Code section 1542 with respect to Released Claims that they may have against the Defendant. Section 1542 provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

As such, the Named Plaintiffs, Settlement Class Members, as well as individuals who do not properly elect to exclude themselves from the Settlement understand that they are providing the Defendant with a full and complete release with respect to the Released Claims. Released Claims do not include any claims that cannot be released as a matter of law.

VIII. THE NEXT STEP – THE SETTLEMENT HEARING

A hearing (the “Settlement Hearing”) will be held before the Sacramento County Superior Court, on _____, at ____ p.m., 813 6th Street, Sacramento California 95814 to determine whether the proposed Settlement is fair, adequate and reasonable and should be finally approved by the Superior Court. The Settlement Hearing may be adjourned by the Superior Court from time to time as the Superior Court may determine without further notice.

IX. HOW TO OBTAIN ADDITIONAL INFORMATION

The foregoing is only a summary of the lawsuit and the proposed Settlement and does not purport to be comprehensive. For a more detailed statement of the matters involved in the lawsuit and the specific terms of the proposed Settlement, you may refer to the pleadings, the Settlement Agreement, and other papers filed in the Action, which may be inspected at the Office of the Clerk of the Sacramento County Superior Court during regular business hours of each court day.

All inquiries regarding this Notice and/or the Settlement should be directed to the Class Counsel and/or Claims Administrator, ILYM Group Inc.

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, DEFENDANT, OR DEFENDANT’S ATTORNEY WITH INQUIRIES.

SO ORDERED BY THE HONORABLE JUDGE _____ OF THE SUPERIOR COURT.