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Attorneys for Defendant

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MARIO ROMERO, as an individual and on behalf
of all others similarly situated, and as a private
attorney general,

Plaintiff,

vs.

SAN FRANCISCO C&C/MEL'S DRIVE IN,
form unknown; and DOES 1 through 50, inclusive,

Defendants.

Case No. 20STCV41738

[Hon. Carolyn B. Kuhl, Department 12]

**AMENDMENT TO JOINT STIPULATION
OF CLASS ACTION SETTLEMENT**

Date: February 14, 2023

Time: 10:30 a.m.

Department: 12

Complaint Filed: October 27, 2020

Pursuant to the Court’s ruling at the January 11, 2023 hearing in this matter and pursuant to Section 8.1.2 of the Joint Stipulation of Class Action Settlement executed by the Parties, Plaintiff, Mario Romero, and Defendant, San Francisco C&C/Mel’s Drive In, hereby submit this amendment to the Joint Stipulation of Class Action Settlement previously filed in this Action on December 16, 2022, as Exhibit 1 to the Declaration of Simon L. Yang (the “Agreement”).

The Parties seek to amend Sections 3.3, 4.1, 4.2, 6.1, and 6.2, as well as the Notice of Class Action and PAGA Settlement (“Class Notice”), which was attached as Exhibit A to the Agreement.

Section 3.3 is amended to state:¹

Mailing of Notice. Within 14 calendar days of receipt of the Class Data, the Administrator shall send Class Notice to each Class Member via First Class U.S. Mail, using the last known mailing address for each Class Member, based on class data provided by Defendant. Any Class Notice returned to the Administrator as undeliverable shall be sent ~~promptly~~ ***within seven calendar days*** via First Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Administrator shall promptly attempt to determine the correct address using a single skip-trace search and shall then ~~promptly~~ ***within seven calendar days*** send a single re-mailing. This shall be the sole means of notice to Class Members.

Section 4.1 is amended to state:

Consideration Period. Class Members shall be provided 45 calendar days after the postmark date of the initial mailing of Class Notice to exercise any rights to opt out of the settlement. ***Class Members who are remailed Class Notice shall be provided 45 calendar days after the postmark date of the initial mailing of Class Notice to exercise any rights to opt out of the settlement.*** Except as provided herein, no Class Member responses that are postmarked more than 45 calendar days after the initial mailing (***or remailing, if applicable***) of Class Notice shall be considered. The Parties shall do nothing to encourage or solicit Class Members or PAGA Employees to accept, opt out of, or object to the settlement.

Section 4.2 is amended to state:

Objection Right and Effect. Settlement Class Members shall be given the opportunity to object to the terms of the class action settlement. Settlement Class Members may object to the class action settlement by mailing to the Administrator an objection within 45 calendar days after the postmark date of the initial mailing (***or remailing, if applicable***) of Class Notice, which describes the objection and states any intention to appear at the final approval hearing. Alternatively, Settlement Class Members may appear at the final approval hearing to object to the settlement. Any Settlement Class Member who does not comply with the objection procedures in the Class Notice shall be deemed to have waived any objections and shall be foreclosed from making any objection, whether by appeal or otherwise, to the settlement. Settlement Class Members who object to

¹ Additions are added in ***bold italics***; deletions appear in ~~*strikethrough italics*~~.

1 the settlement pursuant to the terms of the Class Notice shall remain subject to
2 being bound by the release provisions in this Agreement pursuant to a Final
3 Approval Order and shall remain eligible to receive an Individual Class Payment.
4 Class Members do not have the right to object to the terms of the PAGA
5 settlement.

6 Section 6.1 is amended to state:

7 **Releases by Settlement Class Members.** By operation of the entry of the Final
8 Approval Order *and once Defendant has paid the amount of the agreed*
9 *settlement in full*, and except as to such rights or claims as may be created by this
10 Agreement, all Settlement Class Members fully release Defendant and each
11 Released Party from any and all claims during the Class Period that were pleaded
12 in the Action or that could have been pleaded based on the facts alleged in the
13 Action, including claims for (1) failure to pay or timely pay sick pay wages, (2)
14 failure to pay or timely pay overtime wages, (3) failure to provide rest breaks, (4)
15 failure to provide meal periods, (5) failure to furnish accurate itemized wage
16 statements, (6) failure to timely pay wages during employment or upon
17 termination, and (7) unfair business practices based on these violations. Plaintiff
18 agrees that, upon entry of the Final Approval Order, Plaintiff and all Settlement
19 Class Members will be forever barred from pursuing any and all of the claims
20 covered by this Release that arose during the Class Period against the Defendant
21 and all Released Parties.

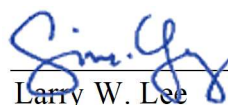
22 Section 6.2 is amended to state:

23 **Releases by PAGA Employees.** By operation of the entry of the Final Approval
24 Order *and once Defendant has paid the amount of the agreed settlement in full*,
25 and except as to such rights or claims as may be created by this Agreement,
26 Plaintiff as a proxy for the State and the LWDA, as well as PAGA Employees
27 who are Settlement Class Members, fully releases Defendant and each Released
28 Party from any and all claims during the PAGA Period for civil penalties pleaded
in the Action or that could have been pleaded based on the facts alleged in the
Action. Plaintiff agrees that upon entry of the Final Approval Order, all
Settlement Class Members will release any/all claims covered by this Release
against the Defendant and all Released Parties that arose during the PAGA Period
and Plaintiff and all Settlement Class Members will be forever barred from
pursuing any and all claims covered by this Release which arose during the
PAGA Period against the Defendant and all Released Parties.

Attached hereto as **Exhibit 1** is a true and correct copy of the "Notice of Class Action and PAGA
Settlement" as amended by the Parties.

DATED: February 6, 2023

DIVERSITY LAW GROUP, P.C.

By: 
Larry W. Lee
Simon L. Yang
Attorneys for Plaintiff

1 DATED: February 6, 2023

MATT WERTHEIM & ASSOCIATES

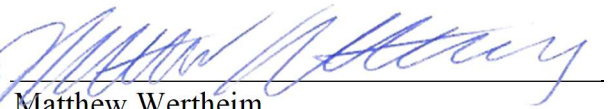
2
3 By: 
4 Matthew Wertheim
Attorneys for Defendant

EXHIBIT 1

f you need any assistance with translating this notice, please visit www.xxxxx.com.

i necesita ayuda para traducir este aviso, visite www.xxxxx.com.

This notice is being sent pursuant to court order. This is not a solicitation from a lawyer.

NOTICE OF CLASS ACTION AND PAGA SETTLEMENT

Mario Romero v. San Francisco C&C/Mel's Drive In,

Superior Court of the State of California for the County of Los Angeles Case No. 20STCV41738

If you were a non-exempt employee for San Francisco C & C dba Mel's Drive-In in the State of California and paid shift differential wages at any time from October 26, 2016, through May 31, 2022, you could receive a payment from a class action settlement (the "Settlement").

Read this notice carefully, as your legal rights could be affected whether you act or not.

The Superior Court of the State of California for the County of Los Angeles (the "Court") has preliminarily approved a Settlement that could affect your rights. The proposed Settlement resolves a class action and Labor Code Private Attorneys General Act of 2004 ("PAGA") action filed by Plaintiff, Mario Romero, against Defendant, San Francisco C & C dba Mel's Drive-In, which has been designated Case No. 20STCV41738 (the "Action").

- The Action alleges Defendant failed to pay or timely pay all sick pay wages and overtime, provide meal and rest breaks, and furnish accurate itemized wage statements. On this basis, the Action pursues class action and PAGA claims.
- Defendant denies Plaintiff's allegations and maintains it has fully complied with the law. By agreeing to the Settlement, Defendant in no way admits any violation of law or any liability whatsoever to Plaintiff or others and expressly denies all such liability. Both Plaintiff and Defendant have agreed to the Settlement in light of all known facts and circumstances—including the uncertainty associated with litigation.
- If the Court grants final approval of the settlement, it would provide cash payments to Class Members, based on the number of relevant workweeks that they worked during the Class Period.
- Based on Defendant's records, you worked XXX relevant workweeks during the Class Period. An *estimate* of the amount that could be allocated to you is \$XXX. Whether you receive a payment depends on whether the Court grants final approval of the class action settlement, and the amount you ultimately receive depends on the terms the Court finally approves and whether you opt out of the class action settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS CLASS ACTION SETTLEMENT:	
DO NOTHING	You do not have to do anything in response to this notice. If you do nothing and the Court grants final approval of the class action settlement, you will remain eligible to automatically receive an Individual Class Payment and will be bound by the class action release provisions of the Settlement.
OPT OUT	You may opt out of the class action settlement by submitting a Request for Exclusion. If you opt out, you may not object to the class action settlement, will not be eligible to receive an Individual Class Payment, and will not be bound by the class action release provisions of the Settlement.
OBJECT	You may object to the class action settlement by submitting a written objection. If you object and the Court grants final approval of the class action settlement despite your objection, you will remain eligible to automatically receive an Individual Class Payment and will be bound by the class action release provisions of the Settlement.

If the Court approves the Settlement, you will receive an Individual PAGA Payment and will be bound by the PAGA release provisions of the Settlement, regardless of whether you opt out of the class action settlement.

NOTICE OF CLASS ACTION AND PAGA SETTLEMENT

Questions? Please contact the Administrator at (xxx) xxx-xxxx. www.xxxxx.com

**THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION FROM THE COURT
AS TO THE MERITS OF THE CLAIMS.**

1. Why Did I Receive This Notice?

You are receiving this Notice of Class Action and PAGA Settlement (the “Notice”) because Defendant’s records show that you were a Class Member because you were employed as a non-exempt employee by Defendant in the State of California at some time from October 26, 2016, through May 31, 2022 (the “Class Period”). Class Members who worked from at some time from October 26, 2016, through May 31, 2022 are also “PAGA Employees” under PAGA and may be entitled to share in the funds allocated to the PAGA settlement.

Because the Settlement preliminarily approved by the Court would affect Settlement Class Members’ legal rights, the Court ordered that this Notice be sent to you. This Notice provides a brief description of the Action, informs you of the settlement terms preliminarily approved by the Court, and advises you of your legal rights with respect to the Settlement. If the Court finally approves the Settlement, the Settlement will fully resolve the Action, and your legal rights may be affected by the Settlement.

The Court has preliminary approved Larry W. Lee and Simon L. Yang of Diversity Law Group, P.C. as Class Counsel. Based on their investigation and evaluation, they are of the opinion that the terms of Settlement are fair, reasonable, adequate, and in the best interests of Class Members. The terms of the Settlement are set forth in detail in the Joint Stipulation of Class Action and PAGA Settlement (“Agreement”). You may obtain a copy of the Agreement from Phoenix Settlement Administrators, a neutral third-party appointed by the Court to administer the settlement (the “Administrator”).

2. What Is the Action About?

On August 27, 2020, Plaintiff filed a complaint in Court that alleged that Defendant failed to pay or timely pay all sick pay wages and overtime, provide meal and rest breaks, and furnish accurate itemized wage statements to Plaintiff and other non-exempt employees. Specifically, Plaintiff alleged that employees were paid sick pay at their base rates of pay, did not have certain compensation considered when calculating their overtime rates, denied meal and rest periods, and furnished wage statements that failed to accurately itemize and show hourly rates of pay, hours worked, gross wages earned, net wages earned, and the name of the legal entity that was the employer.

Defendant denies and continues to deny (i) all of the allegations made by Plaintiff, (ii) that it violated any applicable laws, or (iii) that it is liable or owes damages, penalties, or other compensation or remedies to anyone with respect to the alleged facts or claims asserted in the Action. Nonetheless, without admitting or conceding any liability or wrongdoing whatsoever, Defendant has agreed to settle the Action, to avoid the burden, expense, and uncertainty of continuing the Action.

3. What Are the Payments Under the Settlement?

Defendant agrees to pay a Gross Settlement Amount of \$750,000.00, which is inclusive of any Administration Costs, Attorneys’ Fees and Costs Award, Class Representative Award, PAGA Penalty Fund, and Individual Class Payments awarded by the Court. The Court may approve payment of (i) Administration Costs to the Administrator for administering the settlement (e.g., printing, distributing, or tracking Notices, distributing payments, etc.); (ii) an Attorneys’ Fees and Costs Award to Class Counsel for litigation and resolution of the Action; (iii) a Class Representative Award to Plaintiff both for his efforts in prosecuting the Action for Class Members and for Plaintiff’s additional general release of claims inapplicable to Class Members; and (iv) a PAGA Penalty Fund.

PAGA Penalty Fund: The Settlement requests that the Court approve a PAGA Penalty Fund of \$50,000.00. Pursuant to Labor Code requirements, 75% of the PAGA Penalty Fund, or \$37,500.00, will be allocated to the LWDA as an LWDA Payment. The remainder of the PAGA Penalty Fund, or \$12,500, will be allocated and entirely payable to PAGA Employees on a pro rata basis. These payments shall be classified for tax reporting purposes as penalties.

Individual Class Payments: Individual Class Payments shall be distributed to Settlement Class Members, without the need to submit a claim form. Individual Class Payments and allocated among Settlement Class Members on a pro rata basis, based on the number of workweeks reported by Defendant for each Settlement Class Member during the Class Period. 15% of Individual Class Payments shall be allocated to wages and subject to IRS Form W-2 reporting; the remainder of Individual Class Payments shall be classified for tax reporting purposes as interest and penalties.

Through this settlement, each Class Member shall agree to be solely and legally responsible for paying all other applicable taxes on their respective Individual Settlement Payments and shall indemnify and hold harmless the Parties from any claim or liability for taxes, penalties, or interest arising as a result of the payments.

All uncashed or undeliverable settlement checks will expire 180 days after the postmarked date of their initial mailing. After 180 days, the sum value of all expired checks will be tallied by the Administrator. The Administrator shall direct the principal for any expired checks in accordance with the Final Approval Order. The Parties shall request that the Court order that the principal for any expired checks escheat to the State of California's Unclaimed Property Fund in the name of the Class Member.

Attorneys' Fees and Costs Award: You do not need to individually pay any portion of Class Counsel's attorneys' fees and costs. Any payments for those attorneys' fees and costs will be determined by the Court. Class Counsel intends to request that the Court approve an Attorneys' Fees and Costs Award in the amount of (a) 33⅓% of the Gross Settlement Amount (or \$250,000.00) and (b) litigation costs of up to \$20,000.00.

Class Representative Award: Any Class Representative Award is to be determined by the Court and would be supplemental to Plaintiff's Individual Settlement Payments. Class Counsel intends to request that the Court approve a Class Representative Award of \$10,000.00 for Plaintiff's efforts in prosecuting the Action for Class Members and for Plaintiff's additional general release of claims inapplicable to Class Members.

Administration Costs: Class Counsel intends to request that the Court approve Administration Costs of up to \$15,000.00, payable to the Administrator for administering the settlement, including, but not limited to, printing, distributing, or tracking Notices, providing any required tax forms, processing any required tax payments, or reporting, and calculating and distributing all payments under the Settlement.

All Payments Subject to Court Approval: The above payments will be made if and only if the Court concludes the settlement is reasonable, fair, and adequate for the Class. The Court may adjust the amounts of certain payments.

4. What Do I Release Under the Settlement?

If the Court grants final approval of the class action settlement and concludes it is reasonable, fair, and adequate for Class Members, Settlement Class Members would release Defendant and its present and former parent companies, subsidiaries, divisions, related or affiliated companies, and its shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, counsel in the Action, and any other individual or entity that could be liable for any of the Released Claims ("Released Parties") from any and all claims for violations any and all claims during the Class Period that were pleaded in the Action or that could have been pleaded based on the facts alleged in the Action, including claims for (1) failure to pay or timely pay sick pay wages, (2) failure to pay or timely pay overtime wages, (3) failure to provide rest breaks, (4) failure to provide meal periods, (5) failure to furnish accurate itemized wage statements, (6) failure to timely pay wages during employment or upon termination, and (7) unfair business practices based on these violations.

This means that, if you do not timely and formally exclude yourself from the class action settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant about the legal issues resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

Upon approval, Plaintiff as a proxy for the State and the LWDA, as well as PAGA Employees who are Settlement Class Members, fully releases Defendant and each Released Party from any and all claims during the PAGA Period for civil penalties pleaded in the Action or that could have been pleaded based on the facts alleged in the Action.

5. How Do I Dispute My Number of Workweeks?

The first page of this Notice states how many relevant workweeks you worked during the Class Period, based on Defendant's records. If you dispute your number of relevant workweeks during the Class Period, you must mail a written dispute to the Administrator listed below and state your name, address, last four digits of your Social Security number, and the number of relevant workweeks you contend you worked from October 26, 2016, through May 31, 2022. The written dispute must be postmarked by [45 calendar days after the initial mailing of Notice or remailed notice, if applicable].

6. How Do I Object to the Class Action Settlement?

If you want to participate in the Settlement, you do not have to do anything and do not have to appear at the final approval hearing before the Court. You will automatically receive your Individual Settlement Payment if the Court grants final approval of the class action settlement and approves the PAGA settlement.

If you want to object to the class action settlement, you may appear at the final approval hearing to object to the class action settlement. Alternatively, you must take the steps below:

- (1) You must mail a written statement to the Administrator listed below.
- (2) The written statement must include: your name, address, last four digits of your Social Security number, and the basis for your objection.
- (3) If you object, you may but are not required to appear at the final approval hearing either in person or through counsel, paid for at your own expense.
- (4) The written statement must be postmarked by [45 calendar days after the initial mailing of Notice or remailed notice, if applicable].

If you object, you will remain bound by the class action settlement if finally approved and bound by the PAGA settlement if approved. If you do not want to be bound by the class action settlement if finally approved, you must opt out of the class action settlement. Regardless of whether you object to the class action settlement, you will be bound by the PAGA settlement if approved.

The final approval hearing is currently scheduled for _____, 2023, at x:x0 a./p.m., in Department 12 of the Los Angeles Superior Court located at 312 N. Spring Street, Los Angeles, California 90012. Any Final Approval Order issued at or after the final approval hearing will be posted on the Settlement Administrator's website pursuant to Rule 3.771(b) of the California Rules of Court. The Court may modify the time or date of the final approval hearing. Any changes to the time or date of the final approval hearing will be posted to the Settlement Administrator's website.¹

7. How Do I Opt Out of the Class Action Settlement?

If you do not want to participate in the class action settlement, you may opt out of the class action settlement. If you opt out of the class action settlement, you may not object to the class action settlement, will not receive any Individual Class Payment, and will not be bound by the class action release provisions of the Settlement.

In order to opt out, you MUST express your desire to be excluded from the class action settlement by mailing to the Administrator a "Request for Exclusion," which must state "Request for Exclusion," include your name, current address, current telephone number, and last four digits of your social security number. Any such Request for Exclusion must be postmarked by [45 calendar days after the initial mailing of Notice or remailed notice, if applicable].

Any Request for Exclusion that does not include all required information or that is not submitted on a timely basis will be deemed null, void, and ineffective. A Request for Exclusion shall be deemed to be submitted as of the

¹ Any Class Member who elects to appear personally at the Court for any reason related to this Lawsuit must comply with the Court's social distancing and mandatory face covering requirements, as well as any other orders related to COVID-19. All such rules and orders can be located at the Court's website: www.lacourt.org. For more information on how to appear remotely, please visit the Court's website at www.lacourt.org/division/civil/CI0040.aspx and www.lacourt.org/lacc/.

postmarked date. If you submit both a Request for Exclusion and an objection, your Request for Exclusion will be valid and be deemed to invalidate the objection.

8. Where Can I Get Additional Information?

This Notice summarizes the Settlement. For more information, please contact the Administrator or Class Counsel:

Administrator: xxx xxx xxx, California xxx Telephone: (xxx) xxx-xxxx	Class Counsel (Abogados de la Clase): DIVERSITY LAW GROUP, P.C. Larry W. Lee (lwlee@diversitylaw.com) Simon L. Yang (sly@diversitylaw.com) 515 S. Figueroa St., Suite 1250 Los Angeles, California 90071 Telephone: (213) 488-6555
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PLEASE DO NOT TELEPHONE THE COURT OR DEFENDANT’S COUNSEL FOR INFORMATION REGARDING THIS SETTLEMENT.

1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3
4 STATE OF CALIFORNIA]
5 COUNTY OF LOS ANGELES]ss.
6]

7 I am employed in the County of Los Angeles, State of California. I am over the age of
8 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite
9 1250, Los Angeles, California 90071.

10 On February 6, 2023, I served the following document(s) described as:
11 **AMENDMENT TO JOINT STIPULATION OF CLASS ACTION SETTLEMENT** on the
12 interested parties in this action as follows:

13 Matthew Wertheim
14 wertheimlaw@gmail.com
15 Matt Wertheim & Associates
2135 Lombard St.
San Francisco, CA 94123
Attorney for Defendant

16 X BY ELECTRONIC SERVICE VIA CASE ANYWHERE: Based on a
17 court order I caused the above-entitled document(s) to be served through Case Anywhere at the
18 website www.caseanywhere.com, addressed to all parties appearing on the electronic service list
19 for the above-entitled case. The service transmission was reported as complete and a copy of the
20 Case Anywhere Filing Receipt/Confirmation will be filed, deposited, or maintained with the
21 original document(s) in this office.

22 I declare under penalty of perjury under the laws of the State of California that the
23 above is true and correct. Executed on February 6, 2023, at Los Angeles, California.

24 
25 Erika Mejia
26
27
28