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22 **Attorneys for Defendant Rowtown, Inc.**

23 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

24 **COUNTY OF MONTEREY**

25 **LAUREN LEBARRE,**

26 **Plaintiff,**

27 **v.**

28 **ROWTOWN, INC., a corporation;**  
**OBSIDIAN HR, INC., a corporation; and**  
**DOES 1-100, inclusive,**

**Defendants.**

**Case No.: 21CV002021**

**CLASS ACTION SETTLEMENT**  
**AGREEMENT AND RELEASE**

29 This Class Action Settlement and Release (hereinafter "Settlement Agreement") is made and  
30 entered into by and between Plaintiff Lauren LeBarre ("Plaintiff" or "Class Representative"),  
31 individually and on behalf of the putative class, and Defendant Rowtown, Inc. ("Defendant"),  
32 collectively referred to as the "Parties." The Parties hereby agree that this entire action shall be  
33 settled on the terms and conditions set forth in this Settlement Agreement, subject to preliminary and

1 final approval by the Court. In the event that the Court does not execute and file the Order of Final  
2 Approval; the Settlement Agreement does not become final for any reason or is modified in any  
3 material respect; or the Effective Settlement Date, as defined herein, does not occur, this Settlement  
4 Agreement shall be deemed null and void ab initio and shall be of no force or effect whatsoever, and  
5 shall not be referred to for any purpose whatsoever.

## INTRODUCTION

6 1. On April 23, 2021, Class Counsel sent written notice to Defendant and the California  
7 Labor and Workforce Development Agency (“LWDA”), alleging that, during Plaintiff’s prior  
8 employment with Defendant, she was not paid overtime at the correct rate of pay, had tips  
9 impermissibly taken by her employer, was not paid sick leave at the correct rate, was not timely paid  
10 all wages, was not paid all wages due upon termination, and was not furnished with accurate wage  
11 statements. The LWDA did not respond to this letter.

12 2. On June 23, 2021, Class Counsel filed this action in Monterey County Superior Court  
13 as against Defendant and co-Defendant Obsidian HR, Inc., on behalf of herself and all other  
14 California employees similarly situated. Plaintiff also brought a cause of action under the Private  
15 Attorneys General Act (“PAGA”, Lab. Code, § 2698 *et seq.*) Importantly, however, this Settlement  
16 Agreement does not include any settlement for civil penalties under the PAGA. Plaintiff shall cause  
17 the Ninth Cause of Action under the PAGA to be dismissed, without prejudice, prior to seeking  
18 preliminary approval of this Settlement Agreement.

19 3. In July 2021, the California Supreme Court issued its ruling in the matter of *Ferra v.*  
20 *Loews Hollywood Hotel, LLC* (2021) 11 Cal.5<sup>th</sup> 858, clarifying that “premium” payments for non-  
21 compliant rest and meal periods must be paid at the “regular rate of compensation”, inclusive of  
22 commissions, nondiscretionary bonuses, and other items of compensation. Accordingly, on August  
23 17, 2021, Plaintiff filed a First Amended Complaint—this did not add any substantive claims but  
24 clarified that, to the extent that rest/meal premiums were paid, they were not paid at the appropriate  
25 regular rate of compensation.

26 4. On November 12, 2021, Defendant filed an Answer to the First Amended Complaint,  
27 in which it denied the claims, causes of action and substantive allegations of the First Amended  
28 Complaint, and asserted various affirmative defenses. Defendant continues to deny the claims and  
causes of action of the First Amended Complaint, and enters into this Agreement to avoid  
unnecessary litigation expenses.

5. On January 6, 2022, following considerable informal discovery in which Defendant  
disclosed key wage-and-hour data and a sampling (30 percent) of payroll documents of the Class  
Members, the Parties attended mediation before Joel Grossman, Esq., an experienced and renowned  
mediator of employment class actions. Pursuant to said mediation, the Parties agreed to resolve, on  
behalf of the putative Class, all claims alleged in the First Amended Complaint and derivative claims  
related thereto arising from the facts alleged in the First Amended Complaint, up to the date of  
preliminary Court approval of this settlement, including claims for underpayment of overtime,  
underpayment of paid sick leave hours, failure to provide meal or rest periods, underpayment of meal  
or rest period premiums, wage statement violations, unfair business practices, and waiting time  
penalties arising from or related to such claims. Co-Defendant Obsidian HR, Inc. is not a party to this  
Settlement Agreement, though Plaintiff intends to dismiss all claims against that entity following the  
entry of Order of Final Approval.

1           6.       Subsequent to mediation, the Parties agreed to a putative class action settlement and  
2 release and Plaintiff submitted it to the above-captioned Court for preliminary approval. However,  
3 and prior to hearing on the motion for preliminary approval, Defendant disclosed that, due to the  
4 inclusion of a “Meal/Rest Period Subclass”, the number of putative class members would be  
5 substantially greater than previously anticipated. Class Counsel informed the Court as to these  
6 developments and that prior settlement agreement was not preliminarily approved and, accordingly, is  
7 void and of no effect whatsoever.

8           7.       For purposes of the settlement set forth in this Settlement Agreement, the Parties agree  
9 that the Court shall certify one Settlement Class, for settlement purposes only, defined as follows:

10           All current and former non-exempt employees employed by Rowtown, Inc. in the  
11 State of California from June 23, 2017 to the date of preliminary approval of this  
12 Settlement.

13           8.       The Parties further agree that the Settlement Class shall be divided into the  
14 following subclasses:

- 15           a.       The “Overtime Subclass” – Plaintiff and all other current and former non-exempt  
16 employees employed by Rowtown, Inc. in the state of California who were paid non-  
17 discretionary incentives, including without limitation, service charges, and worked  
18 overtime in the same pay period from June 23, 2017 to the date of preliminary Court  
19 approval of the Settlement;
- 20           b.       The “Sick Leave Subclass” – Plaintiff and all other current and former non-exempt  
21 employees employed by Rowtown, Inc. in the state of California who were paid non-  
22 discretionary incentives, including without limitation, service charges, and used paid  
23 sick leave in the same pay period from June 23, 2017 to the date of preliminary Court  
24 approval of the Settlement;
- 25           c.       The “Meal/Rest Period Premium Subclass” – Plaintiff and all other current and former  
26 non-exempt employees employed by Rowtown, Inc. in the state of California who  
27 were paid non-discretionary incentives, including without limitation, service charges,  
28 and were paid meal or rest period premiums in the same pay period from June 23,  
29 2017 to the date of preliminary Court approval of the Settlement ;
- 30           d.       The “Waiting Time Subclass” – Plaintiff and all other current and former non-exempt  
31 employees employed by Rowtown, Inc. in the State of California who were paid non-  
32 discretionary incentives, including without limitation service charges, and either  
33 worked overtime or used paid sick leave or were paid meal or rest period premiums  
34 in the same workweek, and whose employment with Rowtown, Inc. was severed, at  
35 any time since June 23, 2018; and
- 36           e.       The “Wage Statement Subclass” – Plaintiff and all other current and former  
37 employees in the Overtime Subclass, the Sick Leave Subclass, the Meal/Rest Period  
38 Premium Subclass, and the Meal/Rest Period Subclass who received one or more  
39 wage statements at any time from June 23, 2020 to the date of preliminary Court  
40 approval of the Settlement.

41           The members of the Settlement Class are also referred to as the Class Members. The Class  
42 Period shall be defined as June 23, 2017, to the date of preliminary approval of this Settlement,  
43 inclusive. The Parties and Class Counsel agree that certification of the Settlement Class in  
44 accordance with the terms of this Settlement Agreement is for settlement purposes only. Nothing in

1 this Settlement Agreement will be construed as an admission or acknowledgement of any kind that  
2 any class should be certified in this action or in any other action or proceeding. If the Court does not  
3 grant preliminary and final approval of this settlement, the Parties agree that this conditional class  
certification for settlement purposes automatically will be deemed revoked.

4 9. For purposes of the settlement set forth in this Settlement Agreement only, Plaintiff  
5 contends and Defendant does not dispute that there is substantial evidence to support the requisites  
for certifying the Settlement Class for settlement purposes, specifically:

- 6 a. There are approximately 82 putative Class Members, which is so numerous as  
7 to make it impracticable to join all Class Members;
- 8 b. The Settlement Class is ascertainable;
- 9 c. Common questions of law and fact exist;
- 10 d. The claims of the Class Representative are typical of the claims of the Class  
11 Members, and the Class Representative is an adequate representative of the  
12 Class;
- 13 e. Mayall Hurley P.C. is adequate to represent the Settlement Class and should  
14 be appointed as Class Counsel;
- 15 f. The prosecution of separate actions by individual members of the Settlement  
16 Class would create the risk of inconsistent or varying adjudications, which  
17 could establish incompatible standards of conduct; and
- 18 g. Questions of law and fact common to the members of the Settlement Class  
predominate over questions affecting individual members of the Settlement  
19 Class, and a class action is superior to other available means for the fair and  
20 efficient adjudication of the controversy.

21 10. By entering into this Settlement Agreement, Defendant admits no liability, and  
22 explicitly denies any liability or wrongdoing of any kind arising from any of the claims alleged in the  
23 Action. Nor shall this Settlement Agreement constitute an admission by Defendant as to any  
24 interpretation of laws or as to the merits, validity, or accuracy of any of the claims made against them  
25 in the Action or that the claims alleged are suitable for class-wide treatment. Defendant further  
26 denies liability as to all causes of action alleged in the Action and asserts that, at all times, it complied  
27 with all pertinent provisions of the Labor Code. Defendant enters into this Settlement Agreement  
solely to avoid the time, expense, and risk of continued litigation. The Parties agree that an express  
28 condition of this settlement is that there has been no finding of liability on the merits, that the  
certification of the settlement class is for settlement purposes only, and that this settlement and any  
document related to this settlement (including the Settlement Agreement, the Order of Final Approval  
and judgment to be issued by the Court, and any related documents) and the negotiations leading up  
to this settlement, shall be inadmissible in evidence and shall not be used for any purpose in this or  
any other proceeding, except in an action or proceeding to approve, interpret, or enforce the terms of  
this Settlement Agreement.

1 11. Plaintiff and Class Counsel have conducted necessary informal discovery and  
2 investigation and performed a thorough analysis of the law and facts relating to the claims asserted in  
3 the Action. Based upon their investigation and discovery, and taking into account the defenses that  
4 Defendant asserted and intended to assert in connection with class certification, liability, and the  
5 amount of unpaid wages and penalties that might be recovered after trial, the expense and time  
6 necessary to pursue the action through trial, the risks and costs of further prosecution of the Lawsuit,  
7 the uncertainties of complex litigation, the prior experience of Class Counsel in other actions with  
8 Labor Code claims, and the benefits that will accrue to the Class Members, Plaintiff and Class  
9 Counsel believe that a settlement with Defendant on the terms set forth herein is fair, reasonable,  
10 adequate, and in the best interests of the Class Members.

### 11 **DEFINITIONS**

12 12. “Action” means the above-captioned matter, *LeBarre v. Rowtown, Inc., et al.*,  
13 Monterey County Superior Court, Case No. 21CV002021.

14 13. “Agreement” or “Settlement Agreement” or “Settlement” mean this Class Action  
15 Settlement Agreement and Release.

16 14. “Class Counsel” means Mayall Hurley P.C., by and through lead counsel Robert J.  
17 Wasserman and John P. Briscoe.

18 15. “Class List” means a list of the names, most current mailing addresses and social  
19 security numbers of each Class Member.

20 16. “Class Member” means all non-exempt employees employed by Defendant in  
21 California from June 23, 2017, to the date on which this Settlement Agreement is preliminarily  
22 approved by a court.

23 17. “Class Period” means June 23, 2017, to the date on which this Settlement Agreement  
24 is preliminarily approved by a court.

25 18. “Class Notice” means a notice entitled “Class Notice of Class Action, Preliminary  
26 Approval of Settlement, and Final Approval Hearing” to be approved by the Court and to be mailed  
27 to Class Members as directed by the Court. The Class Notice shall be in, or substantially similar to,  
28 the form attached hereto as Exhibit A.

19 19. “Class Representative” or “Plaintiff” means Plaintiff Lauren LeBarre.

20 20. “Complaint” means the First Amended Complaint for Damages filed in this Action on  
21 August 17, 2021.

22 21. “Court” means the Monterey County Superior Court.

23 22. “Defense Counsel” means counsel for Defendant: the firm of Fenton & Keller, through  
24 lead counsel Christopher E. Panetta and Marco A. Lucido.

25 23. “Effective Settlement Date” as defined below is a condition of performance of the  
26 obligations under this Settlement Agreement. The Effective Settlement Date is determined as

1 follows. If no Class Member or any person claiming to have standing submits an objection or  
2 otherwise purports to object to the Settlement Agreement, then the Effective Settlement Date is the  
3 date of the Court's entry of an Order of Final Approval. If any Class Member or any person claiming  
4 to have standing submits an objection or otherwise purports to object to the Settlement Agreement,  
5 then the Effective Settlement Date is 14 calendar days after (a) the Court's entry of a final approval  
6 order and judgment finally approving the Settlement Agreement ("Order of Final Approval"), and (b)  
7 the first to occur of the following: (1) the date for seeking appellate review of the Court's Order of  
8 Final Approval has passed without a timely appeal or request for review having been made (i.e., 61  
9 days after entry of the trial court's Order of Final Approval and Judgment); or (2) if an appeal,  
10 review, or writ is sought from the Order of Final Approval, the day after the Order of Final Approval  
11 is affirmed or the appeal, review or writ is dismissed or denied, and the Order of Final Approval is no  
12 longer subject to further judicial review.

13 24. "Final Approval Hearing" means the hearing set by the Court for the purpose of  
14 determining, inter alia, (1) the fairness, adequacy and reasonableness of the Settlement Agreement  
15 pursuant to class action procedures and requirements, (2) the service payment to Plaintiff, and (3) the  
16 fees and costs of Class Counsel.

17 25. "Net Settlement Amount" means the portion of the Gross Settlement Amount available  
18 for distribution to Participating Class Members under this Agreement after the payment of the Court-  
19 approved (a) fees and costs of the Settlement Administrator, (b) Service Payment to the Class  
20 Representative, and (c) fees and costs of Class Counsel.

21 26. "Opt-Out" refers to a written, signed request by a Class Member to be excluded from  
22 the Class pursuant to Paragraph 42, filed within the time period and as directed by the Court in the  
23 Class Notice.

24 27. "Order of Final Approval" means an order executed and filed by the Court granting  
25 final approval to the Settlement and entering judgment.

26 28. "Order of Preliminary Approval" means an order executed and filed by the Court  
27 preliminarily approving the Settlement and authorizing dissemination of the Class Notice.

28 29. "Participating Class Member" means any Class Member who does not properly file an  
29 Opt-Out.

30 30. "Qualified Settlement Fund" or "QSF" mean an account that will qualify and be  
31 characterized as a Qualified Settlement Fund under the provisions of the U.S. Treasury Regulations  
32 1.486B-1 and 1.468B-5, to be set up as provided below, and into which the Gross Settlement Amount  
33 is to be deposited as agreed herein, to be administered in a manner consistent with the law and the  
34 terms of this Settlement Agreement.

35 31. "Released Class Claims" means the released claims of the Participating Class  
36 Members, described in detail in Paragraphs 51 and 52, as against Defendant and the other Releasees.

37 32. "Releasees" means Defendant, and its parent companies, subsidiaries, affiliates,  
38 shareholders, members, agents (including without limitation, any investment bankers, accountants,  
39 insurers, reinsurers, attorneys, and any past, present or future officers, directors, and employees)  
40 predecessors, successors, and assigns.

1 33. "Service Payment" means the payment to Plaintiff Lauren LeBarre for her service as  
2 Class Representative.

3 34. "Settlement Administrator" means Phoenix Settlement Administrators.

4 **TERMS AND CONDITIONS OF SETTLEMENT**

5 35. **Gross Settlement Amount**

6 The Parties agree to settle this Class Action for the Gross Settlement Amount of \$75,000. The  
7 settlement is being made on an all-in, non-reversionary basis, such that Defendant will pay the  
8 entirety of the agreed-upon Gross Settlement Amount. The Gross Settlement Amount and other  
9 actions and forbearances taken by Defendant are paid in full and final settlement of (a) the Released  
10 Claims, (b) the fees and costs of the Settlement Administrator, (c) the Service Payment to Plaintiff,  
11 and (d) Class Counsel's Fees and Costs. The Gross Settlement Amount is the maximum total amount  
that Defendant must pay in settlement of this Class Action and pursuant to this Agreement.  
Defendant's share of payroll taxes will not be paid from the Gross Settlement Amount, but instead  
will be paid separately from the Gross Settlement Amount.

12 The Parties estimate that, as of the date this Settlement Agreement is signed, there are  
13 approximately 82 Class Members who received 5,090 wage statements during the Class Period. If  
14 either of these numbers increases by more than 5% through the end of the Class Period, the Maximum  
15 Settlement Amount shall increase pro rata with a 5% grace margin (e.g., if the number of Class  
16 Members increases by 6%, the Maximum Settlement Amount shall increase by 1%). If both the  
17 number of Class Members and the number of Workweeks increases by more than 5%, the greater  
percentage increase will control (e.g., if the number of Class Members increases by 6% and the  
number of furnished wage statements increases by 8%, the Maximum Settlement Amount will  
increase by 3%).

18 36. **Establishment of the Qualified Settlement Fund.**

19 The Settlement Administrator shall be responsible for establishing a QSF upon the Court's  
20 approval to do so, which approval the Parties will jointly seek. The QSF will be taxed as a separate  
21 entity for purposes of all federal, state, and local taxes, and the Parties agree to treat the QSF on a  
22 basis consistent therewith. Payment of the Gross Settlement Amount by Defendant pursuant to the  
23 terms of this Settlement Agreement shall settle and resolve all of the Released Claims. The QSF is to  
be funded by July 15, 2022 or within fifteen (15) calendar days of the Effective Settlement Date,  
whichever date is later. All costs and expenses arising out of or in connection with the administration  
of this Settlement Agreement shall be paid from the Gross Settlement Amount.

24 37. **No Claim Form Required.**

25 Each Participating Class Member shall be entitled to a share of the Net Settlement Amount.  
26 Participating Class Members shall not be required to complete a claim form. Class Members shall  
27 receive a Class Notice informing them of the terms of the Settlement Agreement, their right to file an  
28 Opt-Out and/or object, and an estimate of their share of the Net Settlement Amount. Unless a Class  
Member elects to file an Opt-Out, he or she will be a Participating Class Member.

1           38.     **Calculation of Individual Settlement Payments.**

2           The individual settlement payments of Participating Class Members will be calculated as  
3 follows:

- 4           a.   Step 1: The Gross Settlement Amount shall be deposited into the QSF.
- 5           b.   Step 2: From the Gross Settlement Amount, the following shall be deducted:
- 6                 i.   The Court-approved fees and costs of the Settlement Administrator;
- 7                 ii.   The Court-approved Service Payment to the Class Representative; and
- 8                 iii.   The Court-approved fees and costs of Class Counsel.

9                     The remaining amount after all such deductions shall be referred to as the Net  
10 Settlement Amount.

- 11           c.   Step 3: Each Participating Class Member's share of the Net Settlement Amount will then  
12 be calculated as a percentage, the numerator of which is the number of wage statements he  
13 or she received during the Class Period, the denominator of which is the total number of  
14 wage statements issued to all Participating Class Members, all as determined based on  
15 Defendant' records.

16           39.     **Fees and Costs of the Claims Administrator.**

17           As set forth above, and subject to Court approval, the Parties designate Phoenix Settlement  
18 Administrators as the Settlement Administrator. The Settlement Administrator shall perform the  
19 duties required by this Settlement Agreement by, among other things, and without limitation, (i)  
20 receiving and updating through normal and customary procedures, prior to the mailing of the Class  
21 Notice, the list of Class Members provided by Defendant, (ii) printing and mailing the Court-  
22 approved Class Notice, (iii) performing necessary additional skip traces on any Class Notices and/or  
23 checks returned as undeliverable, (iv) preparing and mailing settlement checks, (v) responding to  
24 Participating Class Members' inquiries as appropriate, (vi) preparing all appropriate tax forms in  
25 connection with the settlement payments and remitting those forms and all required payments to the  
26 appropriate governmental agencies, (vii) preparing declarations related to administration required by  
27 the Court, and (viii) generally performing all normal and customary duties associated with the  
28 administration of such settlements. All of the Settlement Administrator's fees and costs, which shall  
not exceed \$5,950 unless otherwise approved by the Court, will be paid out of the QSF.

39           40.     **Service Payment for Class Representative.**

40           Defendant will not oppose Plaintiff's request for a Service Payment to Plaintiff in an amount  
41 not to exceed \$3,000 in consideration for her service as Class Representative. The Service Payment  
42 is in addition to Plaintiff's individual settlement payment as a Participating Class Member. The  
43 service Payment will be paid out of the QSF. The Settlement Administrator or QSF will issue  
44 Plaintiff an IRS Form 1099 in connection with this payment. In exchange for receiving the Service  
45 Payment, Plaintiff will not opt-out of the settlement, and will execute this settlement agreement,  
46 which constitutes a full, general release of all claims, including a Civil Code section 1542 waiver.



1           41.     **Fees and Costs of Class Counsel.**

2           Subject to Court approval, Class Counsel will apply to the Court for an award of attorneys’  
3 fees and costs incurred in connection with the prosecution of this matter; all of the work remaining to  
4 be performed including, but not limited to, documenting the Settlement Agreement; preparing all of  
5 the motions and documents necessary to secure Court approval of the Settlement Agreement  
(including all related appellate work); carrying out their duties to see that the Settlement Agreement is  
fairly administered and implemented; and obtaining dismissal of the action.

6           Defendant will not oppose Class Counsel’s request to the Court for an award of attorneys’  
7 fees in an amount not to exceed \$25,000 and declared litigation costs of up to \$9,000. The fees and  
8 costs awarded to Class Counsel by the Court shall be paid from the Gross Settlement Amount by the  
9 QSF. The Settlement Administrator or QSF shall issue an IRS Form 1099 to Class Counsel in  
connection with this payment.

10          In the event that a lesser sum is awarded for attorneys’ fees and costs referenced above, or for  
11 the Service Payment to Plaintiff, the approval by the Court of any such lesser sum(s) shall not be  
12 grounds for Plaintiff and/or Class Counsel to terminate the Settlement Agreement. Any amount not  
13 awarded in attorneys’ fees and costs or as a Service Payment to Plaintiff shall be added to the Net  
14 Settlement Amount and distributed to the Participating Class Members in accordance with the terms  
of the Settlement Agreement.

14           42.     **Procedures for Opt-Out and/or Objection to Settlement Agreement.**

15          The Class Notice mailed to all Class Members will advise each Class Member of their right to  
16 Opt-Out of the Settlement Agreement or to object to all or any part of the Settlement Agreement, and  
17 a statement summarizing the calculation for individual settlement payments. Any Class Member who  
18 wishes to Opt-Out of the Settlement Agreement, or to make an objection thereto, shall be advised that  
19 they must submit such Opt-Out or objection in writing to the Claims Administrator, postmarked no  
later than 45 calendar days from the date of mailing of the Class Notice, or by such other deadline set  
by the Court. The Claims Administrator will email a copy of any Opt-Outs received to all counsel  
within 48 hours of its receipt of same.

20          Participating Class Members who wish to object to the settlement must do so in writing, or as  
21 otherwise directed by the Court. Written objections and supporting papers must (a) clearly identify  
22 the case name and number, (b) include the Class Member’s full name, address, telephone number,  
23 and the last four digits of his or her Social Security Number, (c) concisely state the grounds for  
24 objection, and (d) be filed in writing with the Settlement Administrator. To be timely, an objection  
25 must be postmarked or delivered to the Settlement Administrator no later than 45 calendar days after  
26 the Class Notice is first mailed, or by such other deadline set by the Court. The Claims Administrator  
27 will promptly bundle the objections and Opt-Outs and send them to Class Counsel for filing with the  
Court. Participating Class Members who wish to object may, but are not required to, appear and  
present their objections at the Final Approval Hearing in person or through counsel. Only a  
Participating Class Member (i.e., a class member who has not submitted an Opt out) may submit an  
objection. Any Participating Class Member who submits an objection remains bound by this  
Agreement.

28          Except for those Class Members who Opt Out in compliance with the procedures set forth  
above, all Class Members will be bound by the terms and conditions of this Settlement Agreement,

1 the Order of Final Approval, the judgment, and the releases set forth herein and will be deemed to  
2 have waived all objections and opposition to the fairness, reasonableness, and adequacy of the  
3 settlement or the terms of this Settlement Agreement.

4 From the date of entry of the Order of Preliminary Approval through the date of the Final  
5 Approval Hearing, Class Members, including the Class Representative, who do not Opt Out shall be  
6 prohibited from receiving any monetary recovery from a complaint or charge of any kind filed with  
7 the California Division of Labor Standards Enforcement or other court action or proceeding, or from  
8 initiating any lawsuit or other legal proceeding regarding any of the Released Claims.

9 Subject to the Court's granting an Order of Final Approval, any Class Member who does not  
10 Opt Out in compliance with the procedures set forth above shall be forever barred from filing any  
11 other action or proceeding or participating either as a named plaintiff or as an unnamed class member  
12 or aggrieved employee in any other lawsuit or class action or other proceeding in any state or federal  
13 court or administrative agency or tribunal regarding any of the Released Claims.

14 **43. Challenges to the Calculation of Individual Settlement Payments.**

15 A Participating Class Member may dispute the amount of his or her share of the Net  
16 Settlement Amount, and the number of wage statements used to calculate his or her share, by timely  
17 sending a written notice to the Settlement Administrator regarding the nature of the dispute and  
18 providing any records or documentation supporting his or her position. To be considered timely, any  
19 dispute regarding the Participating Class Member's share or the underlying data used to calculate his  
20 or her share must be submitted to the Settlement Administrator within 45 days of the mailing of the  
21 Class Notice. In response to any timely dispute, Defendant will verify the information contained in  
22 the Participating Class Member's personnel file and Defendant's payroll records. Unless the  
23 Participating Class Member can establish a different number or type of wage statements based on  
24 documentary evidence, the number of wage statements established by Defendant's records will  
25 control. Any dispute shall be resolved by the Settlement Administrator, who shall examine the  
26 records provided by Defendant and the Participating Class Member and issue its determination in  
27 accordance with this paragraph. The Settlement Administrator's determination shall be final.

28 **44. Payment Procedures.**

The Settlement Administrator shall distribute the individual settlement payments to  
Participating Class Members, fees and costs of the Settlement Administrator, Service Payment to the  
Class Representative, and Court-approved attorneys' fees and costs of Class Counsel within 10  
calendar days after the date the QSF is funded pursuant to paragraph 36.

**45. Tax Treatment of Participating Class Member Shares.**

Each Participating Class Member's share of the Net Settlement Amount shall be allocated as  
twenty-five percent wages and seventy-five percent statutory penalties and interest. Each  
Participating Class Member is solely responsible for any taxes associated with any monies paid in  
accordance with this Settlement Agreement. The Settlement Administrator will inform Participating  
Class Members of Defendant's share of payroll taxes. However, if any authority of competent  
jurisdiction orders or directs, or if Defendant or the Settlement Administrator determine in good faith,  
that any tax withholding is required, any and all tax obligations of Defendant or the Settlement  
Administrator with regard to any distribution hereunder shall be satisfied by withholding from the

1 particular payment to which such tax obligation pertains, and neither Defendant nor the Settlement  
2 Administrator will have any additional tax liability.

3 As required by state or federal tax requirements, the Claims Administrator or QSF will  
4 prepare and issue appropriate IRS Forms 1099 for Participating Class Members, reflecting the  
5 Participating Class Member's individual settlement payment. The Settlement Administrator will be  
6 responsible for preparing these forms correctly. Participating Class Members will be responsible for  
7 correctly characterizing the compensation that they receive pursuant to the IRS Form 1099 and for  
8 payment of any taxes owing on said amount.

9 The Parties acknowledge and agree that neither Defendant nor their attorneys have made any  
10 representations regarding the tax consequences of the payment of each Participating Class Member's  
11 share under this Settlement Agreement. Each Participating Class Member will be required to pay all  
12 federal, state or local taxes, if any, that are required by law to be paid with respect to his or her share  
13 of the Net Settlement Amount. The Parties further agree that Defendant shall have no legal  
14 obligation to pay, on behalf of Participating Class Members, any taxes, deficiencies, levies,  
15 assessments, fines, penalties, interest, or costs that may be required to be paid with respect to the  
16 payments under this Settlement Agreement except as expressly set forth above.

17 **46. Undistributed Funds.**

18 In the event that any checks mailed to Participating Class Members remain uncashed after the  
19 expiration of 180 days, or an envelope mailed to a Participating Class Member is returned and no  
20 forwarding address can be located for the Participating Class Member after reasonable efforts have  
21 been made (including but not limited to skip tracing), then any such funds shall be transmitted to the  
22 Settlement Administrator and distributed as follows in accordance with California Code of Civil  
23 Procedure section 384:

24 100% to Court Appointed Special Advocates for Children for Monterey County, a  
25 child advocacy program, or such other cy pres entity designated by the Court.

26 **47. Non-Approval of the Settlement Agreement**

27 If the Court should for any reason not approve this Settlement Agreement or fail to enter an  
28 Order of Final Approval, then this Settlement Agreement shall be considered null and void, and  
neither this Settlement Agreement, the conditional certification for settlement purposes, nor any of  
the related negotiations or proceedings, shall be of any force or effect and shall be inadmissible for  
any purpose in any proceeding, and all Parties to this Settlement Agreement shall stand in the same  
position, without prejudice, as if the Settlement Agreement had been neither entered into nor filed  
with the Court.

**48. Invalidation**

Invalidation of any material portion of this Settlement Agreement shall invalidate this  
Settlement Agreement in its entirety, unless the Parties subsequently agree in writing that the  
remaining provisions of this Settlement Agreement are to remain in full force and effect.

1 **NOTICE TO CLASS MEMBERS**

2 49. **Compilation of the Class List.**

3 Within 10 business days after the Court issues the Order of Preliminary Approval, Defendant  
4 will provide the Class List to the Settlement Administrator in an accessible electronic format. The  
5 Class List shall contain the following information about each Class Member: (1) name; (2) last  
6 known mailing address; and (3) social security number. The Settlement Administrator shall maintain  
7 the Class List as “Highly Confidential,” shall use customary best practices to store and maintain such  
8 data on a secure server, and shall not share such information with any person or entity and shall not  
9 use such information for any purpose other than in connection with administering this Settlement,  
10 except that the Settlement Administrator may share information related to individual Class Members  
11 with Class Counsel to the extent such information is needed by Class Counsel to meet their  
12 obligations to the Class. Class Counsel agrees that any such information shared by the Settlement  
13 Administrator shall be maintained as “Highly Confidential” and shall not be shared with any other  
14 person or entity, or used for any purpose other than for purposes of administering this settlement.  
15 The Settlement Administrator will perform address updates and verifications as necessary prior to the  
16 first mailing.

17 50. **Notification of the Class Members.**

18 Within 10 calendar days after receipt of the Class List, or as otherwise directed by the Court,  
19 the Settlement Administrator shall send the Class Members, by first-class mail, at their last known  
20 mailing address or such other address as located by the Settlement Administrator, the Court-approved  
21 Class Notice. The Settlement Administrator will perform additional follow-up as necessary on  
22 returned mail, and will re-mail the Class Notice to an updated address (if any) within 5 calendar days  
23 of receipt of the returned mail. If no other address is found, no further action is required.

24 51. **Undeliverable Notices.**

25 Any Class Notice returned to the Claims Administrator as non-delivered within thirty (30)  
26 days of mailing shall be re-mailed to the forwarding address affixed thereto. If no forwarding address  
27 is provided, the Claims Administrator shall make reasonable efforts (including but not limited to skip  
28 tracing) to obtain an updated mailing address and, if an updated address is identified, shall resend  
the Class Notice to the Class Member within seven (7) calendar days of the date of the return of the  
Class Notice. Class Members to whom the Class Notice are sent after having been returned  
undeliverable to the Claims Administrator will not be given an extension of the time to Opt-Out.  
The date of the postmark on the return envelope shall be the exclusive means used to determine  
whether a Class Member has timely returned his/her Opt-Out on or before the relevant deadline. If  
a Class Member’s Class Notice is returned to the Claims Administrator more than once as non-  
deliverable, then an additional Class Notice shall not be re-mailed.

29 **RELEASES**

30 52. **Release by Participating Class Members.**

31 Upon entry of the Court’s Order of Final Approval and Judgment, Plaintiff and each  
32 Participating Class Member agree to release, and shall be deemed to have released, Defendant and the

1 Releasees from any and all claims based upon Plaintiff's allegations supporting the first through  
2 eighth causes of action of the First Amended Complaint and all derivative claims related thereto  
3 arising from the facts alleged in the First Amended complaint, including but not limited to, all claims  
4 for alleged (a) failure to properly calculate and pay overtime, (b) failure to properly calculate and pay  
5 sick leave, (c) failure to provide rest and meal periods and failure to pay premiums for non-compliant  
6 rest or meal periods at the correct rate, (d) failure to furnish accurate itemized wage statements, (e)  
7 impermissible taking of tips, (f) unfair business practices, and (g) all waiting time penalties arising  
8 from the claims asserted in the First Amended Complaint, whether known or unknown, suspected or  
9 unsuspected, that existed or came into existence between June 23, 2017, and the date of the Order of  
10 Preliminary Approval. The claims described above are referred to herein as the "Released Claims."

11 **53. Complete Release by Plaintiff.**

12 Plaintiff expressly provides a 1542 waiver to the Releasees, which waives all other individual  
13 and/or collective rights, if any, whether or not set forth in this Settlement Agreement,  
14 notwithstanding section 1542 of the California Civil Code, which states:

15 **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
16 THAT THE CREDITOR OR RELEASING PARTY DOES  
17 NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
18 FAVOR AT THE TIME OF EXECUTING THE RELEASE  
19 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
20 MATERIALLY AFFECTED HIS OR HER SETTLEMENT  
21 WITH THE DEBTOR OR RELEASED PARTY."**

22 Plaintiff has read this section and fully discussed it with counsel. Plaintiff recognizes that  
23 she may discover facts in addition to or different from those she now knows or believes to be true  
24 with respect to the subject matter of the Complete and General Release. Nonetheless, upon the  
25 Effective Settlement Date, Plaintiff shall be deemed to have, and by operation of the Order of Final  
26 Approval shall have, fully, finally, and forever settled and released any and all of the claims covered  
27 by this complete and general release of all claims, whether known or unknown, suspected or  
28 unsuspected, contingent or non-contingent, which now exist, or have existed, upon any theory of law  
or equity now existing, including, but not limited to, conduct that is negligent, intentional, with or  
without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or  
existence of such different or additional facts.

**DUTIES OF THE PARTIES**

54. **Prior to Court Approval.**

Prior to seeking preliminary approval of the Settlement Agreement, Class Counsel and  
Plaintiff shall dismiss Plaintiff's Ninth Cause of Action for PAGA Penalties, without prejudice.  
Thereafter, Class Counsel and Plaintiff shall promptly seek the Court's approval of this Settlement.  
As soon as practicable after execution of this Settlement Agreement, Plaintiff and Class Counsel shall  
submit this Settlement to the Court and request entry of a preliminary approval order that:

- a. Certifies this action under California Code of Civil Procedure section 382 as a class action  
for purposes of settlement only with respect to the proposed Class;
- b. Preliminarily approves the Settlement in accordance with the terms of this Settlement

1 Agreement subject to the objections of Class Members, Defendant's rights under  
2 Paragraph 42, and final review by the Court;

- 3 c. Approves the proposed Class Notice and method of notice described in the Settlement  
4 Agreement;
- 5 d. Approves Phoenix Settlement Administrators as Settlement Administrator;
- 6 e. Approves the appointment of Plaintiff as Class Representative, and the appointment of  
7 Class Counsel; and
- 8 f. Schedules the final approval hearing.

9 **55. Following Preliminary Approval.**

10 Class Counsel shall apply to the Court for final approval of the settlement provided for in this  
11 Settlement Agreement, and shall submit a proposed final approval order and judgment in a form  
12 approved by counsel for Defendant:

- 13 a. Approving the Settlement Agreement, adjudging the terms thereof to be fair, reasonable,  
14 and adequate, and directing consummation of its terms and provisions;
- 15 b. Approving payment to the Claims Administrator;
- 16 c. Approving a Service Payment to the Class Representative in the Court's discretion;
- 17 d. Approving an award of attorneys' fees and costs for Class Counsel;
- 18 e. Permanently enjoining and restraining Plaintiff and Participating Class Members from and  
19 against initiating or pursuing against Defendant or the Releasees any individual,  
20 representative, or class claims included within the Released Class Claims set forth in  
21 Paragraphs 52 and 53, above; and
- 22 f. Retaining jurisdiction to the extent necessary over the subject matter of the Class Action  
23 and over the Parties and Class Members to enforce the terms of the Settlement Agreement.

24 No later than 15 calendar days after the distribution of all settlement checks referenced herein,  
25 the Settlement Administrator shall serve on the Parties an accounting, executed under penalty of  
26 perjury, of all monies paid. The Settlement Administrator shall also coordinate with Defendant to  
27 complete the procedures identified in Paragraph 46 with respect to uncashed checks/unclaimed funds.

28 **62. Mutual Cooperation.**

The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement  
Agreement, including but not limited to, executing such documents and taking such other actions as  
may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties shall  
use their best efforts, including all efforts contemplated by this Settlement Agreement and any other  
efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement  
Agreement and the terms set forth herein.

**63. Parties' Authority.**

The signatories hereto hereby represent that they are fully authorized to enter into this Settlement  
Agreement and bind the Parties to the terms and conditions hereof.

1           63.    **No Prior Assignments.**

2           The Parties hereto represent, covenant, and warrant that they have not, directly or indirectly,  
3 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or  
4 entity any portion of any liability, claim, demand, action, cause of action, or rights herein released  
and discharged except as set forth herein.

5           64.    **Termination of Settlement.**

6           If the Court declines to approve the settlement and enter a final order and judgment  
7 substantially in the form submitted by the Parties, such termination shall have the following effects:

- 8           a. The Settlement shall be deemed null and void and this Settlement Agreement shall be  
9 terminated and shall have no force or effect and no Party shall be bound by any of its  
10 terms;
- 11           b. The Settlement Agreement and all negotiations, statements, and proceedings relating  
12 thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be  
13 restored to their respective positions in the litigation prior to the settlement;
- 14           c. Neither this Settlement Agreement nor any related or ancillary documents, actions,  
15 statements, or filings in furtherance of settlement (including any matters associated with  
16 negotiation of the Settlement Agreement and related settlement documents) shall be  
17 admissible or offered into evidence in this action or any other action for any purpose  
18 whatsoever; and
- 19           d. Certification of the settlement class shall be deemed null and void.

20           65.    **Construction.**

21           The Parties hereto agree that the terms and conditions of this Settlement Agreement are the  
22 result of lengthy, intensive, arm's-length negotiations between the Parties with the assistance of a  
23 skilled and experienced mediator. The Parties further agree that this Settlement Agreement shall not  
24 be construed in favor of, or against, any party by reason of the extent to which any party or his, her,  
25 or its counsel participated in the drafting of this Settlement Agreement.

26                   **Captions and Interpretations.**

27           Paragraph titles or captions contained herein are inserted as a matter of convenience and for  
28 reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or  
any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

29           66.    **Modification.**

30           This Settlement Agreement may not be changed, altered, or modified, except in writing and  
31 signed by counsel for the Parties, and approved by the Court, provided however that changes solely to  
32 the timing and deadlines herein may be made for administrative convenience by written agreement of  
33 counsel for all Parties without Court approval. This Settlement Agreement may not be discharged  
34 except by performance in accordance with its terms or by a writing signed by the Parties hereto and  
35 approved by the Court.

1           67.    Integration Clause.

2           This Settlement Agreement contains the entire agreement between the Parties relating to the  
3 settlement of the Action and the transaction contemplated hereby, and all prior or contemporaneous  
4 agreements, understandings, representations, and statements, whether oral or written and whether by  
5 a party or such party's legal counsel, are merged herein. In entering into this Settlement Agreement,  
6 none of the Parties has relied on any representation or promise not expressly set forth in this  
7 Settlement Agreement. No rights hereunder may be waived except in writing.

8           68.    Bindings on Assigns.

9           This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and  
10 their respective heirs, trustees, executors, administrators, successors and assigns.

11          69.    Class Counsel Signatories.

12          It is agreed that because of the anticipated large number of Participating Class Members, it  
13 will be impossible or impractical to have each Participating Class Member execute this Settlement  
14 Agreement. As such, Class Counsel is signing on behalf of the Participating Class Members. In  
15 addition, the Class Notice will advise all Class Members of the binding nature of the Settlement  
16 Agreement and their right to Opt-Out and/or object, and shall have the same force and effect as if it  
17 were executed individually by each Participating Class Member.

18          70.    Confidentiality.

19          Plaintiff, Defendant, and their respective counsel will maintain the proposed settlement and  
20 this Settlement Agreement as confidential and not publicly disclose the same (including  
21 electronically, by way of any web page, blog, tweet, social media, or other electronic means) except  
22 for the specific exceptions stated herein. This shall not apply to or limit the public filing of motions  
23 or other case materials in the Class Action related to seeking and obtaining Court approval of the  
24 proposed Settlement Agreement, the fees and costs of Class Counsel, the service payment to the Class  
25 Representative, and the other relief set forth in this Settlement Agreement. In addition, Class Counsel  
26 (1) may respond to specific questions from Class Members; and (2) as required under the terms of  
27 this Settlement Agreement, may describe and explain the specific terms of this Settlement Agreement  
28 to Class Members who have questions. The Parties understand and agree that there may be media  
coverage of the settlement not initiated by Plaintiff or Defendant, directly or indirectly, as a result of  
the public filings. Notwithstanding the foregoing, both before and following the execution of this  
Settlement Agreement by the Parties and their counsel, Plaintiff, Defendant, and their respective  
counsel agree that no Party shall issue any press release to the news media, nor shall any Party  
communicate in any way with news media concerning the settlement or the Class Action except in  
response to specific questions, which responses shall be limited to a statement that the action has been  
resolved to the satisfaction of the parties and otherwise referring the inquirer to the public record.  
Plaintiff's Counsel may not describe or list this settlement on their website or other online media but  
may refer to this Settlement, after the filing of the motion for preliminary approval, in other court  
filings where prior experience is discussed.



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71. **Counterparts.**

This Settlement Agreement may be executed in counterparts, and the signature pages may be transmitted by fax, pdf, or other electronic means, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement Agreement, which shall be binding upon and effective as to all Parties.

72. **Admissibility.**

This Settlement Agreement is intended to be an enforceable and binding agreement and shall be admissible in evidence to enforce its terms but for no other purpose.

73. **Governing Law.**

The Parties agree that the laws of the State of California govern the interpretation and application of all of the terms this Settlement Agreement, without giving effect to conflict of laws principles.

74. **Enforcement.**

The Parties agree that upon the occurrence of the Effective Settlement Date, this Settlement Agreement shall be enforceable by the Court, and the Parties jointly request the Court’s exclusive and continuing jurisdiction over all Parties and Class Members to interpret and enforce the terms, considerations, and obligations of this Settlement Agreement and all associated documents and filings.

**IT IS SO AGREED:**

**DATED:** \_\_\_\_\_

By \_\_\_\_\_

LAUREN LEBARRE,  
Plaintiff and Class Representative

**DATED:** \_\_\_\_\_

**ROWTOWN, INC.**

By \_\_\_\_\_

Sabu Shake, Jr., CFO

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**APPROVED AS TO FORM:**

**DATED:** \_\_\_\_\_

**MAYALL HURLEY P.C.**

By \_\_\_\_\_

JOHN P. BRISCOE  
Attorneys for Plaintiff Lauren LeBarre  
and the Putative Class

**DATED:** \_\_\_\_\_

**FENTON & KELLER**

By \_\_\_\_\_

CHRISTOPHER E. PANETTA  
MARCO A. LUCIDO  
Attorneys for Defendant  
ROWTOWN, INC.