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14 NATHALIE POUILLE-ZAPATA, GUILLERMO  
ZAPATA, LISA VANDERPUMP and KEN TODD

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

18 OLIVIA BEVERLY HANSON, on behalf of  
19 herself and all others similarly situated,

20 Plaintiff,

21 v.

22 ZAPATA NUCCIO, INC., a California  
corporation doing business as SUR  
23 RESTAURANT; NATHALIE POUILLE-  
ZAPATA, an individual; GUILLERMO  
24 ZAPATA, an individual; LISA  
VANDERPUMP, an individual; KEN TODD,  
25 an individual, and DOES 1 through 100,  
inclusive,

26 Defendants.

CASE NO.: 20STCV28951

[Assigned to the Hon. Elihu M. Berle in  
Dept. 6]

**CLASS ACTION**

**JOINT STIPULATION RE: CLASS  
ACTION AND REPRESENTATIVE  
ACTION SETTLEMENT**

Action Filed: July 31, 2020

Trial Date: None Set

1 This Joint Stipulation re: Class Action and Representative Action Settlement  
2 (“Settlement” or “Agreement” or “Settlement Agreement”) is made by, between and among  
3 plaintiff OLIVIA BEVERLY HANSON (“Plaintiff”) individually and on behalf of the  
4 Settlement Class, as defined below, on the one hand; and defendants ZAPATA NUCCIO, INC.,  
5 NATHALIE-POUILLE-ZAPATA, GUILLERMO ZAPATA, and KEN TODD (collectively  
6 “Defendants”), on the other hand, in the lawsuit entitled *Olivia Beverly Hanson v. Zapata Nuccio,*  
7 *Inc., et al.* filed in Los Angeles County Superior Court, Case No. 20STCV28951 (the “Action”  
8 or “Class Action”). Plaintiff and Defendants shall be, at times, collectively referred to as the  
9 “Parties.” This Agreement is intended by the Parties to fully, finally, and forever resolve,  
10 discharge and settle the claims as set forth herein, based upon and subject to the terms and  
11 conditions of this Agreement.

12 **1. DEFINITIONS**

13 **A. “Action” or “Class Action”** means, *Olivia Beverly Hanson v. Zapata Nuccio,*  
14 *Inc., et al.* filed in Los Angeles County Superior Court, Case No. 20STCV28951.

15 **B. “Class Counsel”** means: David Bibiyan, Esq., Diego Aviles, Esq., and Sara  
16 Ehsani Nia, Esq., of Bibiyan Law Group, P.C. The term “Class Counsel” shall be used  
17 synonymously with the term “Plaintiff’s Counsel.”

18 **C. “Class Period”** means the period from July 31, 2016 through December 22, 2020.

19 **D. “Court”** means the Superior Court of the State of California for the County of  
20 Los Angeles.

21 **E. “Final Approval Date”** means the later of: (1) the date the Court signs an Order  
22 granting final approval of this Settlement (“Final Approval”) and Judgment; (2) if there is an  
23 objector, 60 days from the date the Final Approval and Judgment; or (3) to the extent any appeals  
24 have been filed, the date on which they have been resolved or exhausted.

25 **F. “Defendants”** means Zapata Nuccio, Inc., Nathalie-Pouille-Zapata, Guillermo  
26 Zapata and Ken Todd.

27 **G. “Employer Taxes”** means employer-funded taxes and contributions imposed on  
28 the wage portions of the Individual Settlement Payments (defined below) under the Federal

1 Insurance Contributions Act, the Federal Unemployment Tax Act, and any similar state and  
2 federal taxes and contributions required of employers, such as for unemployment insurance.

3 **H. “General Release”** means the general release of wage-and-hour related claims  
4 by Plaintiff, which is in addition to her limited release of claims as a Participating Class Member.

5 **I. “Gross Settlement Amount”** means a non-reversionary fund in the sum of Seven  
6 Hundred Thousand Dollars and Zero Cents (\$700,000.00),<sup>1</sup> which shall be paid by Defendants,  
7 from which all payments for the Individual Settlement Payments to Participating Class Members  
8 (defined below) and the Court-approved amounts for attorneys’ fees and reimbursement of  
9 litigation costs and expenses to Class Counsel, Settlement Administration Costs, a Service  
10 Award, and the Labor Code Private Attorneys’ General Act, codified at Labor Code Section  
11 2698, et seq. (“PAGA”) payment, shall be paid. It expressly excludes Employer Taxes, which  
12 shall be paid by Defendants separate and apart from the Gross Settlement Amount.

13 **J. “Service Award”** means monetary amounts to be paid to Plaintiff of up to Five  
14 Thousand Dollars and Zero Cents (\$5,000), which subject to Court approval, will be paid out of  
15 the Gross Settlement Amount.

16 **K. “Individual Settlement Payment”** means a payment to a Participating Class  
17 Member (defined below) of his or her net share of the Net Settlement Amount (defined below,  
18 which share and payment shall be determined by the calculations provided in this Agreement).

19 **L. “Individual Settlement Share”** means the gross amount of the Net Settlement  
20 Amount that a Settlement Class Member is eligible to receive based on the number of Workweeks  
21 that he or she worked as a Settlement Class Member during the Class Period if he or she does not  
22 submit a timely and valid Request for Exclusion.

23 **M. “LWDA Payment” of “PAGA Payment”** means the payment to the State of  
24 California Labor and Workforce Development Agency (“LWDA”) for its seventy-five percent  
25 (75%) share of the total amount allocated toward penalties under the PAGA all of which is to be  
26 paid from the Gross Settlement Amount. The Parties have agreed that Ten Thousand Dollars and  
27 Zero Cents (\$10,000.00) shall be allocated toward PAGA penalties (“PAGA Payment”), of which  
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<sup>1</sup> As the same may be increased in accordance with Paragraph 16, below.

1 Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) will be paid to the LWDA  
2 and Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00) will remain a part of the  
3 Net Settlement Amount for payment to Participating Class Members on a *pro rata* basis.

4 **N. “Net Settlement Amount”** means the portion of the Gross Settlement Amount  
5 that is available for distribution to the Participating Class Members after deductions for the Court-  
6 approved allocations for Settlement Administration Costs, a Service Award to Plaintiff, an award  
7 of attorneys’ fees, reimbursement of litigation costs and expenses to Class Counsel, and the  
8 LWDA Payment.

9 **O. “Operative Complaint” or “Complaint”** means the First Amended Complaint  
10 filed with the Court in the Class Action.

11 **P. “PAGA Period”** means the period from July 30, 2019 through December 22,  
12 2020.

13 **Q. “Participating Class Members”** means all Settlement Class Members who do  
14 not submit a timely and valid Request for Exclusion.

15 **R. “Plaintiff”, “Named Plaintiff” or “Class Representative”** shall refer to  
16 Plaintiff Olivia Beverly Hanson.

17 **S. “Preliminary Approval Date”** means the date on which the Court enters an  
18 Order granting preliminary approval of the Settlement.

19 **T. “Released Parties”** shall mean Defendants and each of their past, present, and  
20 future respective subsidiaries, dba’s, affiliates, parents, insurers and reinsurers, and company-  
21 sponsored employee benefit plans of any nature and their successors and predecessors in interest,  
22 including all of their officers, directors, shareholders, employees, agents, principals, heirs,  
23 representatives, accountants, auditors, consultants, attorneys, administrators, fiduciaries,  
24 trustees, and agents.

25 **U. “Response Deadline”** means the deadline for Settlement Class Members to mail  
26 or fax any Requests for Exclusion, objections, or Workweek Disputes to the Settlement  
27 Administrator, which is forty-five (45) calendar days from the date that the Class Notice is first  
28 mailed in English and Spanish by the Settlement Administrator. The date of the postmark or fax-

1 stamp shall be the exclusive means for determining whether a Request for Exclusion, objection,  
2 or Workweek Dispute was submitted by the Response Deadline.

3 **V. “Request for Exclusion”** means a written request to be excluded from the  
4 Settlement Class pursuant to Section 9.C below.

5 **W. “Settlement Administration Costs”** means all costs incurred by the Settlement  
6 Administrator in administration of the Settlement, including, but not limited to, translating the  
7 Class Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English  
8 and Spanish, calculating Individual Settlement Shares and Individual Settlement Payments and  
9 associated taxes and withholdings, providing declarations, generating Individual Settlement  
10 Payment checks and related tax reporting forms, doing administrative work related to unclaimed  
11 checks, transmitting payment to Class Counsel for the Court-approved amounts for attorneys’  
12 fees and reimbursement of litigation costs and expenses, to Plaintiff for her Service Award, and  
13 to the LWDA from the LWDA Payment, providing weekly reports of opt-outs, objections and  
14 related information, and any other actions of the Settlement Administrator as set forth in this  
15 Agreement, all pursuant to the terms of this Agreement. The Settlement Administration Costs are  
16 estimated not to exceed \$6,750.00. If the actual amount of the Settlement Administration Costs  
17 is less than \$6,750.00, the difference between \$6,750.00 and the actual Settlement Administration  
18 Costs shall be a part of the Net Settlement Amount. If the Settlement Administration Costs exceed  
19 \$6,750.00, then such excess will be paid solely from the Gross Settlement Amount and Defendant  
20 will not be responsible for paying any additional funds in order to pay these additional costs.

21 **X. “Settlement Administrator”** means the Third-Party Administrator mutually  
22 agreed upon by the Parties that will be responsible for the administration of the Settlement  
23 including, without limitation, translating the Class Notice in Spanish, the distribution of the  
24 Individual Settlement Payments to be made by Defendants from the Gross Settlement Amount  
25 and related matters under this Agreement.

26 **Y. “Settlement Class” or “Settlement Class Members”** means all current and  
27 former non-exempt, hourly paid employees who worked in California for Defendants at any time  
28 during the Class Period.

1           **Z.**     “**Workweeks**” means the number of workweeks that a Settlement Class Member  
2 was employed by Defendants in a non-exempt, hourly position during the Class Period. If a  
3 Settlement Class Member disputes his/her Individual Settlement Share, it shall be termed a  
4 “Workweek Dispute.”

5           **2.     BACKGROUND**

6           **A.**     Plaintiff filed a putative wage-and-hour class action complaint against  
7 Defendants on July 31, 2020. Plaintiff alleges that during the Class Period, with respect to  
8 Plaintiff and the Settlement Class Members, Defendants, *inter alia*, failed to pay the Settlement  
9 Class Members’ overtime wages and minimum wages for all hours worked and/or recorded.  
10 Plaintiff further alleges that Defendants failed to provide compliant meal and rest periods and  
11 associated premium payments; failed to issue compliant and accurate itemized wage statements;  
12 failed to timely pay all wages due and owing at the time of termination or resignation; failed to  
13 provide Class Members access to employment records; failed to reimburse work-related  
14 expenses; failed to provide gratuities earned; and engaged unfair competition based on the  
15 alleged Labor Code Violations.

16           **B.**     On July 30, 2020, Plaintiff filed with the LWDA and served on Defendants a  
17 notice under Labor Code section 2699.3 (the “PAGA Notice”) stating she intended to serve as a  
18 proxy of the LWDA to recover civil penalties for aggrieved employees. The PAGA Notice  
19 includes violations of law originally pled in the Class Action, plus a request for penalties for  
20 failure to comply with Labor Code sections 204, 246, 432, 1174, 1198.5, and 2810.5. On October  
21 20, 2020, when 65 days passed without any communication from the LWDA, Plaintiff filed a  
22 First Amended Complaint in the Class Action, adding a single cause of action under PAGA for  
23 penalties under Labor Code sections 210, 226.3, 558, 1197.1 and 2699, on behalf of herself and  
24 all other aggrieved employees in the PAGA Period as a proxy of the LWDA to recover civil  
25 penalties for the Labor Code violations set out in the PAGA Notice.

26           **C.**     Thereafter, the Parties agreed to exchange informal discovery and attend an early  
27 mediation, in which Plaintiff was provided with, among other things: (1) hire dates and separation  
28 dates (as applicable) for the non-exempt employees working for Defendants during the Class

1 Period; (2) a representative sampling of corresponding time and payroll records; (3) an Employee  
2 Handbook including pertinent written policies in place during the Class Period; and (4)  
3 Defendants' standalone policies, including those within their New Hire Packet.

4 **D.** On December 22, 2020, the Parties participated in a full-day mediation before  
5 mediator Eve Wagner, Esq., a well-regarded mediator experienced in mediating complex labor  
6 and employment matters. With the aid of the mediator's evaluation, the Parties reached the  
7 Settlement to resolve the Class Action.

8 **E.** Class Counsel has conducted significant investigation of the law and facts relating  
9 to the claims asserted in the Class Action and the PAGA Notice and has concluded that that the  
10 Settlement set forth herein is fair, reasonable, adequate, and in the best interests of the Settlement  
11 Class, taking into account the sharply contested issues involved, the expense and time necessary  
12 to litigate the Class Action through trial and any appeals, the risks and costs of further litigation  
13 of the Class Action, the risk of an adverse outcome, the uncertainties of complex litigation, the  
14 information learned through informal discovery regarding Plaintiff's allegations, and the  
15 substantial benefits to be received by the Settlement Class Members.

16 **F.** Defendants have concluded that, because of the substantial expense of defending  
17 against the Class Action, the length of time necessary to resolve the issues presented herein, the  
18 inconvenience involved, and the concomitant disruption to their business operations, it is in their  
19 best interest to accept the terms of this Agreement. Defendants deny each of the allegations and  
20 claims asserted against them in the Class Action and the PAGA Notice. However, Defendants  
21 nevertheless desire to settle the Class Action for the purpose of avoiding the burden, expense and  
22 uncertainty of continuing litigation and for the purpose of putting to rest the controversies  
23 engendered by the Action.

24 **G.** This Agreement is intended to and does effectuate the full, final, and complete  
25 resolution of all Released Claims of Plaintiff and Settlement Class Members, other than those  
26 Settlement Class Members who submit a timely and valid Request for Exclusion.

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1       **3. JURISDICTION**

2           The Court has jurisdiction over the Parties and the subject matter of the Class Action.  
3       The Class Action includes claims that, if proven, would authorize the Court to grant relief  
4       pursuant to the applicable statutes. After the Court has granted Final Approval of the Settlement  
5       and entered judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of  
6       the judgment pursuant to California Rule of Court, rule 3.769, subdivision (h).

7       **4. STIPULATION OF CLASS CERTIFICATION**

8           The Parties stipulate to the certification of the Settlement Class under this Agreement for  
9       purposes of settlement only.

10       **5. STATEMENT OF NO ADMISSION**

11           Defendants deny any wrongdoing of any sort and further deny any liability to Plaintiff  
12       and the Settlement Class with respect to any claims or allegations asserted in the Class Action  
13       and the PAGA Notice. This Agreement shall not be deemed an admission by Defendants of any  
14       claims or allegations asserted in the Actions or the PAGA Notice. Except as set forth elsewhere  
15       herein, in the event that this Agreement is not approved by the Court, or any appellate court, is  
16       terminated, or otherwise fails to be enforceable, Plaintiff will not be deemed to have waived,  
17       limited or affected in any way any claims, rights or remedies, or defenses in the Class Action or  
18       the PAGA Notice, and Defendants will not be deemed to have waived, limited, or affected in any  
19       way any of its objections or defenses in the Class Action and the PAGA Notice. The Parties shall  
20       be restored to their respective positions in the Class Action prior to the entry of this Settlement.

21       **6. RELEASE OF CLAIMS**

22           **A. Release by All Participating Class Members.**

23           Effective only upon the entry of an Order granting Final Approval of the Settlement, entry  
24       of Judgment, and payment by Defendants to the Third-Party Administrator selected of the full  
25       Gross Settlement Amount and Employers' Taxes necessary to effectuate the Settlement, Plaintiff  
26       and all Participating Class Members waive, release, discharge, and promise never to assert in any  
27       forum against the Released Parties all claims against the Released Parties asserted in the First  
28       Amended Complaint filed in the Class Action, or any and all claims that may be asserted against



1 the Released Parties based on the factual allegations in the First Amended Complaint filed in the  
2 Class Action, as follows: For the duration of the Class Period, the release includes: (a) all claims  
3 for failure to pay overtime wages; (b) all claims for failure to pay minimum wages; (c) all claims  
4 for failure to provide compliant meal and rest periods and associated premium pay; (d) all claims  
5 for the failure to timely pay wages upon termination; (e) all claims for non-compliant wage  
6 statements; and (f) all claims asserted through California Business & Professions Code § 17200  
7 *et seq.* arising out of the Labor Code violations referenced in the First Amended Complaint. For  
8 individuals employed during the PAGA Period, the release includes, for the duration of the  
9 PAGA Period, all claims released during the Class Period, as well as all asserted PAGA claims  
10 for penalties arising out of Labor Code Sections 210, 226.3, 558, 1197.1 and 2699 based on the  
11 factual allegations and Labor Code sections alleged to have been violated in the PAGA Notice  
12 and the First Amended Complaint filed in the Class Action on October 20, 2020.

13 **B. General Release.**

14 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry  
15 of Judgment, and payment by Defendants to the Third-Party Administrator selected of the full  
16 Gross Settlement Amount and Employers' Taxes necessary to effectuate the Settlement, in  
17 addition to the Released Claims, Plaintiff makes the additional following General Release:  
18 Plaintiff releases the Released Parties from of all claims, demands, rights, liabilities and causes  
19 of action pertaining to wage-and-hour violations, known or unknown, asserted or that might have  
20 been asserted, whether in tort, contract, or for violation of any state or federal statute, rule, law  
21 or regulation arising out of, relating to, or in connection with any violation related to wage-and-  
22 hour acts or omissions of the Released Parties through the date of full execution of this  
23 Agreement in connection with her employment or the termination thereof, excluding any claims  
24 to be made by Plaintiff for discrimination, retaliation, harassment, wrongful termination under  
25 California public policy, negligent infliction of emotional distress, intentional infliction of  
26 emotional distress, and failure to prevent harassment, whether these claims arise under the Fair  
27 Employment Housing Act, its federal equivalent, California common law, or otherwise. For the  
28 claims released via this General Release, Plaintiff stipulates and agrees that, upon the entry of an

1 Order granting Final Approval of the Settlement, entry of Judgment, and payment by Defendants  
2 to the Third-Party Administrator selected of the full Gross Settlement Amount and Employers’  
3 Taxes necessary to effectuate the Settlement, Plaintiff shall be deemed to have expressly waived  
4 and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of  
5 Section 1542 of the California Civil Code, or any other similar provision under federal or state  
6 law, which provides:

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

11       **7. SETTLEMENT ADMINISTRATOR**

12           Plaintiff and Defendants, through their respective counsel, have selected Phoenix  
13 Settlement Administrators to administer the Settlement, which includes but is not limited to  
14 translating the Class Notice to Spanish, distributing and responding to inquiries about the Class  
15 Notice and calculating all amounts to be paid from the Gross Settlement Amount. Charges and  
16 expenses of the Settlement Administrator, currently estimated to be \$6,750.00 will be paid from  
17 the Gross Settlement Amount. If the actual Settlement Administrator fees are less than \$6,750.00  
18 the difference will remain a part of the Net Settlement Amount.

19       **8. NOTICE, WORKWEEK DISPUTE, OBJECTION, AND EXCLUSION PROCESS**

20           **A. Notice to the Settlement Class Members.**

21           (1) Within ten (10) calendar days after the Preliminary Approval Date,  
22 Defendants’ Counsel shall provide the Settlement Administrator with information with respect  
23 to each Settlement Class Member, including his or her: (1) name, last known address(es) and last  
24 known telephone number(s) currently in Defendants’ possession, custody, or control; (2) Social  
25 Security Number in Defendants’ possession, custody, or control; and (3) the hire dates and  
26 termination dates for each Settlement Class Member (“Class List”). The Settlement  
27 Administrator shall perform an address search using the United States Postal Service National  
28 Change of Address (“NCOA”) database and update the addresses contained on the Class List

1 with the newly-found addresses, if any. Within seven (7) calendar days of receiving the Class  
2 List from Defendants, the Settlement Administrator shall mail the Class Notice in English and  
3 Spanish to the Settlement Class Members via first-class regular U.S. Mail using the most current  
4 mailing address information available. The Settlement Administrator shall maintain a list with  
5 names and all addresses to which notice was given, and digital copies of all the Settlement  
6 Administrator's records evidencing the giving of notice to any Settlement Class Member, for at  
7 least four (4) years from the Final Approval Date. Such information shall be available to Class  
8 Counsel and Defendants' Counsel upon request.

9 (2) The Class Notice will set forth:

- 10 (a) the Settlement Class Member's estimated payment and the basis  
11 for it;
- 12 (b) the information required by California Rule of Court, rule 3.766,  
13 subdivision (d);
- 14 (c) the material terms of the Settlement;
- 15 (d) the proposed Settlement Administration Costs;
- 16 (e) the definition of the Settlement Class;
- 17 (f) a statement that the Court has preliminarily approved the  
18 Settlement;
- 19 (g) how the Settlement Class Member can obtain additional  
20 information, including contact information for Class Counsel;
- 21 (h) information regarding opt-out and objection procedures;
- 22 (i) the date and location of the Final Approval Hearing; and
- 23 (j) that the Settlement Class Member must notify the Settlement  
24 Administrator no later than the Response Deadline if the  
25 Settlement Class Member disputes the accuracy of the number of  
26 Workweeks as set forth on his or her Class Notice ("Workweek  
27 Dispute"). If a Settlement Class Member fails to timely dispute  
28 the number of Workweeks attributed to him or her in conformity

1 with the instructions in the Class Notice, then he or she shall be  
2 deemed to have waived any objection to its accuracy and any claim  
3 to any additional settlement payment based on different data.

4 (3) If a Class Notice from the initial notice mailing is returned as  
5 undeliverable, the Settlement Administrator will attempt to obtain a current address for the  
6 Settlement Class Member to whom the returned Class Notice had been mailed, within five (5)  
7 calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class  
8 Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator  
9 is successful in obtaining a new address, it will promptly re-mail the Class Notice to the  
10 Settlement Class Member. Further, any Class Notices that are returned to the Settlement  
11 Administrator with a forwarding address before the Response Deadline shall be promptly re-  
12 mailed to the forwarding address affixed thereto. Class Members who are re-mailed a Class  
13 Notice shall have an additional fifteen (15) calendar days to submit a Request for Exclusion,  
14 objection or to dispute estimated payments.

15 (4) No later than seven (7) calendar days from the Response Deadline, the  
16 Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the  
17 completion of the notice process, including the number of attempts to obtain valid mailing  
18 addresses for and re-sending of any returned Class Notices, as well as the identities, number of,  
19 and copies of all Requests for Exclusion and objections/comments received by the Settlement  
20 Administrator.

21 **B. Objections.**

22 Only Settlement Class Members who do not opt out of the Settlement (*i.e.*, Participating  
23 Class Members) may object or comment regarding the Settlement. In order for any Settlement  
24 Class Member to object or comment to this Settlement, or any term of it, he or she should do so  
25 by mailing a written objection or comment to the Settlement Administrator at the address or  
26 phone number provided on the Class Notice no later than the Response Deadline. The Settlement  
27 Administrator shall email a copy of the objection/comment forthwith to Class Counsel and  
28 Defendants' counsel. Class Counsel shall lodge a copy of the objection or comment with the

1 Court with the Motion for Final Approval. The objection or comment should set forth in writing:  
2 (1) the objector's/commenter's name and address, and (2) the reason(s) for the  
3 objection/comment, along with whatever legal authority, if any, the objector/commenter asserts  
4 supports the objection. If a Settlement Class Member objects or comments regarding this  
5 Settlement, the Settlement Class Member will remain a member of the Settlement Class and if  
6 the Court approves this Agreement, the Settlement Class Member will be bound by the terms of  
7 the Settlement in the same way and to the same extent as a Settlement Class Member who does  
8 not object or comment. The date of mailing of the Class Notice to the objecting or commenting  
9 Settlement Class Member shall be conclusively determined according to the records of the  
10 Settlement Administrator. Settlement Class Members do not need to object or comment in  
11 writing to be heard at, or object/comment to the Settlement, at the Final Approval Hearing.

12 **C. Requesting Exclusion.**

13 Any Settlement Class Member may request exclusion from (i.e., "opt out" of) the  
14 Settlement by mailing a written request to be excluded from the Settlement ("Request for  
15 Exclusion") to the Settlement Administrator, postmarked or fax-stamped on or before the  
16 Response Deadline. To be valid, a Request for Exclusion must include the Class Member's name,  
17 social security number and signature and the following statement or something to its effect:  
18 "Please exclude me from the Settlement Class in the *Olivia Beverly Hanson v. Zapata Nuccio,*  
19 *Inc, et al.* matter" or a statement of similar meaning. The Settlement Administrator shall  
20 immediately provide copies of all Requests for Exclusion to Class Counsel and Defendants'  
21 Counsel and shall report the Requests for Exclusions that it receives, to the Court, in its  
22 declaration to be provided in advance of the Final Approval Hearing. Any Settlement Class  
23 Member who requests exclusion using this procedure will not be entitled to receive any payment  
24 from the Settlement and will not be bound by the Settlement Agreement or have any right to  
25 object to, appeal, or comment on the Settlement. Any Settlement Class Member who does not  
26 opt out of the Settlement by submitting a timely and valid Request for Exclusion will be bound  
27 by all terms of the Settlement, including those pertaining to the Released Claims, as well as any  
28 Judgment that may be entered by the Court if Final Approval of the Settlement is granted.

1           **D.     Disputes Regarding Settlement Class Members’ Workweek Data.**

2           Each Settlement Class Member may dispute the number of Workweeks attributed to him  
3 or her on his or her Class Notice (“Workweek Dispute”). Any such disputes must be mailed to  
4 the Settlement Administrator by the Settlement Class Member, postmarked on or before the  
5 Response Deadline. The Settlement Administrator shall immediately provide copies of all  
6 disputes to Class Counsel and counsel for Defendants and shall immediately attempt to resolve  
7 all such disputes directly with relevant Settlement Class Member(s) with the assistance of  
8 Defendants and Class Counsel. If the dispute cannot be resolved in this manner, the Court shall  
9 adjudicate the dispute.

10       **9.     INDIVIDUAL SETTLEMENT PAYMENTS TO PARTICIPATING CLASS**  
11           **MEMBERS**

12           Individual Settlement Payments will be calculated and distributed to Participating Class  
13 Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class  
14 Members’ respective number of Workweeks during the Class Period. Specific calculations of the  
15 Individual Settlement Payments will be made as follows:

16           **A.**     The Settlement Administrator will determine the total number of Workweeks  
17 worked by each Settlement Class Member and the aggregate number of Workweeks worked by  
18 all Settlement Class Members during the Class Period (“Class Workweeks”), as reflected on  
19 the Class List provided by Defendants.

20           **B.**     To determine each Participating Class Member’s Individual Settlement Share,  
21 the Settlement Administrator will determine the aggregate number of Workweeks worked by  
22 all Participating Class Members during the Class Period (“Participating Class Workweeks”)  
23 and use the following formula: Individual Settlement Share = (Participating Class Member’s  
24 Workweeks ÷ Participating Class Workweeks) × Net Settlement Amount.

25           **C.**     This net amount is to be paid out to Participating Class Members by way of  
26 check and is referred to as “Individual Settlement Payment(s).”

27     / / /

28     / / /

1                   **DISTRIBUTION OF PAYMENTS**

2                   **A.     Distribution of Individual Settlement Payments.**

3                   Settlement Class Members who do not submit a timely and valid Request for Exclusion  
4 (i.e., Participating Class Members) will receive an Individual Settlement Payment. Individual  
5 Settlement Payment checks shall remain valid and negotiable for one hundred and eighty (180)  
6 calendar days after the date of their issuance. Within seven (7) calendar days after expiration  
7 of the 180-day period, checks for such payments shall be canceled and funds associated with  
8 such checks shall be considered unpaid, unclaimed or abandoned cash residue pursuant to Code  
9 of Civil Procedure section 384 (“Unpaid Residue”). The Unpaid Residue plus accrued interest,  
10 if any, as provided in Code of Civil Procedure section 384, shall be transmitted as follows: to  
11 Legal Aid at Work, 180 Montgomery St., Suite 600, San Francisco, California 94104 for use  
12 in Los Angeles County. The Settlement Administrator shall prepare a report regarding the  
13 distribution plan pursuant to Code of Civil Procedure section 384 and the report shall be  
14 presented to the Court by Class Counsel along with a proposed amended judgment that is  
15 consistent with the provisions of Code of Civil Procedure section 384.

16                   **B.     Funding of Settlement.**

17                   Defendant Kenn Todd shall pay \$350,000 of the Gross Settlement Amount, defendant  
18 Guillermo Zapata shall pay \$175,000 of the Gross Settlement Amount and defendant Nathalie  
19 Poullie-Zapata shall pay \$175,000 of the Gross Settlement Amount, totaling to \$700,000.  
20 Nevertheless, Defendants shall remain jointly and severally liable for full payment of the Gross  
21 Settlement Amount in accordance with the terms in this Agreement.

22                   **C.     Timing of Funding**

23                   Defendants shall have until the later of: (1) thirty (30) days after final approval; or (2)  
24 March 1, 2022 to fully fund the Gross Settlement Amount to the Settlement Administrator  
25 pursuant to Internal Revenue Code section 1.468B-1 for deposit in an interest-bearing qualified  
26 settlement account (“QSA”) with an FDIC insured banking institution, for distribution in  
27 accordance with this Agreement and the Court’s Orders and subject to the conditions described  
28 herein. In addition, as part of the final payment, Defendants shall include Defendants’ share of

1 taxes owed on the wages portion of the settlement, which shall be determined by the Settlement  
2 Administrator. Individual Settlement Payments for Class Members shall be paid exclusively  
3 from the QSA, pursuant to the settlement formula set forth herein, and shall be mailed within  
4 seven (7) calendar days after the entire sum of the Gross Settlement Amount is paid along with  
5 the Employer Taxes by Defendants.

6 Payments from the QSA shall be made for (1) the Service Awards to Plaintiff as specified  
7 in this Agreement and approved by the Court; (2) the Attorneys' Fees and Cost Award to be paid  
8 to Class Counsel, as specified in this Agreement and approved by the Court; (3) the Settlement  
9 Administrator Costs, as specified in this Agreement and approved the Court; and (4) the amount  
10 allocated to PAGA penalties to be paid to the LWDA, as specified in this Agreement and  
11 approved by the Court. The balance remaining shall constitute the Net Settlement Amount from  
12 which Individual Settlement Payments shall be made to Participating Class Members, less  
13 applicable taxes and withholdings. All interest accrued shall be for the benefit of the Class  
14 Members and distributed in a pro-rata basis.

15 **C. Time for Distribution.**

16 Within seven (7) calendar days after payment of the full Gross Settlement Amount by  
17 Defendants, as well as Employer Taxes, or after the Final Order and Judgment following a Final  
18 Fairness and Approval hearing, whichever is later, or as soon thereafter as practicable, the  
19 Settlement Administrator shall distribute all payments due under the Settlement, including the  
20 Individual Settlement Payments to Participating Class Members, as well as the Court-approved  
21 payments for the Service Award to Plaintiff, attorneys' fees and litigation costs and expenses to  
22 Class Counsel, Administration Costs to the Settlement Administrator, and the portion of the  
23 LWDA payment payable to the LWDA.

24 **10. ATTORNEYS' FEES AND LITIGATION COSTS**

25 Class Counsel shall apply for, and Defendants shall not oppose, an award of attorneys'  
26 fees of up to one third of the Gross Settlement Amount, or Two Hundred Thirty-Three Thousand  
27 Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$233,333.33). Class Counsel shall  
28 further apply for, and Defendants shall not oppose, an application or motion by Class Counsel



1 for reimbursement of actual costs associated with Class Counsel’s prosecution of this matter as  
2 set forth by declaration testimony in an amount up to Twenty Thousand Dollars and Zero Cents  
3 (\$20,000.00). Awards of attorneys’ fees and costs shall be paid out of the Gross Settlement  
4 Amount, for all past and future attorneys’ fees and costs necessary to prosecute, settle, and obtain  
5 Final Approval of the settlement in the Action. The “future” aspect of the amounts stated herein  
6 includes, without limitation, all time and expenses expended by Class Counsel (including any  
7 appeals therein). There will be no additional charge of any kind to either the Settlement Class  
8 Members or request for additional consideration from Defendants for such work. Should the  
9 Court approve attorneys’ fees and/or litigation costs and expenses in amounts that are less than  
10 the amounts provided for herein, then the unapproved portion(s) shall be a part of the Net  
11 Settlement Amount.

12 **11. SERVICE AWARD TO PLAINTIFFS**

13 Named Plaintiff shall seek, and Defendants shall not oppose, a Service Award in an  
14 amount not to exceed Five Thousand Dollars and Zero Cents (\$5,000.00) for Plaintiff, for  
15 participation in and assistance with the Class Action. Any Service Award awarded to Plaintiff  
16 shall be paid from the Gross Settlement Amount and shall be reported on an IRS Form 1099. If  
17 the Court approves Service Awards to Plaintiff in less than the amounts sought herein, then the  
18 unapproved portion(s) shall be a part of the Net Settlement Amount.

19 **12. TAXATION AND ALLOCATION**

20 **A.** Each Individual Settlement Share shall be allocated as follows: 33% as wages (to  
21 be reported on an IRS Form W2); and 67% as interest and penalties (to be reported on an IRS  
22 Form 1099). The Parties agree that the employees’ share of taxes and withholdings with respect  
23 to the wage-portion of the Individual Settlement Share will be withheld from the Individual  
24 Settlement Share in order to yield the Individual Settlement Payment. The amount of federal  
25 income tax withholding will be based upon a flat withholding rate for supplemental wage  
26 payments in accordance with Treasury Regulation § 31.3402(g)-1(a)(2) as amended or  
27 supplemented. Income tax withholding will also be made pursuant to applicable state and/or  
28 local withholding codes or regulations.

1           **B.**     Forms W-2 and/or Forms 1099 will be distributed by the Settlement  
2 Administrator at times and in the manner required by the Internal Revenue Code of 1986 (the  
3 “Code”) and consistent with this Agreement. If the Code, the regulations promulgated  
4 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes  
5 set forth in this Section may be modified in a manner to bring Defendants into compliance with  
6 any such changes.

7           **C.**     All Employer Taxes shall be paid by Defendants separate, apart and above from  
8 the Gross Settlement Amount. Defendants shall remain liable to pay the employer’s share of  
9 payroll taxes as described above.

10          **D.**     Neither Counsel for Plaintiff nor Defendants intend anything contained in this  
11 Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement  
12 be relied upon as such within the meaning of United States Treasury Department Circular 230  
13 (31 C.F.R. Part 10, as amended) or otherwise.

14   **13.    PRIVATE ATTORNEYS’ GENERAL ACT ALLOCATION**

15           The Parties agree to allocate Ten Thousand Dollars and Zero Cents (\$10,000) of the Gross  
16 Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five percent (75%)  
17 of the amount allocated toward PAGA (\$7,500.00) will be paid to the LWDA (*i.e.*, the PAGA  
18 Payment), and twenty-five percent (25%) (\$2,500.00) will remain a part of the Net Settlement  
19 Amount to be distributed to Participating Class Members on a *pro rata* basis, based upon their  
20 respective Workweeks.

21   **14.    COURT APPROVAL**

22           This Agreement is contingent upon an order by the Court granting Final Approval of the  
23 Settlement, and that the LWDA does not intervene and object to the Settlement. In the event it  
24 becomes impossible to secure approval of the Settlement by the Court and the LWDA, the Parties  
25 shall be restored to their respective positions in the Class Action prior to entry of this Settlement.  
26 If this Settlement Agreement is voided, not approved by the Court or approval is reversed on  
27 appeal, it shall have no force or effect and no Party shall be bound by its terms except to the  
28 extent: (a) the Court reserves any authority to issue any appropriate orders when denying

1 approval; and/or (b) there are any terms and conditions in this Settlement Agreement specifically  
2 stated to survive the Settlement Agreement being voided or not approved, and which control in  
3 such an event.

4 **15. INCREASE IN WEEKLY PAY PERIODS**

5 Defendants represent that there are no more than 15,903 Workweeks worked during the  
6 Class Period by Class Members. In the event the number of Workweeks increases by more  
7 than 5%, or 924 Workweeks, then the Gross Settlement Amount shall be increased  
8 proportionally by the Workweek Value. The Workweek Value shall be calculated by dividing  
9 the Gross Settlement Amount (\$700,000.00) by 15,903, which amounts to a Workweek Value  
10 of \$44.01. Thus, for example, should there be 17,000 Workweeks in the Class Period, then the  
11 Gross Settlement Amount shall be increased by \$48,278.97. (17,000 Workweeks – 15,903  
12 Workweeks x \$44.01/Workweek.)

13 **16. NOTICE OF JUDGMENT**

14 In addition to any duties set out herein, the Settlement Administrator shall provide  
15 notice of the Final Judgment entered in the Class Action by posting the same on its website.

16 **17. MISCELLANEOUS PROVISIONS**

17 **A. Interpretation of the Agreement.**

18 This Agreement constitutes the entire agreement between Plaintiff and Defendants with  
19 respect to its subject matter. Except as expressly provided herein, this Agreement has not been  
20 executed in reliance upon any other written or oral representations or terms, and no such extrinsic  
21 oral or written representations or terms shall modify, vary or contradict its terms. In entering  
22 into this Agreement, the Parties agree that this Agreement is to be construed according to its  
23 terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be  
24 interpreted and enforced under the laws of the State of California, both in its procedural and  
25 substantive aspects, without regard to its conflict of law provisions. Any claim arising out of or  
26 relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively  
27 in the Superior Court of the State of California for the County of Los Angeles, and Plaintiff and  
28 Defendants hereby consent to the personal jurisdiction of the Court in the Action over it solely

1 in connection therewith. The foregoing is only limited to disputes concerning this Agreement  
2 and in no way limits or negates the enforceability and effect of any underlying arbitration  
3 agreements signed by employees of Defendants obligating them to arbitrate any and all claims  
4 on an individual (and not on a class, collective, or representative) basis. Plaintiff, on Plaintiff's  
5 behalf and on behalf of the Settlement Class, and Defendants participated in the negotiation and  
6 drafting of this Agreement and had available to them the advice and assistance of independent  
7 counsel. As such, neither Plaintiff nor Defendants may claim that any ambiguity in this  
8 Agreement should be construed against the other. The Agreement may be modified only by a  
9 writing signed by counsel for the Parties and approved by the Court.

10 **B. Further Cooperation.**

11 Plaintiff, Defendants, and their respective attorneys shall proceed diligently to prepare  
12 and execute all documents, to seek the necessary approvals from the Court, and to do all things  
13 reasonably necessary to consummate the Settlement as expeditiously as possible.

14 **C. Counterparts.**

15 The Agreement may be executed in one or more actual or non-original counterparts, all  
16 of which will be considered one and the same instrument and all of which will be considered  
17 duplicate originals.

18 **D. Authority.**

19 Each individual signing below warrants that he or she has the authority to execute this  
20 Agreement on behalf of the party for whom or which that individual signs.

21 **E. No Third-Party Beneficiaries.**

22 Plaintiff, Participating Class Members, Class Counsel, and Defendants are direct  
23 beneficiaries of this Agreement, but there are no third-party beneficiaries.

24 **F. Force Majeure.**

25 The failure of any party to perform any of its obligations hereunder shall not subject such  
26 party to any liability or remedy for damages, or otherwise, where such failure is occasioned in  
27 whole or in part by acts of God, fires, accidents, earthquakes, other natural disasters, explosions,  
28 floods, wars, interruptions or delays in transportation, power outages, labor disputes or shortages,

1 shortages of material or supplies, governmental laws, restrictions, rules or regulations, sabotage,  
2 terrorist acts, acts or failures to act of any third parties, or any other similar or different  
3 circumstances or causes beyond the reasonable control of such party.

4 **E. Deadlines Falling on Weekends or Holidays.**


5 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,  
6 or legal holiday, that deadline shall be continued until the following business day.

7 **F. Severability.**


8 In the event that one or more of the provisions contained in this Agreement shall for any  
9 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or  
10 unenforceability shall in no way effect any other provision if Defendants' Counsel and Class  
11 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed  
12 as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

13 **IT IS SO AGREED:**

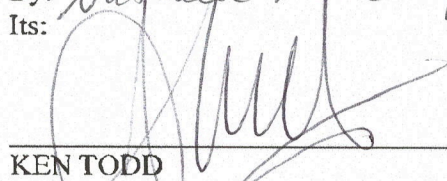
14 Dated: 2/12, 2021

  
Olivia Beverly Hanson (Feb 12, 2021 20:49 PST)  
OLIVIA BEVERLY HANSON  
Plaintiff and Class Representative

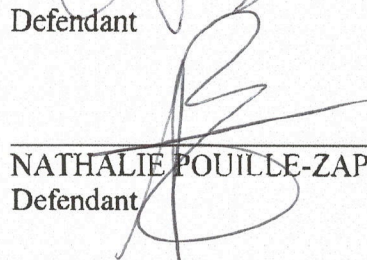
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ZAPATA NUCCIO, INC.  
Defendant  
By: Rafael Pojillo Zapata  
Its:

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23 Dated: 2/25, 2021

  
KEN TODD  
Defendant

24  
25  
26 Dated: 2/25, 2021

  
NATHALIE POUILLE-ZAPATA  
Defendant

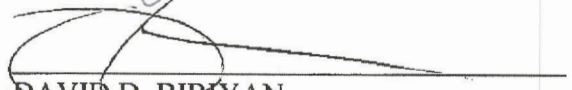
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Dated: February 25, 2021


  
\_\_\_\_\_  
GUILLERMO ZAPATA  
Defendant

**AGREED AS TO FORM:**

Dated: February 16, 2021

  
\_\_\_\_\_  
DAVID D. BIBIYAN  
Counsel for Plaintiff Olivia Beverly Hanson

Dated: March 4, 2021

  
\_\_\_\_\_  
ORION ROBINSON  
Counsel for Defendants Zapata Nuccio, Inc.,  
Nathalie-Pouille-Zapata, Guillermo Zapata,  
Lisa Vanderpump and Ken Todd