

## **FIRST AMENDED JOINT STIPULATION AND SETTLEMENT AGREEMENT**

Subject to final approval by the Court, this Settlement Agreement is between Plaintiff Cynthia Dela Vega (“Plaintiff”), on behalf of herself, other members of the general public similarly situated, and other aggrieved employees, and Defendants Valerio’s Tropical Bakeshop I, Inc., Valerio’s Tropical Bakeshop II, Inc., Valerio’s Tropical Bakeshop III, Inc., Valerio’s Tropical Bakeshop V, Inc., Valerio’s Tropical Bakeshop VI, Inc., Valerio’s Tropical Bakeshop VII, Inc., Valerio’s Tropical Bakeshop X, Inc., Valerio’s Tropical Bakeshop XI, Inc., and Valerio’s Tropical Bakeshop XII, Inc. (“Defendants”). Plaintiff and Defendants are collectively referred to in this Agreement as the “Parties.”

### **I. DEFINITIONS**

In addition to the other terms defined in this Agreement, the terms below have the following meaning:

- A. Administration Costs:** All administrative costs incurred by the Settlement Administrator to administer this Settlement including the cost of notice to the Class Members, settlement administration, and any fees and costs incurred or charged by the Settlement Administrator in connection with the execution of its duties under this Agreement, which shall not exceed \$15,000. All Administration Costs shall be paid from the Qualified Settlement Fund.
- B. Agreement, Settlement Agreement, Joint Stipulation, or Settlement:** The settlement agreement reflected in this document, titled “First Amended Joint Stipulation and Settlement Agreement.”
- C. Attorney Fee Award:** The amount, not to exceed thirty-three and one-third percent (33.3%) of the Total Consideration or three-hundred sixty-six thousand three-hundred dollars (\$366,300.00), finally approved by the Court and awarded to Class Counsel. The Attorney Fee Award shall be paid from the Qualified Settlement Fund and will not be opposed by Defendants.
- D. Case or Class Action:** The lawsuit originally filed by Plaintiff on July 17, 2020, entitled *Cynthia Dela Vega v. Valerio’s Tropical Bakeshop I, Inc. et al.*, Case No. 20STCV04354, in the Superior Court of California, County of Los Angeles.
- E. Class:** Any and all persons who have been employed by Defendants as non-exempt, hourly employees in California at any time from July 17, 2016 to April 22, 2022.
- F. Class Counsel:** Attorneys Kane Moon and Lilit Ter-Astvatsatryan, of Moon & Yang, APC.

- G. Class Member:** Each person eligible to participate in this Settlement who is a member of the Class as defined above.
- H. Class Notice or Notice:** The “Notice of Class Action Settlement” or “Notice” shall mean the notice to be provided to all Class Members regarding the terms of this Settlement, substantially like the form attached hereto as **Exhibit A**, subject to Court approval. The Notice shall constitute class notice pursuant to California Rule of Court 3.769 (f) and, once approved by the Court shall be deemed compliant with California Rule of Court 3.766.
- I. Class Period:** The time period from July 17, 2016, to April 22, 2022.
- J. Class Representative or Plaintiff:** Cynthia Dela Vega individually and as a representative of the Class Members, Eligible Aggrieved Employees, and the State of California.
- K. Class Representative Enhancement Payment:** The amount the Court awards to Plaintiff for Plaintiff’s services as Class Representative, which will not exceed ten-thousand dollars (\$10,000). This payment shall be paid from the Qualified Settlement Fund and will not be opposed by Defendants. This enhancement payment is subject to approval of the Court. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
- L. Complaint:** The First Amended Complaint filed by Plaintiff in this case on March 22, 2021, entitled *Cynthia Dela Vega v. Valerio’s Tropical Bakeshop I, Inc. et al.*, Case No. 20STCV27597, in the Superior Court of California, County of Los Angeles.
- M. Comprehensive Release:** Upon Defendants’ fulfillment of its payment obligations under Section IV.I.9.a. below, Plaintiff is releasing in exchange for the consideration provided for by this Agreement a comprehensive release of all known and unknown claims by Plaintiff, including a California Civil Code section 1542 waiver arising out of the operative allegations in the Case.
- N. Cost Award:** The amount that the Court orders Defendants to pay Class Counsel for payment of actual litigation costs, which shall not exceed twenty-five thousand dollars (\$25,000). The Cost Award will be paid from the Qualified Settlement Fund and will not be opposed by Defendants. The Cost Award is subject to Court approval. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
- O. Counsel for Defendants:** Attorneys Ann K. Smith and Michele L. Collender of Atkinson Andelson Loya Ruud & Romo.

- P. Court:** The Superior Court of California, County of Los Angeles.
- Q. Defendants:** Valerio’s Tropical Bakeshop I, Inc., Valerio’s Tropical Bakeshop II, Inc., Valerio’s Tropical Bakeshop III, Inc., Valerio’s Tropical Bakeshop V, Inc., Valerio’s Tropical Bakeshop VI, Inc., Valerio’s Tropical Bakeshop VII, Inc., Valerio’s Tropical Bakeshop X, Inc., Valerio’s Tropical Bakeshop XI, Inc., and Valerio’s Tropical Bakeshop XII, Inc.
- R. Effective Final Settlement Date:** The Effective Final Settlement Date shall be the date upon which the following occur: (i) the funding of the Total Consideration in the Qualified Settlement Fund by Defendants, (ii) approval of the Settlement is granted by the Superior Court of California for the County of Los Angeles, or other court assuming jurisdiction of this matter, (iii) the Court’s Judgment approving the Settlement becomes Final, and (iv) the date of the time for filing or noticing any appeal of the Judgment has expired.
- S. Eligible Aggrieved Employees:** The aggrieved employees eligible to recover the PAGA Payment that consist of all individuals employed as non-exempt employees by Defendants within California from July 17, 2019 to April 22, 2022 (“PAGA Period”).
- T. Exclusion Form:** The Election Not to Participate In (“Opt Out” Form) Class Action Settlement.
- U. Judgment or Final Approval:** The “Final Approval Order” means the final order entered by the Court following the Final Fairness and Approval Hearing. The “Final Judgment” means the final judgment entered by the Court following the Final Fairness and Approval Hearing.
- V. Total Consideration or TC:** The total value of the Settlement is a non-reversionary one-million one hundred-thousand dollars (\$1,100,000.00). This is the gross amount Defendants can be required to pay under this Settlement Agreement, which includes without limitation: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorney Fee Award and Cost Award to Class Counsel for attorneys’ fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payment paid to the Class Representative, as approved by the Court; (4) the Administration Costs, as approved by the Court; and (5) the PAGA Payment to the LWDA and to Eligible Aggrieved Employees, as approved by the Court. Defendants’ portion of payroll taxes as the Class Members’ current or former employer is not included in the Total Consideration and will be a separate obligation of Defendants. No portion of the Total Consideration will revert to Defendants for any reason.
- W. Individual Settlement Share(s):** The amount payable to each Participating Class Member under the terms of this Settlement Agreement. Class Members

are not required to submit a claim form to receive their Individual Settlement Shares pursuant to this Agreement. Rather, Participating Class Members will receive an Individual Settlement Share automatically, without the return of a claim form.

- X. **LWDA**: California Labor and Workforce Development Agency.
- Y. **Net Settlement Amount or NSA**: The total amount of money available for payout to Participating Class Members, which is the TC less the Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payment, the PAGA Payment paid to the LWDA and Eligible Aggrieved Employees, and Administration Costs. The NSA is the portion of the TC that will be distributed to Class Members who do not request exclusion from the Settlement.
- Z. **Notice Packet**: The Class Notice.
- AA. **PAGA**: The California Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698 *et seq.*).
- BB. **PAGA Payment**: The PAGA Payment consists of seventy-five thousand dollars \$75,000.00 of the Total Consideration allocated to satisfy the PAGA claim as alleged in the Class Action. Seventy-five percent (75%) of which, fifty-six thousand two-hundred fifty dollars (\$56,250.00), shall be paid to the LWDA, and twenty-five percent (25%) of which, eighteen-thousand seven-hundred fifty (\$18,750.00), shall be distributed to Eligible Aggrieved Employees, on a pro rata basis, as set forth below.
- CC. **PAGA Period**: July 17, 2019 to April 22, 2022.
- DD. **Participating Class Members**: All Class Members who do not submit a valid and timely request to exclude themselves from this Settlement.
- EE. **Parties**: Plaintiff and Defendants.
- FF. **Preliminary Approval or Preliminary Approval Order**: The order entered by the Court following the Preliminary Approval Hearing approving the proposed Settlement.
- GG. **Qualified Settlement Fund or QSF**: A fund within the meaning of Treasury Regulation section 1.468B-1, 26 C.F.R. § 1.468B-1 *et seq.*, which is established by the Settlement Administrator for the benefit of Participating Class Members, Eligible Aggrieved Employees, Plaintiff and Class Counsel.
- HH. **Released Claims**: Upon Effective Final Settlement Date the claims that Plaintiff, the other Participating Class Members and the Eligible Aggrieved Employees are releasing in exchange for the consideration provided for by this

Agreement are all known and unknown claims, rights, demands, damages, liabilities and causes of action, in law or in equity, arising at any time during the Class Period alleged in the Complaint, Plaintiff's letter to the LWDA, , or that could have been alleged based on the facts pleaded. , including but not limited to California Labor Code §§ 201-203, 204, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1194, 1197, 1197.1, 1198, any category of violations identified in Labor Code § 2699.5, and the related applicable IWC Wage Orders.

- II. **Released Parties:** Defendants and each of their current and former owners, operators, officers, members, directors, shareholders, partners, affiliated companies, parent companies, subsidiary companies, holding companies, predecessors, successors, insurers, assigns, trustees, DBAs, franchisors, franchisees, payroll service providers, legal representatives, accountants, employees, independent contractors, lessors, and agents.
- JJ. **Response Deadline:** Sixty (60) calendar days from the initial mailing of the Notice Packet.
- KK. **Settlement Administration:** The Settlement Administrator will mail the Notice Packet by first class U.S. mail to all Class Members and Eligible Aggrieved Employees at the address Defendants have on file.
- LL. **Settlement Administrator:** The third-party administrator agreed upon by Parties to administer this Settlement is Phoenix Class Action Administration Solutions ("Phoenix").
- MM. **Superior Court:** The Superior Court of California, County of Los Angeles.

## II. **RECITALS**

- A. **Plaintiff's Complaint.** Per the Complaint, Plaintiff alleges, on behalf of herself, all other members of the general public similarly situated, and other aggrieved employees, that Defendants violated California state wage and hour laws and PAGA because of Defendants' wage and hour policies and practices. Specifically, Plaintiff alleges that Defendants: (1) failed to pay all wages, including minimum wages, regular wages, overtime, and double time; (2) failed to properly calculate overtime and double time wages; (3) failed to provide meal breaks (including without limitation first and second meal breaks) each day based on the hours worked by each employee, including meal breaks that were short, late, interrupted, and/or missed altogether; (4) failed to authorize and permit legally compliant rest breaks each day based on the hours worked by each employee, including rest breaks that were short, late, interrupted, and/or missed altogether; (5) failed to factor non-discretionary bonuses into employees' regular rates of pay for overtime compensation purposes; (6) failed to timely pay wages during employment for each pay period for every employee; (7) failed to timely pay wages upon discharging employees; and (8) conducted

unfair business practices. Plaintiff further alleged that the aforementioned resulted in inaccurate wage statements; the underpayment of wages to employees upon termination and/or resignation; and a violation of PAGA.

- B. Notice to the LWDA.** On July 15, 2020, Plaintiff's Counsel sent letters to the LWDA and Defendants, on behalf of Plaintiff, in compliance with California Labor Code section 2699.3. Plaintiff seeks to represent herself and all PAGA Settlement Members. More than 65 days passed after the letter was sent to the LWDA, and the LWDA has not indicated that it intends to investigate the alleged violations referenced in the letter.
- C. The Parties' Investigation.** The Parties agreed to mediation with mediator Todd Smith. Counsel for the Parties have thoroughly investigated the facts relating to the claims alleged in the Complaint and have made a thorough study of the legal principles applicable to the claims asserted against Defendants. Defendants produced hundreds of documents related to each of their wage and hour practices, including time and pay records for employees from each Defendant. Based on their investigation and evaluation of this case, Plaintiff and Class Counsel have concluded that the Settlement is fair, reasonable, and adequate in light of all known facts and circumstances, including the defenses asserted by Defendants, potential adverse findings regarding liability, and numerous potential appellate issues and are more than sufficient to assess the merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis
- D. Mediation.** Plaintiff and Class Counsel have engaged in good faith, arms-length negotiations with Defendants concerning possible settlement of the claims asserted in the Complaint. On April 22, 2022, the Parties participated in mediation before mediator Todd Smith. Under the auspices of the mediator, the Parties reached a settlement of the Class Action.

**NOW, THEREFORE**, in consideration of the mutual covenants, promises, and conditions set forth, the Parties agree as follows:

### **III. NON-ADMISSION OF LIABILITY**

- A. Defendants' Denial of Wrongdoing.** Defendants generally and specifically deny any and all liability or wrongdoing of any sort with regard to any of the claims alleged, make no concessions or admissions of liability of any sort, and contend that for any purpose other than settlement, the Complaint is not appropriate for PAGA or class treatment. Defendants also assert several defenses to the claims and have denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Class Action. Neither this Agreement, nor any document referred to or contemplated herein, nor any statements, discussions, or communications, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission,

concession, or indication by or against Defendants or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. Nor should the Agreement be construed as an admission that Plaintiff can serve as adequate Class Representative. There has been no final determination by any court as to the merits of the claims asserted by Plaintiff against Defendants or as to whether a class or classes should be certified, other than for settlement purposes only.

- B. Benefits of Settlement to Class Members and Eligible Aggrieved Employees.** Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendants through trial and through any possible appeals. Plaintiff and Class Counsel also have considered the uncertainty and risk of further litigation, the potential outcome, the existing arbitration agreements and the difficulties and delays inherent in such litigation as well as Defendants past and current financial condition confirmed through the opinion of an accounting expert. Plaintiff and Class Counsel conducted extensive settlement negotiations, including formal mediation on April 22, 2022. Based on the foregoing, Plaintiff and Class Counsel believe the Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members and Eligible Aggrieved Employees.
- C. Defendants' Reasons for Settlement.** Defendants recognize that the defense of this litigation will be protracted and expensive. Substantial amounts of time, energy, and resources of Defendants have been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff. Defendants, therefore, have agreed to settle in the manner, and upon the terms, set forth in this Agreement to put to rest the Released Claims.
- D. Plaintiff's Claims.** Plaintiff asserts that Defendants defenses are without merit. Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this Agreement is, may be construed as, or may be used as an admission, concession or indication by or against Plaintiff, Class Members, or Class Counsel as to the merits of any claims or defenses asserted, or lack thereof, in the Class Action. However, in the event that this Settlement is finally approved by the Court, none of Plaintiff, Class Members, or Class Counsel will oppose Defendants' efforts to use this Agreement to prove that Plaintiff and Class Members have resolved and are forever barred from re-litigating the Released Claims.

#### **IV. SETTLEMENT TERMS AND CONDITIONS**

- A. Total Consideration.** Subject to the terms and conditions of this Agreement, the maximum Total Consideration, excluding payroll taxes, that Defendants are obligated to pay under this Settlement Agreement is one-million one-hundred-thousand dollars (\$1,100,000.00).

- B. Class Certification.** Solely for the purposes of this Settlement, the Parties stipulate and agree to certification of the claims asserted on behalf of Class Members. As such, the Parties stipulate and agree that for this Settlement to occur, the Court must certify the Class as defined in this Agreement.
- C. Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree to the certification of the claims asserted on behalf of Plaintiff and Class Members for purposes of this Settlement only. This Stipulation is contingent upon the Preliminary and Final approval and certification of the Settlement Class only for purposes of settlement. If the Settlement does not become final, for whatever reason, the fact that the Parties were willing to stipulate provisionally to certification as part of the Settlement shall have no bearing on and shall not be admissible or used in any way in connection with, the question of whether the Court should certify any claims in a non-settlement context in this Class Action or in any other lawsuit. Defendants expressly reserve the right to oppose class certification and/or to proactively move to deny class certification should this Settlement be modified or reversed on appeal or otherwise not become final.
- D. Appointment of Class Representative.** Solely for the purposes of this Settlement, the Parties stipulate and agree Plaintiff shall be appointed as the representative for the Class.
- E. Appointment of Class Counsel.** Solely for the purpose of this Settlement, the Parties stipulate and agree that the Court appoint Class Counsel to represent the Class.
- F. Individual Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual Settlement Share from the Net Settlement Amount to each Participating Class Member.

**1. Calculation.**

- a. Individual Settlement Share Calculation.** Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to: (i) the number of weeks he or she worked during the Class Period based on the Class List provided by Defendants, divided by (ii) the total number of weeks worked by any and all Participating Class Members collectively, during the Class Period based on the same Class List, which is then multiplied by the Net Settlement Amount. One day worked in a given week will be credited as a week for purposes of this calculation. Therefore, the value of each Participating Class Member's Individual Settlement Share ties directly to the amount of weeks that he or she worked.



2. **Tax Withholdings.** Each Participating Class Member's Individual Settlement Share will be apportioned as follows: twenty percent (20%) wages and eighty percent (80%) non-wage statutory damages and interests. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms. The amounts paid as damages and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms. The employees' share of payroll tax withholdings shall be withheld from each person's Individual Settlement Share. Eligible Aggrieved Employees' portion of the PAGA Payment will be allocated as one hundred percent (100%) non-wage damages and will be issued an IRS form 1099 if it exceeds six-hundred dollars (\$600.00).

**G. Settlement Disbursement.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments out of the Total Consideration:

1. **To Plaintiff.** In addition to her Individual Settlement Share, and subject to the Court's approval, Plaintiff will receive up to ten-thousand dollars (\$10,000) as the Class Representative Enhancement Payment. The Settlement Administrator will pay the Class Representative Enhancement Payment out of the Qualified Settlement Fund. Payroll tax withholdings and deductions will not be taken from the Class Representative Enhancement Payment. An IRS Form 1099 will be issued to Plaintiff with respect to her Class Representative Enhancement Payment. In the event the Court does not approve the entirety of the application for the Class Representative Enhancement Payment, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendants nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Plaintiff, the difference shall become part of the NSA and be available for distribution to Participating Class Members.
2. **To Class Counsel.** Class Counsel will apply to the Court for, and Defendants agree not to oppose, a total Attorney Fee Award not to exceed thirty-three and one-third percent (33.3%) or three-hundred sixty-six thousand three-hundred dollars (\$366,300.00) of the TC, plus reasonable costs not to exceed twenty-thousand dollars (\$20,000). The Settlement Administrator will pay the court-approved amounts for the Attorney Fee Award and Cost Award out of the Total Consideration. The Settlement Administrator may purchase an annuity to utilize US treasuries and bonds or other attorney fee deferral vehicles for Class Counsel. Payroll tax withholding and deductions will not be taken from the Attorney Fee Award or the Cost Award. IRS Forms 1099 will be issued to Class Counsel with

respect to these payments. In the event the Court does not approve the entirety of the application for the Attorney Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendants nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Class Counsel for the Attorney Fee Award and/or Cost Award, the difference shall become part of the NSA and be available for distribution to Participating Class Members. Except as provided herein, each side shall bear its own attorneys' fees and costs.

- 3. To Responsible Tax Authorities.** The Settlement Administrator will pay the amount of the Participating Class Members' portion of normal payroll withholding taxes out of each person's Individual Settlement Share. The Settlement Administrator will calculate the amount of the Participating Class Members' and Defendants' portion of payroll withholding taxes. The Settlement Administrator will submit Defendants' portion of payroll withholding tax calculation to Defendants for additional funding and forward those amounts along with each person's Individual Settlement Share withholdings to the appropriate taxing authorities.
- 4. To the Settlement Administrator.** The Settlement Administrator will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court not to exceed \$15,000. This will be paid out of the Qualified Settlement Fund. If the actual amount of Administration Costs is less than the amount estimated, the difference shall become part of the NSA and be available for distribution to Participating Class Members. In the event the Court does not approve the entirety of the application for the Administration Costs, the Settlement Administrator shall pay to itself whatever amount the Court awards, and neither Defendants nor the Plaintiff shall be responsible for paying the difference between the amount requested and the amount awarded.
- 5. To Class Members.** The Settlement Administrator will pay Participating Class Members according to the Individual Settlement Share calculations set forth above. All payments to Participating Class Members shall be made from the Qualified Settlement Fund.
- 6. To Eligible Aggrieved Employees.** The PAGA Payment consists of seventy-five thousand dollars (\$75,000.00) of the Total Consideration allocated to satisfy the PAGA claim as alleged in the Class Action. Twenty-five percent (25%) of which (\$18,750.00) shall be paid to the Eligible Aggrieved Employees. The Settlement Administrator shall pay each Eligible Aggrieved Employee according to their proportional share, which will be based upon the total number of pay periods he or she was employed during the PAGA Timeframe. The individual share will be calculated by

determining the total number of pay periods the Eligible Aggrieved Employees were employed during the PAGA Timeframe (*i.e.*, the sum of all pay periods of employment for each Eligible Aggrieved Employee) and dividing that number into eighteen-thousand seven-hundred fifty dollars (\$18,750.00) allocated to Eligible Aggrieved Employees to determine the monetary value assigned to each pay period. That number will then be multiplied by the individual eligible aggrieved employee's total number of pay periods employed during the PAGA Timeframe to determine that individual's proportional share. Settlement checks issued to the Eligible Aggrieved Employees pursuant to this Agreement shall expire one hundred eighty (180) days from the date they are issued by Defendants. Any unclaimed funds after the one hundred eighty (180) days shall be turned over by the Settlement Administrator to the Unclaimed Property Fund of the State's Controller's Office in the name of the Class Member of the Eligible Aggrieved Employee

7. **To the LWDA:** The PAGA Payment consists of seventy-five thousand dollars (\$75,000.00) of the Total Consideration allocated to satisfy the PAGA claim as alleged in the Class Action. Seventy-five percent (75%) of which, fifty-six thousand two-hundred fifty dollars (\$56,250.00), shall be paid to the LWDA.

**H. Appointment of Settlement Administrator.** Solely for the purposes of this Settlement, the Parties stipulate and agree that Phoenix shall be retained to serve as Settlement Administrator. The Settlement Administrator shall be responsible for: (a) preparing, printing, and mailing the Notice Packet to the Class Members; (b) keeping track of any objections or requests for exclusion from Class Members; (c) performing skip traces and remailing Notice Packets and Individual Settlement Shares to Class Members; (d) calculating any and all payroll tax deductions as required by law; (e) calculating each Participating Class Member's Individual Settlement Share and each Eligible Aggrieved Employee's portion of the PAGA Payment; (f) providing weekly status reports to Counsel for Defendants and Class Counsel, which is to include updates on any objections or requests for exclusion that have been received; (g) providing a due diligence declaration for submission to the Court prior to the Final Approval hearing; (h) mailing Individual Settlement Shares and portion of the PAGA Payment to Participating Class Members and Eligible Aggrieved Employees respectively; (i) mailing the LWDA portion of the PAGA Payment to the LWDA; (j) distributing the Attorney Fee Award and the Cost Award to Class Counsel; (k) printing and providing Class Members and Plaintiff with W-2s and 1099 forms as required under this Agreement and applicable law; (l) providing a due diligence declaration for submission to the Superior Court upon the completion of the Settlement; (m) providing any funds remaining in the QSF as a result of uncashed checks to the Unclaimed Property Fund of the State's Controller's Office in the name of the Class Member of the Eligible Aggrieved Employee and (n) performing other tasks as the Parties mutually agree. The Parties each represent that they do not have any financial

interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

## **I. Procedure for Approving Settlement.**

### **1. Motion for Preliminary Approval and Conditional Certification.**

- a.** Plaintiff will move for an order conditionally certifying the Class for settlement purposes only, giving Preliminary Approval of the Settlement, setting a date for the Final Approval hearing, and approving the Class Notice..
- b.** At the Preliminary Approval hearing, the Plaintiff will appear, support the granting of the motion, and submit a proposed order granting conditional certification of the Class and Preliminary Approval of the Settlement; appointing the Class Representative, Class Counsel, and Settlement Administrator; approving the Notice Packet; and setting the Final Approval hearing.
- c.** Should the Court decline to conditionally certify the Class or to Preliminarily Approve all material aspects of the Settlement, the Settlement will be null and void, and the Parties will have no further obligations under it. Provided, however, that the amounts of the Attorney Fee Award, the Cost Award, the Administration Costs, and the Class Representative Enhancement Payment shall be determined by the Court, and the Court's determination on these amounts shall be final and binding, and that the Court's approval or denial of any amount requested for these items are not conditions of this Settlement Agreement, and are to be considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement. Any order or proceeding relating to an application for the Attorney Fee Award, the Cost Award, the Administration Costs, and the Class Representative Enhancement Payment shall not operate to terminate or cancel this Agreement. Nothing in this Agreement shall limit Plaintiff's or Class Counsel's ability to appeal any decision by the Court to award less than the requested Attorney Fee Award, the Cost Award, the Administration Costs, and the Class Representative Enhancement Payment.

**2. Notice to Class Members.** After the Court enters its Preliminary Approval Order, every Class Member will be provided with the Notice Packet in accordance with the following procedure:

- a.** Within twenty-one (21) calendar days after entry of the Preliminary Approval Order, Defendants shall deliver to the

Settlement Administrator the following information about each Class Member's: (1) first and last name; (2) last known mailing address; (3) social security number; (4) date of hire and termination date; and (5) the total number of weeks during which the Class Member performed any actual work during the Class Period as a member of the Class (collectively "Class List"). If any or all this information is unavailable to Defendants, Defendants will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the unavailable information. The Settlement Administrator will conduct a skip trace for the address of all former Defendants' employee Class Members. The Settlement Administrator shall maintain the Class List and all data contained within the Class List as private and confidential. This provision will not impede Class Counsel's ability to discharge fiduciary duties, including effectuating the terms of this settlement.

- b.** The Settlement Administrator shall run all the addresses on the Class List through the United States Postal Service NCOA database (which provides updated addresses for any individual who has moved in the previous four years who has notified the U.S. Postal Service of a forwarding address) to obtain current address information. The Settlement Administrator shall mail the Notice Packet to the Class Members via first-class regular U.S. Mail using the most current mailing address information available within fourteen (14) calendar days after the receipt of the Class List from Defendants.
- c.** If a Notice Packet is returned because of an incorrect address, within ten (10) days from receipt of the returned Notice Packet, the Settlement Administrator will conduct a search for a more current address for the Class Member and re-mail the Notice Packet to the Class Member. The Settlement Administrator will use the National Change of Address Database and skip traces to attempt to find the current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Notice Packet is returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. If the Settlement Administrator is unable to locate a better address, the Notice Packet shall be re-mailed to the original address. If the Notice Packet is re-mailed, the Settlement Administrator will note for its own records the date and address of each re-mailing. Those Class

Members who receive a re-mailed Notice Packet, whether by skip-trace or forwarded mail, will have their Response Deadline to postmark an Exclusion Form, or mail an objection to the Settlement, extended by ten (10) calendar days from the original Response Deadline. The Settlement Administrator shall mark on the envelope whether the Notice Packet is a re-mailed notice.

- d.** Class Members may dispute the information provided in their Notice Packet, but must do so in writing, via first class mail, and it must be postmarked by the Response Deadline. To the extent Class Members dispute the number of weeks to which they have been credited or the amount of their Individual Settlement Share, Class Members must produce evidence to the Settlement Administrator showing that such information is inaccurate. Absent evidence rebutting Defendants records, Defendants records will be presumed determinative. However, if a Class Member produces evidence to the contrary, the Parties will evaluate the evidence submitted by the Class Member and will make the final decision as to the number of eligible weeks that should be applied and/or the Individual Settlement Share to which the Class Member may be entitled.
- e.** If any Exclusion Form received is incomplete or deficient, the Settlement Administrator shall send a letter informing the Class Member of the deficiency and allow fourteen (14) days to cure the deficiency. However, any cure period will not extend the Response Deadline. If after the cure period the Exclusion Form is not cured, it will be determined that the Class Member did not exclude himself or herself from the Settlement and will be bound by the Settlement.
- f.** The Settlement Administrator shall provide a weekly status report to the Parties. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Counsel for Defendants of the number of Notice Packets mailed, the number of Notice Packets returned as undeliverable, the number of Notice Packets re-mailed, and the number of Exclusion Forms received.
- g.** No later than fourteen (14) calendar days after the Response Deadline, the Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its compliance with its obligations under this Agreement. The declaration from the Settlement Administrator shall also be filed with the Court by Class Counsel no later than ten (10) calendar days before the Final Approval hearing. Before the Final Approval hearing, the Settlement Administrator will supplement its declaration of due

diligence if any material changes occur from the date of the filing of its prior declaration.

- 3. Objections to Settlement.** The Notice Packets will provide that the Class Members who wish to object to the Settlement must do so in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later than the Response Deadline. For any Class Member to object to this Settlement, or any term of it, the person making the objection must not submit a request for exclusion (i.e., must not opt out). The timeframe to submit an objection will not be increased for returned mailings.

  - a. Format.** Any Objections must: (a) state the objecting person’s full name, address, and telephone number and the name and address of counsel, if any; (b) have the words “Notice of Objection” or “Formal Objection;” (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (d) list identifying witness(es) the objector may call to testify at the Final Approval hearing; (e) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing; (f) be signed by the objecting Class Member or his or her attorney; and (g) state whether the objecting Class Member (or someone on his or her behalf) intends to appear at the Final Approval Hearing.
  - b. Appearance at Final Approval and Oral Objection.** Class Members may (though are not required to) appear at the Final Approval Hearing, either in person or through the objector’s own counsel, at his or her own expense and orally object to the Settlement.
  - c. Objecting Class Members.** If a Class Member objects to the Settlement, the objecting Class Member will remain a member of the Settlement and if the Court approves the Settlement, the objecting Class Member will be bound by the terms of the Settlement in the same way and to the same extent as a Participating Class Member who does not object.
  - d. Responses to Objection.** Plaintiff and Defendants will be permitted to respond in writing to such objections no later than seven (7) days before the Final Approval hearing. Plaintiff waives any right to object to the Settlement, and hereby endorse the Settlement as fair, reasonable and adequate and in the best interests of the Settlement Class.
- 4. Request for Exclusion from the Settlement (“Opt-Out”).** The Notice Packet will provide that Class Members who wish to exclude themselves

from the Settlement must mail to the Settlement Administrator an Exclusion Form. The written request for exclusion must: (a) include the Class Member's name, address, and last four digits of the social security number; (b) be addressed to the Settlement Administrator; (c) be signed by the Class Member or his or her lawful representative; and (d) be postmarked no later than the Response Deadline.

- a. Confirmation of Authenticity.** The date of the initial mailing of the Notice Packet, and the date the signed request to be excluded is postmarked, shall be conclusively determined according to the records of the Settlement Administrator. If there is a question about the authenticity of a signed request for exclusion, the Settlement Administrator may demand additional proof of the Class Member's identity. Any Class Member who returns a timely, valid, and executed Exclusion Form will not participate in or be bound by the Settlement and Judgment, will not receive an Individual Settlement Share, and will not have any right to object, appeal, or comment thereon. A Class Member who does not complete and mail a timely Exclusion Form will automatically be included in the Settlement, will receive an Individual Settlement Share, and be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and by the Judgment, regardless of whether he or she has objected to the Settlement.
- b. Report.** No later than seven (7) calendar days after the Response Deadline, the Settlement Administrator will provide the Parties with a complete and accurate accounting of the number of Notice Packets mailed to Class Members, the number of Notice Packets returned as undeliverable, the number of Notice Packets re-mailed to Class Members, the number of re-mailed Notice Packets returned as undeliverable, the number of Class Members who objected to the Settlement and copies of their submitted objections, the number of Class Members who returned valid requests for exclusion, and the number of Class Members who returned invalid requests for exclusion.
- c. Defendants' Option to Terminate.** Defendants shall retain the right, in the exercise of its sole discretion, to nullify the Settlement if five percent (5%) or more of the Class Members make a valid request to be excluded from the Settlement. If Defendants exercise this option to nullify the Settlement, Defendants shall pay for all of the third-party administrator's costs incurred up to the point of Defendants' notification of nullification of the Settlement. The Parties agree to an option to terminate period of thirty (30) days from the date Defendants are notified of the number of requests to



be excluded exceeds the requisite number on the weekly report prepared by the third-party administrator.

**5. No Solicitation of Objection or Requests for Exclusion.** Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, request exclusion from the Settlement, or appeal from the Judgment.

**6. Motion for Final Approval.**

- a.** Upon expiration of the Objection/Exclusion Deadlines, Class Counsel will file unopposed motions and memorandums in support thereof for Final Approval of the Settlement and the following payments in accord with the terms of the Settlement: (1) the Attorney Fee Award; (2) the Cost Award; (3) the Administration Costs; (4) the Class Representative Enhancement Payment; and (5) the PAGA Payment. Class Counsel will also move the Court for an order of Final Approval (and associated entry of Judgment) releasing and barring any Released Claims of the Class Members who do not opt out of the Settlement.
- b.** If the Court does not grant Final Approval of the Settlement, or if the Court's Final Approval of the Settlement is reversed or materially modified on appellate review, then this Settlement will become null and void. If that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendants to pay the Total Consideration or any amounts that otherwise would have been owed under this Agreement, except that Defendants shall pay fifty percent (50%) of the Administration Costs, and Plaintiff shall pay the remaining fifty percent (50%) of the Administration Costs. An award by the Court of a lesser amount than sought by Plaintiff and Class Counsel for the Class Representative Enhancement Payment, the Attorney Fee Award, and/or the Cost Award, will not constitute a material modification to the Settlement within the meaning of this paragraph.
- c.** Upon Final Approval of the Settlement, the Parties shall present to the Court a proposed Final Approval Order, approving the Settlement and entering Judgment in accordance therewith. After entry of Judgment, the Court shall have continuing jurisdiction over the Class Action for purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration matters, and (3) addressing such post-Judgment matters as may be appropriate under Court rules and applicable law.

7. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, if Class Members do not timely object to the Settlement, then the Parties and their respective counsel waive any and all rights to appeal from the Judgment, including, but not limited to, all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate or set aside judgment, and any extraordinary writ, and the Judgment will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceeding, or post-judgment proceeding.
8. **Vacating, Reversing, or Modifying Judgment on Appeal.** If, after a notice of appeal, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then this Settlement will become null and void and the Parties will have no further obligations under it. A material modification would include, but not necessarily be limited to, any alteration of the Total Consideration, an alteration in the calculation of the Net Settlement Amount, and any change to the calculation of the Individual Settlement Share.
9. **Disbursement of Settlement Shares and Payments.** Subject to the Court finally approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Superior Court's Final Approval Order and Judgment. The maximum amount Defendants can be required to pay under this Settlement for any purpose is the Total Consideration. The Settlement Administrator shall keep Counsel for Defendants and Class Counsel apprised of all distributions from the Total Consideration. The Settlement Administrator shall respond to questions from Counsel for Defendants and Class Counsel.
  - a. **Funding the Settlement:** No later than ninety-five (95) calendar days after Effective Date, Defendants shall deposit the Total Consideration one-million one-hundred thousand dollars (\$1,100,000.00) needed to pay the entire TC by wiring the funds to the Settlement Administrator. Defendants shall also at this time provide any tax information that the Settlement Administrator may need to calculate each Participating Class Member's Individual Settlement Share.
  - b. **Disbursement:** Within seven (7) calendar days after the funding of the Settlement, the Settlement Administrator shall calculate and pay all payments due under the Settlement Agreement, including all Individual Settlement Shares, the Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payment, the PAGA Payment, and the Administration Costs. The Settlement

Administrator will also forward a check for the PAGA Payment to the LWDA for settlement of the PAGA claim.

- c. **QSF:** The Parties agree that the QSF is intended to be a “Qualified Settlement Fund” under Section 468B of the Code and Treasury Regulations § 1.4168B-1, 26 C.F.R. § 1.468B-1 *et seq.* and will be administered by the Settlement Administrator as such. The Parties and Settlement Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.

**10. Uncashed Checks.** Participating Class Members must cash or deposit their Individual Settlement Share checks within one hundred eighty (180) calendar days after the checks are mailed to them. If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) calendar days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced. If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will transfer the uncashed checks to the Unclaimed Property Fund of the State Controller’s office in the name of the class member or Eligible aggrieved employees.

**11. Final Report by Settlement Administrator.** Within ten (10) calendar days after the disbursement of all funds, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds.

**12. Defendants’ Legal Fees.** Defendants are responsible for paying for all of Defendants’ own legal fees, costs, and expenses incurred in this Class Action outside of the Total Consideration.

**J. Release of Claims.** Upon Defendants’ fulfillment of its payment obligations under Section IV(I)(9)(a) of this Agreement, Class Members, who do not submit a timely and valid request for exclusion, hereby waive, release, promise never to assert in any forum, remise and forever discharge the Released Parties from the Released Claims during the Class Period.

**K. Effect of PAGA Settlement.** Upon Defendants’ fulfillment of its payment obligations under Section IV(I)(9)(a) of this Agreement, the LWDA, and any other representative, proxy, or agent thereof, including, but not limited to, any and all Eligible Aggrieved Employees during the PAGA Timeframe, shall not pursue any action for civil penalties under the California Labor Code Private Attorneys General

Act of 2004 (“PAGA”), Labor Code §§ 2698, *et seq.*, against the Released Parties based on or arising out of alleged violations of Labor Code sections alleged in Plaintiff’s letter to the LWDA and the Complaint.

**L. Plaintiff’s Release of Claims and General Release.** Upon Defendants fulfillment of its payment obligations under Section IV(I)(9)(a) of this Agreement, and in exchange for the Class Representative Enhancement Payment to the Plaintiff in an amount not to exceed Ten Thousand Dollars (\$10,000), in recognition of her work and efforts in obtaining the benefits for the Class, and undertaking the risk for the payment of costs in the event this matter had not successfully resolved, Plaintiff hereby provides a general release of claims for herself and her respective spouse, heirs, successors and assigns, and forever release, remise, and discharge the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature and description whatsoever, known or unknown, suspected or unsuspected, asserted or that might have been asserted, whether in tort, contract, equity, or otherwise, arising out of and/or relating to Plaintiff’s employment with Defendants, payment of wages during that employment and the cessation of that employment and/or violation of any federal, state or local statute, rule, ordinance or regulation. With respect to the General Release, Plaintiff stipulates and agrees that, as of the Effective Final Settlement Date, Plaintiff shall be deemed to have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

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

#### **M. Miscellaneous Terms**

- 1. No Admission of Liability.** Defendants make no admission of liability or wrongdoing by virtue of entering into this Agreement. Additionally, Defendants reserve the right to contest any issues relating to class certification and liability if the Settlement is not approved. Defendants denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, has any liability to anyone under the claims asserted in the Case, or that but for the Settlement, a Class should be certified in the Case. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendants of liability or wrongdoing. This Settlement and Plaintiff’s and Defendants’ willingness to settle the Case will have no bearing on, and will not be admissible in

connection with, any litigation (other than solely in connection with this Settlement).

- 2. No Effect on Employee Benefits.** The amounts paid under this Agreement do not represent a modification of any previously credited hours of service under any employee benefit plan, policy or bonus program sponsored by Defendants. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under, benefit plans (self-insured or not) sponsored by Defendants, policies or bonus programs. Any payments made under the terms of this Settlement shall not be applied retroactively, currently or on a going forward basis as salary, earnings, wages, or any other form of compensation for the purposes of Defendants' benefit plan, policy or bonus program. Defendants retain the right to modify the language of its benefit plans, policies and bonus programs to effect this intent and to make clear that any amounts paid pursuant to this Settlement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies and bonus programs for purpose of eligibility, vesting, benefit accrual or any other purpose, and that additional contributions or benefits are not required by this Settlement.
- 3. Publicity.** Class Counsel and Plaintiff agree to discuss the terms of this Settlement only in declarations submitted to a court to establish Class Counsel's adequacy to serve as Class Counsel, in declarations submitted to a court in support of motions for preliminary approval, Final Approval, for attorneys' fees/costs, and any other pleading filed with the Court in conjunction with the Settlement, and in discussions with Class Members in the context of administering this Settlement until the Preliminary Approval Order is issued. Class Counsel and Plaintiff agree that they shall not publish any press releases or press statements regarding the Settlement, identify Defendants or Counsel for Defendants by name in any media including Class Counsel's website, or have any communications with the press or media about the Case or the Settlement. Plaintiff, in response to inquiries, will state that that "the Case was resolved." This provision will not impede Class Counsel's ability to discharge fiduciary duties, including effectuating the terms of this settlement.
- 4. Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other written or oral representations or terms, and no such

extrinsic oral or written representations or terms shall modify, vary, or contradict its terms. In entering into this Agreement, the Parties agree that this Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence. Nothing in this Agreement in any way limits or negates the enforceability and effect of the underlying arbitration agreements signed by employees of Defendants, obligating them to arbitrate any and all claims on an individual (and not on a class, collective, or representative) basis.

- 5. Authorization to Enter Into Settlement Agreement.** Class Counsel and Counsel for Defendants warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.
- 6. Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.
- 7. Deadlines Falling on Weekends or Holidays.** To the extent that any deadline set forth in this Settlement Agreement falls on a Saturday, Sunday, or legal holiday, that deadline shall be continued until the following business day.
- 8. Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Class Action in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Court.
- 9. Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.

- 10. Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.
- 11. No Prior Assignment.** Plaintiff hereby represents, covenants, and warrants that he has not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.
- 12. Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of California, without giving effect to any conflict of law principles or choice of law principles.
- 13. Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Class Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
- 14. No Tax or Legal Advice.** The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that Class Members will assume any such tax obligations or consequences that may arise from this Agreement, and that Class Members shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any Class Member, such Class Member assumes all responsibility for the payment of such taxes.
- 15. Jurisdiction of the Superior Court.** Pursuant to Code of Civil Procedure section 664.6, the Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Superior Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.
- 16. Invalidity of Any Provision; Severability.** Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found

unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.

**17. Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

**18. Execution in Counterpart.** This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

**[SIGNATURES ON NEXT PAGE]**



**V. EXECUTION BY PARTIES AND COUNSEL**

Dated: \_\_\_\_\_, 2022

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Plaintiff Cynthia Dela Vega

Dated: \_\_\_\_\_, 2022

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Ariosto Valerio  
President  
Defendants Valerio's Tropical Bakeshop III, Inc.;  
Valerio's Tropical Bakeshop V, Inc.;  
Valerio's Tropical Bakeshop VII, Inc.;  
Valerio's Tropical Bakeshop X, Inc.;  
Valerio's Tropical Bakeshop XI, Inc.; and  
Valerio's Tropical Bakeshop XII, Inc.

Dated: \_\_\_\_\_, 2022

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Elenita Valerio  
President  
Defendants Valerio's Tropical Bakeshop I, Inc.;  
Valerio's Tropical Bakeshop II, Inc.; and  
Valerio's Tropical Bakeshop VI, Inc.

Dated: \_\_\_\_\_, 2022

**MOON & YANG**

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Kane Moon  
Lilit Astvatsatryan  
Attorneys for Plaintiff Cynthia Dela Vega, on behalf  
of herself and all others similarly situated

Dated: \_\_\_\_\_, 2022

**ATKINSON ANDELSON LOYA RUUD &  
ROMO**

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Ann K. Smith  
Michele L. Collender  
Attorneys for Defendants  
Valerio's Tropical Bakeshop I, Inc.;  
Valerio's Tropical Bakeshop II, Inc.;  
Valerio's Tropical Bakeshop III, Inc.;  
Valerio's Tropical Bakeshop V, Inc.;  
Valerio's Tropical Bakeshop VI, Inc.;  
Valerio's Tropical Bakeshop VII, Inc.;  
Valerio's Tropical Bakeshop X, Inc.;  
Valerio's Tropical Bakeshop XI, Inc.; and  
Valerio's Tropical Bakeshop XII, Inc.