

1 Thomas A. Rist (SBN 238090)  
2 **RIST LAW OFFICE, LC**  
3 2221 Camino Del Rio South, Suite 300  
4 San Diego, CA 92108  
5 (619) 377-4660  
6 tom@sdvictimlaw.com

7 Brad Nakase (SBN: 236226)  
8 **NAKASE LAW FIRM, INC.**  
9 2221 Camino Del Rio South, Suite 300  
10 San Diego, CA 92108  
11 (619) 550-1321  
12 brad@nakaselawfirm.com

13 Attorney for Plaintiffs

14 Julie Vogelzang (SBN 174411)  
15 **SCHOR VOGELZANG & CHUNG, LLP**  
16 2170 Fourth Avenue  
17 San Diego, CA 92101  
18 (619) 906-2400  
19 julie@svclegal.com

20 Attorney for Defendants

21 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
22 **COUNTY OF SAN DIEGO**

23 TANEA MALDONADO, on behalf of  
24 herself and all others similarly situated,

25 Plaintiffs,

26 vs.

27 FIRST MAINSAIL, INC. dba  
28 PRIMAVERA RISTORANTE, a  
California Corporation; JEANNETTE  
STAVROS; and DOES 1 through 10,  
inclusive,

Defendants.

CASE NO. 37-2020-00023369-CU-OE-CTL

**STIPULATION OF SETTLEMENT AND  
RELEASE**

Judge: Ronald Frazier  
Dept.: C-65  
Complaint Filed: July 7, 2020  
Trial: February 4, 2022

1 This Stipulation of Settlement and Release (“Agreement”) is entered into by and between  
2 plaintiff Tanea Maldonado (“Named Plaintiff”), individually and on behalf of the Putative Class  
3 Members and PAGA Group Members defined below (collectively with Named Plaintiff, “Plaintiffs”  
4 or “Class Members”), and defendants First Mainsail, Inc. dba Primavera Ristorante and Jeannette  
5 Stavros (collectively “Defendants”), subject to the approval of the Court. Named Plaintiff and  
6 Defendants collectively are referred to herein as the “Parties.”

7 **1. RECITALS**

8 1.1 On July 7, 2020, Named Plaintiff, filed a putative class action complaint against  
9 Defendants in the San Diego Superior Court, State of California, entitled *Tanea Maldonado v. First*  
10 *Mainsail, Inc. dba Primavera Ristorante and Jeannette Stavros*, Case No. 37-2020-00023369-CU-OE-  
11 CTL (the “Action”), alleging that Defendants failed to pay minimum wages; failed to pay wages at the  
12 agreed upon rate; failed to provide meal and rest periods; failed to pay overtime; failed to pay wages  
13 upon termination of employment; failed to provide accurate wage statements; and further alleged  
14 violations of the California Unfair Competition Law.

15 1.2 On July 7, 2020, the Named Plaintiff sent a letter to the California Labor & Workforce  
16 Development Agency (“LWDA”) informing it that she intended to pursue penalties pursuant to the  
17 Private Attorneys General Act (“PAGA”) for the same violations alleged in the Complaint filed in this  
18 Action.

19 1.3 More than sixty-five (65) days passed following the date Plaintiff sent her  
20 correspondence to the LWDA, and the LWDA never responded to Plaintiffs’ correspondence. As a  
21 result, on September 9, 2020, Plaintiff filed a First Amended Complaint and alleged civil penalties  
22 under PAGA.

23 1.4 On October 27, 2020, Defendants filed their Answer to the First Amended Complaint  
24 (“FAC”), denying the allegations set forth in the FAC and alleging a number of affirmative defenses.  
25 The FAC is also referred to herein as the “Operative Complaint.”

26 1.5 Plaintiffs’ Counsel has conducted a thorough investigation of the facts in the Action and  
27 has diligently pursued an investigation of Class Members’ and PAGA Group Members’ claims against  
28

1 Defendants. Plaintiff and Defendants have engaged in substantial investigation in connection with the  
2 Action, including the informal exchange of a large volume of information regarding the claims asserted  
3 in the Action and other relevant issues. Defendants produced, and Plaintiffs' Counsel reviewed,  
4 relevant policies, payroll information for the Named Plaintiff and Class Members and PAGA Group  
5 Members, wage statements, and other documents related to the Class Members' and PAGA Group  
6 Members' time with Defendants. Plaintiffs' Counsel also investigated documents and other forensic  
7 evidence relating to Defendants' financial condition.

8 1.6 For several months, the Parties worked on a resolution of the matter and eventually  
9 agreed to resolve all of the allegations raised in the Operative Complaint.

10 1.7 The Parties have entered into this Settlement solely in order to reduce the risks and costs  
11 of further litigation, and to avoid further business distractions.

12 1.8 Defendants deny any liability or wrongdoing of any kind associated with the claims  
13 alleged in the Action, including all allegations made or that could have been made based upon the  
14 factual allegations in the Operative Complaint and other pleadings described herein. Defendants  
15 further contend that, for any purpose other than settlement, this Action is not appropriate for class  
16 treatment and that Named Plaintiff is not an adequate class representative. Among other things,  
17 Defendants contend that they complied in good faith with all provisions of California and federal law  
18 including, but not limited to, properly paying Class Members and PAGA Group Members for all hours  
19 worked, including minimum wages and overtime and that all meal and rest breaks were provided.  
20 Defendants also contend they properly paid Class Members and PAGA Group Members all wages due  
21 each pay period and at the termination of their employment.

22 1.9 Based on the investigation summarized above, Plaintiffs' Counsel are of the opinion  
23 that the Settlement on the terms set forth in this Agreement is fair, reasonable, and adequate and is in  
24 the best interest of the Class in light of all known facts and circumstances, including the risk of  
25 significant delay, defenses asserted by Defendants, unresolved legal issues that could have a material  
26 impact on the outcome of the Action, the financial instability of Defendants, and numerous potential  
27 appellate issues. The Parties recognize that the issues presented in the Action are likely only to be  
28

1 resolved after extensive and costly pretrial proceedings, including a dispute as to whether any of the  
2 claims asserted can be certified as a class action, and that further litigation will cause inconvenience,  
3 distraction, disruption, delay and expense disproportionate to the potential benefits of litigation. The  
4 Parties agree that they have taken into account the risk and uncertainty of the outcome inherent in any  
5 complex litigation of this nature.

6 1.10 It is the intention of the Parties and the objective of this Agreement to avoid the costs  
7 of further litigation, trial and appeals, and to settle and dispose of, fully and completely and forever,  
8 the claims released herein and described below, on the terms set forth herein.

9 **2. DEFINITIONS**

10 As used in this Agreement, the terms set forth in this Section 2 shall have the meanings ascribed  
11 to them below.

12 2.1 **Action.** “Action” means the above-captioned action entitled *Tanea Maldonado v. First*  
13 *Mainsail, Inc. dba Primavera Ristorante and Jeannette Stavros*, Case No. 37-2020-00023369-CU-OE-  
14 CTL, commenced on July 7, 2020, with the operative First Amended Complaint filed on September 9,  
15 2020, currently pending in San Diego Superior Court, State of California as a putative class action and  
16 representative action.

17 2.2 **Agreement.** “Agreement” means this Stipulation of Settlement and Release, including  
18 Exhibits 1-4 referred to herein and attached hereto.

19 2.3 **Claims.** “Claims” means the claims stated in the First Amended Complaint and those  
20 based on the facts alleged in the First Amended Complaint, namely, for Failure to Pay Minimum Wages  
21 (Cal. Labor Code 1194)(First Cause of Action); Failure to Pay Wages at the Agreed Upon Rate (Cal  
22 Labor Code § 223)(Second Cause of Action); Failure to Provide Meal Breaks (Cal. Labor Code  
23 §§226.7 and 512, and IWC Wage Order No. 5, §11)(Third Cause of Action); Failure to Provide Rest  
24 Breaks (Cal. Labor Code §§226.7 and 516, and IWC Wage Order No. 5, §12)(Fourth Cause of Action);  
25 Failure to Pay Overtime (Cal. Labor Code § 1194 and IWC Wage Order No. 5)(Fifth Cause of Action);  
26 Failure to Pay Compensation at Time of Termination (Cal Lab. Code §§ 201-203 (Sixth Cause of  
27 Action); Failure to Provide Accurate Itemized Wage Statements (Cal. Labor Code §226(a) and IWC  
28



1           2.12   **Effective Date.** “Effective Date” means when the Settlement is considered “Final.” For  
2 purposes of this Agreement, “Final” means (i) in the event that there were no timely and valid  
3 objections filed, or any timely and valid objections have been withdrawn, then the date of the Court’s  
4 Final Approval Order approving the Settlement; or, (ii) in the event that one or more timely and valid  
5 objections has/have been filed and not withdrawn at the time the Final Approval Order is entered, then  
6 upon the passage of the applicable date for an objector to seek appellate review of the Court’s Final  
7 Approval Order, without a timely appeal having been filed; or, (iii) in the event that a timely appeal of  
8 the Court’s Final Approval Order has been filed, then the Settlement Agreement shall be final when  
9 the applicable appellate court has rendered a final decision or opinion affirming the Court’s Final  
10 Approval Order without material modification, and the applicable date for seeking further appellate  
11 review has passed, or the date that any such Appeal has been either dismissed or withdrawn by the  
12 appellant.

13           2.13   **Fee and Expense Award.** “Fee and Expense Award” means such award of attorneys’  
14 fees and costs/expenses as the Court may authorize to be paid to Plaintiffs’ Counsel from the Gross  
15 Settlement Fund for their services to Plaintiffs in the Action.

16           2.14   **Final Approval Hearing.** “Final Approval Hearing” means the hearing at or after  
17 which the Court makes a decision on whether to grant final approval of the Settlement as fair,  
18 reasonable and adequate, implement the terms of the Agreement, enter Judgment, and dismiss the  
19 Action with prejudice.

20           2.15   **Final Approval Order or Judgment.** “Final Approval Order” or “Judgment” means  
21 the order and judgment finally approving the Settlement, as contemplated in Section 5.2 of this  
22 Agreement, granting final approval of the settlement, issuing an associated entry of final judgment, and  
23 dismissing the Action with prejudice with respect to Settlement Class Members.

24           2.16   **Gross Settlement Fund.** “Gross Settlement Fund” means the aggregate sum of Seventy  
25 Thousand Dollars and No Cents (\$70,000.00), which is the maximum total amount that Defendant shall  
26 be required to pay for all purposes under this Agreement in full and final settlement of the Action. The  
27 following shall be paid from the Gross Settlement Fund pursuant to the Plan of Allocation:  
28

1 (a) Settlement Awards to all Settlement Class Members, (b) Fee and Expense Award, (c) Service  
2 Awards; (d) LWDA Payment; and (e) Settlement Administration Costs. Under no circumstances shall  
3 Defendants pay any sum in excess of the Gross Settlement Fund, with the exception of the employer’s  
4 share of payroll taxes arising from the payments made under this Settlement, which will be paid by  
5 Defendants separate from and in addition to the Gross Settlement Amount.

6           2.17   **Judgment.** “Judgment” means the Judgment entered on the Final Approval Order in  
7 the Action.

8           2.18   **LWDA Payment.** “LWDA Payment” means the final amount approved as payment to  
9 the LWDA for resolution of the PAGA claims of Plaintiff and the PAGA Group Members as provided  
10 in Section 3.3 below.

11           2.19   **Named Plaintiff.** “Named Plaintiff” means plaintiff Tanea Maldonado.

12           2.20   **Net Settlement Fund.** “Net Settlement Fund” means the Gross Settlement Fund less  
13 the Fee and Expense Award, the Service Award, the LWDA Payment, and the Settlement  
14 Administration Costs.

15           2.21   **Notice Packet.** “Notice Packet” means the Class Notice attached hereto as **Exhibit 1**,  
16 the Class Member Information Sheet attached hereto as **Exhibit 2**, the Objection form attached hereto  
17 as **Exhibit 3**, and the Request for Exclusion form attached hereto as **Exhibit 4**, each subject to Court  
18 approval.

19           2.22   **Objection.** “Objection” means a Class Member’s valid and timely written objection to  
20 the Settlement Agreement. For an Objection to be valid, it must include: (a) the Class Member’s full  
21 name, address, telephone number, and the last four digits of the Class Member’s social security number;  
22 and (b) a written statement of all grounds for the objection accompanied by legal support, if any, for  
23 such objection. An objection form substantially in the form attached hereto as **Exhibit 3** shall be mailed  
24 to Class Members as part of the Notice Packet.

25           2.23   **PAGA Settlement Amount.** “PAGA Settlement Amount” means the portion of the  
26 Gross Settlement Amount allocated to the resolution of PAGA Group Members’ claims arising under  
27 PAGA. The Parties have agreed that the PAGA Settlement Amount is Five Thousand Dollars and Zero  
28

1 Cents (\$5,000.00), subject to Court approval. Of the PAGA Settlement Amount, 75% will be  
2 considered the LWDA Payment, and the remaining 25% will be added to the Net Settlement Amount  
3 and distributed pro rata to PAGA Group Members on a pro rata basis based on the total number of pay  
4 periods (full or partial) worked by each PAGA Group Member during the PAGA Period. Partial pay  
5 periods will be rounded up to the nearest whole integer. PAGA Group Members will receive payment  
6 from the employee portion of the PAGA Settlement Amount regardless of whether they submit a  
7 Request for Exclusion if the PAGA Settlement Amount is approved by the Court.

8       **2.24 PAGA Group Members.** “PAGA Group Members” means all Class Members who  
9 worked at least one (1) pay period at any time during the PAGA Period.

10       **2.25 PAGA Period.** “PAGA Period” means the time period from July 7, 2019, through  
11 March 16, 2020.

12       **2.26 Parties.** “Parties” means Named Plaintiff and Defendants.

13       **2.27 Plaintiffs.** “Plaintiffs” means Named Plaintiff and Class Members.

14       **2.28 Plaintiffs’ Counsel.** “Plaintiffs’ Counsel” means Rist Law Office, LC and Nakase Law  
15 Firm, Inc.

16       **2.29 Plan of Allocation.** “Plan of Allocation” means the manner in which the Net Settlement  
17 Fund shall be allocated to Settlement Class Members, as specified in Section 4.5 of this Agreement.

18       **2.30 Preliminary Approval or Preliminary Approval Order.** “Preliminary Approval” or  
19 “Preliminary Approval Order” means the order preliminarily approving the Settlement, which shall,  
20 among other things, preliminarily approve the Settlement as fair, reasonable and adequate, approve the  
21 content and manner of distribution of Class Notice to Plaintiffs, approve the Settlement Administrator,  
22 and set the briefing schedule for Named Plaintiffs’ motion for final approval of the Settlement.

23       **2.31 Preliminary Approval Date.** “Preliminary Approval Date” means the date upon which  
24 the Court enters the Preliminary Approval Order.

25       **2.32 Pro Rata Allocation or Allocation.** “Pro Rata Allocation” or “Allocation” means the  
26 amount of money to be paid to each Settlement Class Member from the Net Settlement Fund, based on  
27 the Plan of Allocation set forth in Section 4.5 of this Agreement.



1           2.33   **Qualified Settlement Account or QSF.** “Qualified Settlement Account” or “QSF”  
2 means the settlement account to be established by the Settlement Administrator, within the meaning of  
3 Treasury Regulation § 1.468B-1, 26 CFR § 1.468B-1 et seq., for the benefit of Settlement Class  
4 Members, for administration and distribution of funding and payments under the Agreement.

5           2.34   **Released Claims.** “Released Claims” means all claims stated in the First Amended  
6 Complaint and all claims, rights, demands, liabilities, and causes of action of any nature or description  
7 arising from the facts alleged in the First Amended Complaint in the Action, or as reasonably could  
8 have been pleaded based on the factual allegations pleaded in the First Amended Complaint in the  
9 Action that accrued during the Class Period. These claims include but are not necessarily limited to,  
10 1) Failure to Pay Minimum Wages (Cal. Labor Code 1194); 2) Failure to Pay Wages at the Agreed  
11 Upon Rate (Cal Labor Code § 223); 3) Failure to Provide Meal Breaks (Cal. Labor Code §§226.7 and  
12 512, and IWC Wage Order No. 5, §11); 4) Failure to Provide Rest Breaks (Cal. Labor Code §§226.7  
13 and 516, and IWC Wage Order No. 5, §12); 5) Failure to Pay Overtime (Cal. Labor Code § 1194 and  
14 IWC Wage Order No. 5); 6) Failure to Pay Compensation at Time of Termination (Cal Lab. Code §§  
15 201-203; 7) Failure to Provide Accurate Itemized Wage Statements (Cal. Labor Code §226(a) and IWC  
16 Wage Order No. 5, §7); 8) Unfair and Unlawful Business Practices (Cal. Bus. & Prof. Code § 17200  
17 *et seq.*); 9) Civil Penalties under PAGA (Cal. Lab. Code §2698 *et seq.*) 10) any penalties, liquidated  
18 damages, restitution, disgorgement, civil penalties, statutory penalties, taxes, interest, attorneys’ fees,  
19 or litigation costs derived from the above alleged claims. The Released Claims shall include a release  
20 of any federal Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq. (“FLSA”) claims that could be  
21 asserted based on the facts alleged in the First Amended Complaint in the Action. The Parties  
22 acknowledge that under this release, the right of the LWDA to investigate the released PAGA claims  
23 is not released but Released Claims do include any claims for penalties by a Settlement Class Member  
24 as a result of any such LWDA investigation.

25           2.35   **Released Parties.** “Released Parties” means Defendants, all of Defendants’ past,  
26 present and/or future parent corporations, subsidiaries, divisions, affiliates, related companies,  
27 successors and assigns and each of their respective past, present and future officers, directors,  
28

1 employees, partners, shareholders, operators, principals, owners, heirs, representatives, accountants,  
2 auditors, consultants, benefit plans, insurers and reinsurers, representatives, attorneys, and agents.

3       **2.36 Request for Exclusion.** “Request for Exclusion” means a valid and timely written  
4 request by a Class Member to be excluded from the Settlement. To be effective, the Request for  
5 Exclusion must contain the elements described in Sections 4.3.2 – 4.3.3 below. To be effective, the  
6 Request for Exclusion must be postmarked by the Response Deadline and received by the Settlement  
7 Administrator. The Request for Exclusion shall not be effective as to the release of claims arising under  
8 PAGA and shall not preclude the Class Member from receiving their share of the PAGA Settlement  
9 Amount. A Request for Exclusion form substantially in the form attached hereto as Exhibit 4 shall be  
10 included in the Notice Packet and mailed to Class Members.

11       **2.37 Response Deadline.** “Response Deadline” means the postmarked date sixty (60)  
12 calendar days from the date of initial mailing of the Notice Packet, or such other date set by the Court  
13 in the Preliminary Approval Order, for a Class Member to mail an Objection to the Settlement or a  
14 Request for Exclusion to the Claims Administrator. In the event the sixtieth (60th) calendar day falls  
15 on a Sunday or federal holiday, the Response Deadline will be extended to the next day on which the  
16 U.S. Postal Service is open. In the event the Settlement Administrator must re-mail a Notice Packet,  
17 then those Class Members shall have an additional fourteen (14) days from the date of re-mailing to  
18 object or request exclusion from the Settlement, or until the Response Deadline, whichever is later, in  
19 which to postmark an Objection or Request for Exclusion.

20       **2.38 Service Award.** “Service Award” means the payment, if any, authorized by the Court  
21 to be made to a Named Plaintiff in addition to any Pro Rata Allocation.

22       **2.39 Settlement.** “Settlement” means this Agreement and all actions taken pursuant to and  
23 in furtherance of this Agreement.

24       **2.40 Settlement Administration Costs.** “Settlement Administration Costs” means the  
25 amount approved by the Court to be paid out of the Gross Settlement Fund for the services of a  
26 Settlement Administrator to administer the Settlement, including but not limited to printing and mailing  
27 the Class Notice, locating Class Members, calculating Settlement Awards, issuing Settlement Award  
28

1 and other checks payable pursuant to this Agreement, reporting all applicable payments made  
2 hereunder on Internal Revenue Service (IRS) Form 1099-MISC, and any other services as described in  
3 Section 4.2.3 below. It is estimated that the Settlement Administration Costs will total no more than  
4 \$5,000.00.

5       **2.41 Settlement Administrator.** “Settlement Administrator” means ILYM GROUP, INC.,  
6 or such other administrator as may be approved by the Court, which shall be responsible for  
7 administering the Settlement pursuant to the terms of the Agreement, the Class Notice, the Preliminary  
8 Approval Order, and the Final Approval Order and Judgment. The Settlement Administrator shall  
9 agree to confidentiality terms as may be required by Defendants regarding Class Members’ personal  
10 identifying information provided to the Settlement Administrator by it, and the Settlement  
11 Administrator shall work with Plaintiffs’ Counsel and Defendants’ Counsel to implement and  
12 administer appropriate fraud-prevention policies relating to the Settlement. The Parties represent that  
13 they do not have any financial interest in the Settlement Administrator or otherwise have a relationship  
14 with the Settlement Administrator that could create a conflict of interest.

15       **2.42 Settlement Award.** “Settlement Award” means the Pro Rata Allocation and PAGA  
16 Settlement Amount, if applicable, to be paid from the Net Settlement Fund to a Settlement Class  
17 Member and/or PAGA Group Member.

18       **2.43 Settlement Class Members.** “Settlement Class Members” means all Class Members  
19 who do not timely complete and mail a valid Request for Exclusion from the Settlement.

20       **Workweeks.** “Workweeks” means the number of weeks that Class Members worked as  
21 a Class Member during the Class Period, rounded up to the next whole integer.

### 22 **3. SETTLEMENT TERMS**

23       **3.1 Settlement Payment by Defendants.** In full and final settlement of this Action and the  
24 Released Claims, within thirty (30) days of the Effective Date, Defendants shall remit the Gross  
25 Settlement Fund to the Settlement Administrator for the purpose of funding the Settlement. The Gross  
26 Settlement Fund shall be applied to the payment of all Settlement Awards, Plaintiffs’ Counsel’s Fee  
27 and Expense Award, the LWDA Payment, Service Award, and Settlement Administration Costs as  
28

1 awarded by the Court. Under no circumstances will Defendants be obligated to pay more than the  
2 Gross Settlement Fund to settle the Action and the Released Claims. This settlement is non-  
3 reversionary, meaning that Settlement Class Members will not have to make a claim in order to receive  
4 a distribution. Distributions, in the form of individual Settlement Awards, will be made directly to  
5 each participating Settlement Class Member.

6       **3.2 Attorneys' Fees and Costs.** Defendants will not oppose Named Plaintiffs' motion for  
7 up to \$28,331 as an award of attorneys' fees and costs, ("Fee and Expense Award"). Named Plaintiff  
8 agrees not to ask the Court for more than \$28,331 for attorneys' fees and costs, and in no event shall  
9 Defendants be liable for any attorneys' fees or costs in excess of this amount. The Fee and Expense  
10 Award shall be paid from the Gross Settlement Fund, and Defendants shall not otherwise be obligated  
11 to pay any portion of Plaintiffs' attorneys' fees, costs or expenses. The specific amounts of the  
12 attorneys' fees and costs awarded shall be subject to final approval by the Court, and the award of any  
13 amounts less than requested by Named Plaintiff will not be grounds for terminating the Settlement but  
14 may be subject to an appeal by Plaintiffs or Plaintiffs' Counsel. Any amount of attorneys' fees and  
15 costs requested by Named Plaintiff and ultimately not awarded by the Court shall be included in the  
16 Net Settlement Fund for distribution to the Settlement Class Members. Plaintiffs' Counsel shall serve  
17 Defendant with copies of all documents submitted in support of their application for an award of  
18 attorneys' fees and costs.

19       **3.3 LWDA Allocation and Payment.** Defendants will not oppose an allocation of \$5,000  
20 of the Gross Settlement Fund to the LWDA and Class Members pursuant to their claims for relief under  
21 PAGA. Subject to court approval, the Parties anticipate that \$3,750, or seventy-five percent (75%) of  
22 the allocation, would be paid to the LWDA and \$1,250, or twenty-five percent (25%) of the allocation,  
23 would be distributed to the PAGA Group Members as part of the Net Settlement Fund on a pro rata  
24 basis based on the total number of pay periods (full or partial) worked by each PAGA Group Member  
25 during the PAGA Period. Partial pay periods will be rounded up to the nearest whole integer. The entire  
26 PAGA Settlement Amount will be paid out of the Gross Settlement Fund. The Court's adjustment, if  
27 any, of the amount allocated to the PAGA claim in the Action, will not invalidate this Agreement.



1 c. Preliminarily certify the Class, for settlement purposes only, as an opt-out class  
2 under California Code of Civil Procedure §382. More specifically, the Parties agree as part of the  
3 Agreement that, for settlement purposes, the requirements of California Code of Civil Procedure §382  
4 are satisfied. This Agreement is made solely for purposes of the Settlement. The Agreement is in no  
5 way an admission that class certification is proper or that Named Plaintiff is an adequate class  
6 representative, and this Agreement will not be admissible in this or any other action or proceeding as  
7 evidence that (i) the claims advanced in the Action should be certified, or (ii) Defendant or any of the  
8 Released Parties are liable to Plaintiff, the Class Members, or any other putative class.

9 d. Preliminarily approve the form, content and manner of distribution of the Notice  
10 Packet (Exhibits 1-4).

11 e. Set deadlines for the Settlement Administrator to distribute the Class Notice and  
12 for Class Members to return their Requests for Exclusion or objections to the Settlement;

13 f. Set a deadline for Named Plaintiff to file his motion for final approval of the  
14 Settlement;

15 g. Approve ILYM Group, Inc. as the Settlement Administrator; and

16 h. Stay all proceedings in the Action pending Final Approval.

17 Plaintiffs' Counsel shall provide Defendants with a reasonable opportunity to review, and  
18 provide comments to, the motion for preliminary approval of the Settlement before the motion  
19 and supporting papers are filed with the Court.

20 4.2 **Class Notice.** Subject to Court approval, the Parties agree that as soon as practicable  
21 after entry of the Preliminary Approval Order, the Settlement Administrator shall provide notice of the  
22 Settlement to the Class Members pursuant to the following procedures:

23 4.2.1 Within fourteen (14) days of the entry of the Preliminary Approval Order,  
24 Defendants will provide the Settlement Administrator with the Class List in electronic format.

25 4.2.2 The information so provided shall be designated as Confidential, and the  
26 Settlement Administrator shall give Defendants its signed acknowledgment that it will keep this  
27 information confidential. The information Defendants provide to the Settlement Administrator, along  
28

1 with any updated contact information identified by the Settlement Administrator as set forth in Section  
2 4.2.3, below, shall be used solely to administer the Settlement, shall remain confidential, and shall not  
3 be disclosed to anyone, except pursuant to the express written authorization of Defendant or the  
4 individual in question, by order of the Court, or to the extent necessary to fulfill the Settlement  
5 Administrator's reporting obligations hereunder. Nothing herein shall limit use of the information by  
6 the Settlement Administrator for purposes of administering the Settlement; provided, however, that the  
7 Settlement Administrator shall not disclose any of the information to Plaintiffs or Plaintiffs' Counsel,  
8 anything in the Protective Order to the contrary notwithstanding. Plaintiffs' Counsel shall be provided  
9 the current name and contact information of any Settlement Class Member who files an objection or  
10 who contests the information in his or her Class Notice.

11 4.2.3 The Settlement Administrator's duties shall include, without limitation:  
12 (i) printing and mailing to the Class Members the Class Notice as directed by the Court; (ii) taking all  
13 steps reasonably necessary to ensure Class Members timely receive the Class Notice; (iii) consulting  
14 as necessary with Plaintiffs' Counsel and Defendant's Counsel concerning the pay periods or months  
15 worked by Class Members and the amount of any Settlement Awards to be paid to Settlement Class  
16 Members; (iv) receiving any objections made by potential Class Members; (v) taking receipt of and  
17 safeguarding the Gross Settlement Fund; (vi) calculating and disbursing the Settlement Awards, the  
18 Service Awards, and the Fee and Expense Award, provided such amounts are approved by the Court;  
19 and (vii) issuing IRS Forms 1099-MISC with respect to the Settlement Awards, Service Awards, and  
20 Fee and Expense Award, together with such other tasks as the Parties may mutually agree or the Court  
21 may order the Settlement Administrator to perform. The Settlement Administrator shall take all  
22 reasonable steps to ensure that (a) the highest percentage of Class Members receive a Class Notice; (b)  
23 Class Members who wish to participate in the Settlement are permitted to do so consistent with this  
24 Agreement; and (c) it has the most current and accurate addresses for Class Members, including, but  
25 not limited to performing an initial National Change of Address database search on Class Members for  
26 whom Defendant does not have a current address. In addition, the Settlement Administrator shall  
27 perform a standard search, also known as "batch," "skip trace," or "credit header" searches on all  
28

1 addresses returned as undeliverable. The Settlement Administrator shall immediately re-mail a Class  
2 Notice to all updated addresses obtained through its efforts to locate the most current and accurate  
3 addresses for Class Members. The Settlement Administrator shall also provide toll-free telephone  
4 support to Class Members for any questions they may have; set up a website for Class Members to be  
5 directed to, with Settlement-related documents posted thereto; maintain appropriate databases to fulfill  
6 its duties; receive, control and account for all returned Class Notices, Requests for Exclusion,  
7 objections and disputes; calculate the Settlement Awards; and prepare and deliver reports to Plaintiffs'  
8 Counsel and Defendant's Counsel on a weekly basis that communicate the status of the administration  
9 of the notice process, including the number of Class Notices mailed, returned, searched and re-mailed,  
10 as well as the number of Requests for Exclusion, objections and any disputes received by it. In addition  
11 to the duties identified above, the Settlement Administrator shall prepare final declarations, reports and  
12 invoices that accurately describe the Settlement process, the level of participation, and actions taken to  
13 ensure the best possible notice of the Settlement was provided to Class Members.

14           Within 10 days following receipt of the information to be provided under Section 4.2.1, above,  
15 the Settlement Administrator shall mail the Court approved Notice Packet to all Class Members. The  
16 Settlement Administrator shall send the Notice Packet in the form approved in the Preliminary  
17 Approval Order to Class Members, via first class United States mail, using the most current mailing  
18 address as identified in the Class List. The Notice Packet will include (a) information regarding the  
19 nature of the Action; (b) a summary of the Settlement's principal terms; (c) the Class definition; (d) the  
20 total number of Workweeks each respective Class Member worked for Defendant during the Class  
21 Period; (e) a calculation of the Class Member's approximate Settlement Award and the formula for  
22 calculating Settlement Awards; (f) the dates which comprise the Class Period and PAGA Period; (g)  
23 the deadlines by which the Class Member must postmark Requests for Exclusion, Objections to the  
24 Settlement, or Workweek disputes; (h) the Released Claims, as set forth herein; and (j) the date for the  
25 Final Approval Hearing. Class Members will have until the Response Deadline to postmark an  
26 Objection or Requests for Exclusion. Prior to the initial mailing, the Settlement Administrator will  
27 check all Class Member addresses against the National Change of Address database and shall update  
28



1 any addresses before mailing. Any Notice Packets returned to the Settlement Administrator with a  
2 forwarding address shall be immediately, but no more than five (5) days within receiving notice that  
3 the Notice Packet was undeliverable, re-mailed by the Settlement Administrator. The Settlement  
4 Administrator shall conduct one or more address searches for any Class Member's Notice Packet that  
5 is returned without a forwarding address and shall, upon obtaining a new or different address,  
6 immediately, but no more than five (5) days within receiving notice that the Notice Packet was  
7 undeliverable, re-mail the Class Member's Notice Packet. It shall be presumed that each and every  
8 Class Member whose Notice Packet is not returned to the Claims Administrator as undeliverable as  
9 postmarked by the Response Deadline or in the event the Notice Packet was re-mailed, fourteen (14)  
10 days after re-mailing, whichever is later, has actually received the Class Notice.

11 If the Notice Packet is re-mailed, the Settlement Administrator will note for its own records and  
12 notify Plaintiffs' Counsel and Defense Counsel of the date of each such re-mailing as part of a weekly  
13 status report provided to the Parties.

14 In the event a Class Member's Notice Packet remains undeliverable sixty (60) calendar days  
15 after the Notice Packet was initially mailed, the Settlement Administrator will not mail the Class  
16 Member's Settlement Award. The Settlement Administrator will hold the Class Member's Settlement  
17 Award during the check cashing period on behalf of the Class Member. If at the conclusion of the check  
18 cashing period the Class Member's Notice Packet and Settlement Award remain undeliverable and/or  
19 unclaimed and uncashed, the Settlement Administrator will distribute the funds from  
20 unclaimed/uncashed checks in accordance with the procedures set forth in this section. Any checks  
21 that are not cashed upon the expiration of that 180-day time period will be void, and the uncashed funds  
22 shall be paid to the State Controller Unclaimed Property Fund in the name of the Class Member for  
23 whom the funds are designated.

24 4.2.4 Without prejudice to any other remedies, the Settlement Administrator shall  
25 agree to be responsible for any breach of its obligations (whether committed by the Settlement  
26 Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless from and  
27

1 against all liabilities, claims, causes of action, costs and expenses (including legal fees and expenses)  
2 arising out of any breach committed by the Settlement Administrator or its agents.

3           4.2.6 If a Class Member disputes the total pay periods/months shown on his or her  
4 Class Member Information Sheet, he or she may produce information to the Settlement Administrator  
5 showing such other number of Workweeks he or she contends should be used. The Class Member  
6 Information Sheet will provide that Class Members who wish to dispute the Workweeks set forth on  
7 the Class Notice must timely mail a written and signed dispute (“Workweek Dispute”) along with  
8 supporting documentation to the Settlement Administrator, postmarked on or before the Response  
9 Deadline in accordance with Section 4.10.2 below. The Settlement Administrator shall review the  
10 information provided and make a final determination as to the work week figure to be used. Workweek  
11 Disputes not postmarked or confirmed received by the Settlement Administrator on or before the  
12 Response Deadline will be considered late and may be summarily rejected by the Settlement  
13 Administrator, in consultation with Plaintiffs’ Counsel and Defendants’ Counsel.

14           4.3     **Requests for Exclusion/Opt Outs.** Class Members who wish to be excluded from or  
15 opt out of the Settlement must submit a written, signed Request for Exclusion to the Settlement  
16 Administrator before the Response Deadline (or fourteen (14) days after the Settlement Administrator  
17 re-mails the Notice Packet to the Class Member, whichever is later). Any Class Members who validly  
18 and timely opt out of the Class will not be entitled to any recovery under the Settlement, will not be  
19 bound by the Settlement, and will not have any right to object, appeal or comment thereon. Class  
20 Members who do not submit a valid and timely request for exclusion shall be bound by all the terms  
21 of the Agreement and any Final Approval Order or Judgment in this Action, and shall be deemed to  
22 have waived all unstated objections and opposition to the fairness, reasonableness, and adequacy of  
23 this Agreement.

24           4.3.1 The Notice Packet will contain instructions on how to validly exclude himself  
25 or herself from the Class and this Settlement, including the language to be used in a Request for  
26 Exclusion. The Request for Exclusion must contain the (i) the name of this Action; (ii) the full name,  
27 address, telephone number and last four digits of the Social Security Number of the person requesting  
28

1 to be excluded; (iii) the words “Request for Exclusion” at the top of the document; and (iv) the  
2 following statement:

3 “I wish to be excluded from the Settlement of this case, *Tanea Maldonado v. First*  
4 *Mainsail, Inc. dba Primavera Ristorante and Jeannette Stavros*, Case No. 37-2020-  
5 00023369-CU-OE-CTL. I understand that by requesting to be excluded from the  
6 Settlement, I will receive no money from the Settlement and I may bring a separate  
7 action. I understand that in any separate action, I may receive nothing or I may receive  
8 less than I would have received if I had not asked to be excluded from the Settlement.  
9 I understand that I should consult with an attorney, at my own expense, regarding the  
10 applicable statute of limitations.”

11 4.3.2 The Request for Exclusion must be personally signed by the Class Member who  
12 seeks to be excluded. No Class Member may opt out by having a Request for Exclusion submitted by  
13 an actual or purported agent or attorney acting on behalf of the Class Member. No Request for  
14 Exclusion may be made on behalf of a group of Class Members.

15 4.3.3 For purposes of determining timeliness, Requests for Exclusion shall be deemed  
16 to have been submitted on the date postmarked by the U.S. Postal Service or other delivery service.  
17 The Settlement Administrator shall stamp the date received on the original of any Request for  
18 Exclusion it receives. Not later than ten (10) days after the Response Deadline, the Settlement  
19 Administrator will inform Plaintiffs’ Counsel and Defendants’ Counsel of the total number of Class  
20 Members who timely submitted valid Requests for Exclusion. Not later than ten (10) days before the  
21 Final Approval Hearing, the Settlement Administrator shall serve copies of all date-stamped Requests  
22 for Exclusion on Plaintiffs’ Counsel and Defendants’ Counsel as well as a declaration describing the  
23 notice process. The Settlement Administrator shall retain the originals of all Requests for Exclusion in  
24 its files. Counsel for the Parties shall not use or disclose the information thus received for any purpose  
25 other than the effectuation of the Settlement.

26 4.3.4 Each Class Member who does not submit a Request for Exclusion substantially  
27 in compliance with Sections 4.3.1 and 4.3.2 by the Response Deadline shall be bound by the terms of  
28 this Agreement and any Court order approving the terms of the Settlement.

4.3.5 In the event of any issue over the completeness, timeliness or validity of any  
Request for Exclusion, the Parties shall meet and confer in good faith for the purpose of resolving the

1 issue and, if the issue cannot be resolved, shall submit the dispute to the Settlement Administrator for  
2 a final and binding resolution which shall not be appealable.

3           4.3.6 If more than five percent of Class Members opt out, Defendants shall have the  
4 unilateral right to rescind this Agreement, in which case all of Defendants' obligations under this  
5 Agreement shall cease to be of any force or effect, and this Agreement shall be null and void. If  
6 Defendants exercise this option, it shall provide Plaintiffs' Counsel with written notice of its election  
7 within 21 days of the Response Deadline set by the Court, with a copy to the Settlement Administrator,  
8 at which point the Parties shall return to their respective positions that existed before the execution of  
9 this Agreement. If rescinded, no term of this Agreement or any draft thereof, or the negotiation,  
10 documentation or other part or aspect of the Parties' settlement discussions, shall have any effect or be  
11 admissible as evidence for any purpose in the Action, or in any other proceeding. Notwithstanding the  
12 foregoing, the Parties agree that in the event this Agreement is rescinded by Defendants pursuant to  
13 this Section, Defendants shall pay the expenses incurred by the Settlement Administrator through the  
14 date of Defendants' election to rescind, not to exceed seventy-five percent (75%) of the amount  
15 approved by the Court in the Preliminary Approval Order.

16           4.4    **Objections to Settlement.** Class Members who do not exclude themselves from the  
17 Settlement may object to the Settlement, in accordance with the procedure set forth below.

18           4.4.1 Class Members who wish to object to the Settlement must submit a written,  
19 signed statement objecting to the Settlement to the Settlement Administrator by the Response Deadline  
20 (or fourteen (14) days after the Settlement Administrator re-mails the Notice Packet to the Class  
21 Member, whichever is later). No Class Member may object on behalf of any other Class Member or  
22 group of Class Members. The Settlement Administrator shall send any objections it receives to  
23 Defendants' Counsel and Plaintiffs' Counsel within three (3) business days of receipt. All written  
24 objections along with any supporting briefs or other materials submitted by Class Members will be  
25 bundled together and filed as a group by counsel for the Plaintiff prior to the Final Approval Hearing.

26           4.4.2 At the same time Named Plaintiff moves for Final Approval pursuant to Section  
27 4.7 of this Agreement, Named Plaintiff shall also file a response to any valid and timely Objections  
28

1 filed by Class Members. Named Plaintiffs' Counsel shall give Defendants' Counsel a draft of the  
2 response to review at least three (3) days before the filing deadline. Defendants shall be permitted, but  
3 not required, to file its own response to any objections.

4 4.4.3 No Class Member shall be entitled to be heard at the Final Approval Hearing,  
5 whether individually or through separate counsel, unless the Objection and supporting materials are  
6 timely filed as set forth in this Section. Class Members who fail to submit timely written Objections  
7 in the manner specified above shall be deemed to have waived any objections and shall be foreclosed  
8 from making any objection (whether by appeal or otherwise) to the Settlement.

9 4.5 **Plan of Allocation: Calculation of Settlement Awards.** The Settlement  
10 Administrator shall be responsible for the Allocations of the Net Settlement Fund to Settlement Class  
11 Members. The Settlement Awards to Settlement Class Members will be paid on a pro rata basis as  
12 follows:

13 4.5.1 Before computing the amounts of any Settlement Awards to be paid to  
14 Settlement Class Members, the Claims Administrator shall determine the amount of the Net Settlement  
15 Fund by deducting from the Gross Settlement Fund the following: (a) the Fee and Expense Award; (b)  
16 the Service Award; (c) the LWDA Payment; and (d) the estimated amount of the Settlement  
17 Administration Costs.

18 4.5.2 The Settlement Award for each Settlement Class Member shall be the Settlement  
19 Class Member's pro-rata share of the Net Settlement Fund, calculated as follows: The Settlement  
20 Administrator shall calculate the total number of Workweeks worked by all Class Members. The  
21 Settlement Administrator will then divide the Net Settlement Fund less the PAGA Settlement Amount  
22 by the total number of Workweeks, calculated based on Class Members' dates of employment, resulting  
23 in a Per Workweek Value. The Settlement Administrator will then take the Per Workweek Value and  
24 multiply it by the number of Workweeks worked by each Settlement Class Member, calculated based  
25 on dates of employment. In addition, for PAGA Group Members, the PAGA Settlement Amount will  
26 be divided between all PAGA Group Members in proportion to the number of pay periods worked by  
27 each PAGA Group Member.

1           4.5.3 The Settlement Administrator shall pay Settlement Awards from the Net  
2 Settlement Fund and shall pay only those Settlement Awards payable to Settlement Class Members. It  
3 is anticipated that the Settlement Class Members will be a subset of the Class Members because some  
4 number of Class Members may opt out of the Settlement.

5           4.5.4 The Settlement Administrator shall determine the Settlement Award that each  
6 Settlement Class Member is entitled to receive, pursuant to the formulas set forth in Sections 4.5.2 and  
7 4.5.3, above. In order to determine the amount of the Settlement Award to which any Settlement Class  
8 Member is entitled, the Settlement Administrator shall use the information provided by Defendants  
9 pursuant to Section 4.2.1, above. In the event that any dispute arises with respect to the total work  
10 weeks for a Class Member or a Settlement Award amount, the Settlement Administrator may review  
11 additional information provided by the Class Member but shall make the final determination after  
12 consultation with Plaintiffs' Counsel and Defendants' Counsel.

13           **4.6 Taxes.**

14           4.6.1 Each Pro Rata Allocation will represent wages and penalties allocated using the  
15 following formula: 20% allocated to wages, 40% allocated to penalties, and 40% allocated to interest.  
16 The amounts paid as wages shall be subject to all tax withholdings customarily made from an  
17 employee's wages, and all other authorized and required withholdings and shall be reported by W-2  
18 forms. The employer-side taxes will be paid separate from and in addition to the Gross Settlement  
19 Amount. The amounts paid as penalties and interest shall be subject to all authorized and required  
20 withholdings other than the tax withholdings customarily made from employees' wages and shall be  
21 reported by IRS 1099 forms. For PAGA Group Members who submit a timely and valid Request for  
22 Exclusion, 100% of the Settlement Award to that individual shall be allocated as penalties, and not  
23 wages, for which the Settlement Administrator will issue to the PAGA Group Member an IRS Form-  
24 1099. Plaintiffs' Plaintiffs'

25           4.6.2 It shall be the responsibility of the Settlement Administrator to report payments  
26 made to Settlement Class Members, Named Plaintiff and Plaintiffs' Counsel on IRS Form 1099-MISC,  
27  
28

1 as applicable, and to provide copies thereof to the individuals named thereon, respectively, and to all  
2 applicable governmental entities, as required by law.

3 4.6.3 The Settlement Awards made to Settlement Class Members under this  
4 Agreement, as well as any other payments made pursuant to this Agreement, will not be utilized to  
5 calculate any additional benefits under any benefit plans to which any Class Members may be eligible,  
6 including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans,  
7 vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties'  
8 intention that this Agreement will not affect any rights, contributions, or amounts to which any Class  
9 Members may be entitled under any benefit plans.

10 4.6.4 All reasonable and direct expenses and costs incurred by or at the direction of  
11 the Settlement Administrator in connection with the administration of the Settlement (including,  
12 without limitation, expenses of tax attorneys and/or accountants incurred in providing advice to the  
13 Settlement Administrator, and mailing and distribution costs and expenses relating to the filing (or  
14 failure to file) any necessary tax reports shall be considered a cost of administration of the Settlement  
15 and shall be part of the Settlement Administration Costs, to be paid out of the Gross Settlement Fund.

16 4.6.5 No person shall have any claim against Defendants (or their designee),  
17 Defendants' Counsel, Plaintiffs, Plaintiffs' Counsel, or the Settlement Administrator based on  
18 mailings, distributions, payments or reports made in accordance with or pursuant to this Agreement.  
19 This provision does not, however, prevent a Party from seeking enforcement of this Agreement.

20 4.7 **Final Approval and Entry of Judgment.** No later than thirty-five days after the  
21 Response Deadline, or on or before such other date set by the Court, Named Plaintiff shall file his  
22 motion for final approval of the Settlement. Plaintiffs' Counsel shall draft the final approval papers  
23 and give Defendants' Counsel a draft of the papers to review at least five (5) days before the motion is  
24 filed. In the motion, Named Plaintiff shall request that the Court finally approve the Settlement as fair,  
25 reasonable and adequate and enter Judgment on the Court's Final Approval Order, dismissing the  
26 Settlement Class Members' claims with prejudice and the claims of all other Class Members without  
27 prejudice. Defendants will not oppose the motion, provided it is consistent with this Agreement.

1           4.8     **Calculation of Gross and Net Settlement Funds.** Within 21 days from the date of  
2 Final Approval of the Settlement, the Settlement Administrator shall calculate and advise Counsel for  
3 the Parties of the amount of the Net Settlement Fund and the calculation thereof.

4           4.9     **Distribution of Settlement Awards.** After the Effective Date, the Settlement Awards  
5 shall be distributed to Settlement Class Members and PAGA Group Members in accordance with the  
6 procedures set forth below:

7                     4.9.1 Within fifteen (15) calendar days after the Court’s Final Approval Order,  
8 Defendants will deposit the Gross Settlement Funds into the QSF opened by the Settlement  
9 Administrator. If the Settlement is not finally approved by the Court for any reason, the deposited  
10 Gross Settlement Funds will be returned to Defendants within ten (10) days of notice that the Court  
11 will not finally approve the Settlement, and any Settlement Administration Costs incurred will be split  
12 evenly and paid by each of the Parties to the Settlement Administrator.

13                    4.9.2 Within fifteen (15) calendar days after the Court’s Final Approval Order,  
14 Defendants will transfer Defendants’ share of employer-side payroll taxes into a QSF established by  
15 the Settlement Administrator either directly or by sending the funds to the Settlement Administrator to be  
16 deposited and distributed as set forth in this Agreement.

17                    4.9.3 Within fifteen (15) days from Defendants’ remittance to the Settlement  
18 Administrator of the Gross Settlement Fund, the Settlement Administrator shall disburse (a) the Fee  
19 and Expense Award to Plaintiffs’ Counsel, (b) the Settlement Award checks to each Settlement Class  
20 Member, and (c) the Settlement Award and Service Award to the Named Plaintiff. Settlement Awards  
21 paid from the Net Settlement Amount allocated to wages will be reduced by applicable employer and  
22 employee tax withholdings, and the Settlement Administrator will issue a Form W-2 for the wage  
23 portion of the Settlement Awards. The Settlement Administrator will issue a Form 1099 to the extent  
24 required by law for the interest and penalty portions of the Settlement Awards.

25                    4.9.4 All checks tendered to Settlement Class Members shall remain valid and  
26 negotiable for one hundred and eighty (180) days from the date of their issuance. In the event that any  
27 checks mailed to Settlement Class Members remain uncashed after the expiration of 180 days, or an  
28



1 envelope mailed to a Settlement Class Member is returned and no forwarding address can be located  
2 for the Settlement Class Member after reasonable efforts have been made, then any such funds shall be  
3 transmitted by the Settlement Administrator pursuant to governing California law to the California  
4 Department of Industrial Relations, to be held there in the name of and for the benefit of such Settlement  
5 Class Members.

6           4.9.5 Defendants shall fully discharge its obligations to Plaintiffs through the  
7 remittance of the Gross Settlement Fund to the Settlement Administrator as set forth in Section 3.1,  
8 above, regardless of whether individual Settlement Awards are actually received or negotiated by  
9 Settlement Class Members. Once Defendants have complied with its obligation set forth in Section  
10 3.1, above, it shall be deemed to have satisfied all of the terms and conditions of this Agreement, shall  
11 be entitled to all the protections afforded it under the Agreement, and shall have no further obligations  
12 under the Agreement, regardless of what occurs with respect to the further administration of the  
13 Settlement. Without prejudice to any other remedies, both the Settlement Administrator and Plaintiffs'  
14 Counsel shall hold Defendants harmless from and against all liabilities, claims, causes of action, costs  
15 and expenses (including legal fees and expenses) arising out of any failure to timely or properly  
16 compensate Settlement Class Members as provided in this Agreement.

17           **4.10 Questions and Disputes.**

18           4.10.1 In the event that questions or disputes arise regarding the entitlement of any  
19 Class Member under this Agreement, counsel for each Party shall cooperate to provide to counsel for  
20 the other Party and the Settlement Administrator all available information reasonably necessary to  
21 resolve them. Such information shall be provided in either electronic form or hard copy, as the  
22 Settlement Administrator may reasonably request.

23           4.10.2 **Workweek Disputes.** If the Parties cannot resolve any dispute concerning the  
24 entitlement of any Class Member under this Agreement, the dispute(s) shall be submitted to the  
25 Settlement Administrator, who shall resolve the dispute(s) and whose decision shall be final and  
26 binding. In such a dispute, the information provided by Defendants will be presumed accurate. If a  
27 Class Member disputes the number of pay periods or Workweeks listed on the Notice, the Class  
28

1 Member may produce evidence to the Settlement Administrator indicating the number of pay periods  
2 or Workweeks contended to have been applicable. Defendants' records will be presumed  
3 determinative, absent evidence to rebut Defendants' records. In the event the Class Member submits  
4 evidence, the Settlement Administrator will evaluate the evidence submitted and provide the evidence  
5 submitted to the Parties who agree to meet and confer about the evidence to determine the actual  
6 number of pay periods and/or Workweeks employed and estimated Settlement Award. If the Parties  
7 are unable to agree, the Parties agree to submit the dispute to the Settlement Administrator to render a  
8 final decision.

9       **4.11 Notification and Certification by Settlement Administrator.** The Settlement  
10 Administrator shall keep Defendants' Counsel and Plaintiffs' Counsel apprised of the status of the  
11 settlement administration process and its distribution of Settlement Awards. Upon completion of  
12 administration of the Settlement, the Settlement Administrator shall provide a detailed, written  
13 certification of such completion to counsel for the Parties.

14       **4.12 Nullification of Agreement if Settlement Not Approved.** In the event (a) the Court  
15 does not preliminarily approve the Settlement as provided herein, (b) the Court does not finally approve  
16 the Settlement as provided herein, (c) the Court does not enter the Judgment as provided herein, or  
17 (d) the Settlement does not become final for any other reason, including the exercise of Defendant's  
18 right to rescind the Settlement under Section 4.3.6 above, this Agreement shall be null and void *ab*  
19 *initio* (with the exception of this Section) and any order or Judgment entered by the Court in furtherance  
20 of this Settlement shall be treated as withdrawn or vacated by stipulation of the Parties. In such case,  
21 Defendant shall have no obligation to make any payments to the Settlement Class Members, Named  
22 Plaintiff or Plaintiffs' Counsel, and the Parties shall be returned to their respective statuses as if the  
23 Agreement had never been entered into or filed with the Court, and the fact that the Parties were willing  
24 to stipulate to class certification of all causes of action pled in the Action as part of the Settlement will  
25 have no bearing on, and will not be admissible in connection with, the issue of whether the Class should  
26 be certified by the Court in a non-settlement context in this Action or any other action, and in any of  
27  
28

1 those events, Defendant expressly reserves the right to oppose certification of the Class or that Named  
2 Plaintiff is an adequate Class representative.

3           **4.13 Number of Class Members.** At the time the Parties signed the Stipulation of  
4 Settlement and Release, Defendants represented there were 71 Class Members. Defendant agrees that  
5 no more than 71 Class Members will be included in the settlement.

6 **5. ENTRY OF JUDGMENT AND RELEASES**

7           **5.1 Obtaining Approval.** As soon as practicable after execution of this Agreement,  
8 Plaintiffs' Counsel shall, with the cooperation of Defendants' Counsel as reasonably requested by  
9 Plaintiffs' Counsel, take all necessary steps to secure Preliminary Approval and Final Approval of the  
10 Settlement by the Court, including responding to any objectors, intervenors, or other persons or entities  
11 seeking to preclude approval of this Agreement.

12           **5.2 Entry of Judgment.** The Final Approval Order and Judgment shall include a provision  
13 for entry of judgment in accordance with this Agreement, with each Party to bear all of its own costs  
14 and attorneys' fees, except as expressly set forth herein.

15           **5.3 Releases by Settlement Class Members.** Effective upon the Effective Date and for  
16 good and valuable consideration set forth herein, all Settlement Class Members and Named Plaintiff  
17 on behalf of themselves, their heirs, spouses, executors, administrators, attorneys, agents and assigns,  
18 shall be deemed to have, and by operation of the Judgment shall have, expressly released, waived and  
19 relinquished the Released Claims. The Settlement Class Members agree not to sue any of the Released  
20 Parties with respect to any of the Released Claims and refrain from filing any actions, claims,  
21 complaints or proceedings regarding the Released Claims with any agency having jurisdiction over the  
22 wage and hour laws of the state of California, or from initiating any other proceedings against the  
23 Released Parties arising out of or relating to the Released Claims.

24           **5.4 Releases by PAGA Group Members.** Effective upon the Effective Date and for good  
25 and valuable consideration set forth herein, the State of California and PAGA Group Members release  
26 the Released Parties from all Released Claims and all claims exhausted in Plaintiffs' notice(s) sent to  
27

1 the LWDA, whether or not alleged in the First Amended Complaint, which arose during the PAGA  
2 Period, regardless of whether PAGA Group Members opt out of the Class Settlement.

3 **5.5 General Release by Named Plaintiff.**

4 5.5.1 Effective upon the Effective Date and for good and valuable consideration set  
5 forth herein, Named Plaintiff Tanea Maldonado hereby forever generally and completely releases and  
6 discharges the Released Parties, of and from any and all claims and demands of every kind and nature,  
7 in law, equity or otherwise, known and unknown, suspected and unsuspected, disclosed and  
8 undisclosed, and in particular of and from all claims and demands of every kind and nature, known and  
9 unknown, suspected and unsuspected, disclosed and undisclosed, for damages actual, consequential  
10 and exemplary, past, present and future, arising out of or in any way related to agreements, transactions,  
11 events, acts or conduct at any time prior to and including the Effective Date, including but not limited  
12 to the Released Claims. The Named Plaintiff agrees not to sue or otherwise make a claim against any  
13 of the Released Parties with respect to any claim released herein by him and is hereby enjoined from  
14 filing any actions, claims, complaints or proceedings with the United States Department of Labor Wage  
15 and Hour Division or any agency having jurisdiction over the wage and hour laws of the states of  
16 California, or from initiating any other proceedings against any of the Released Parties regarding any  
17 of the claims released herein.

18 5.5.2 Named Plaintiff Tanea Maldonado has been fully advised by Plaintiffs' Counsel  
19 of the contents of section 1542 of the Civil Code of the State of California, and hereby expressly waives  
20 that section and the benefits thereof and the benefits of any similar law of any state or territory of the  
21 United States. Section 1542 states as follows:

22 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
23 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST  
24 IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND  
25 THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED  
26 HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

27 5.4.3 This provision explicitly excludes current and/or future claims that are unwaivable as a  
28 matter of law and any claim arising from workers compensation.

1           5.4.4 Named Plaintiff stipulates and agrees that as to the Released Parties, Named Plaintiff  
2 expressly waives and relinquishes, to the fullest extent permitted by law, the provisions, rights and  
3 benefits of section 1542 of the California Civil Code, including Labor Code section 2802.

4 **6. ADDITIONAL PROVISIONS**

5           6.1 **No Admission of Liability.** Defendants contend that at all relevant times it has  
6 complied with all applicable laws in all respects and that its conduct was not willful or otherwise  
7 unlawful with respect to any of the Claims. Defendants have denied and continue to deny each of the  
8 claims alleged in the Action and the contentions made by Named Plaintiff therein. Defendants deny  
9 any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Action and  
10 believes it has valid defenses to all of the claims alleged therein. This Agreement reflects the  
11 compromise and settlement of disputed claims between the Parties, and its provisions and any and all  
12 drafts, communications or discussions relating thereto do not constitute, are not intended to constitute,  
13 and will not under any circumstances be deemed to constitute an admission by Defendants as to the  
14 merits, validity or accuracy of any of the allegations or claims in the Action, or a waiver of any defense.

15           6.2 **Parties Represented by Counsel.** The Parties hereby acknowledge that they have been  
16 represented in negotiations for and in the preparation of this Agreement by independent counsel of their  
17 own choosing, they have read this Agreement and have had it fully explained to them by such counsel,  
18 and they are fully aware of the contents of this Agreement and of its legal effect.

19           6.3 **Voluntary Agreement.** This Agreement is executed voluntarily and without duress or  
20 undue influence on the part of any Party, or of any other person, firm or entity. Each Party has made  
21 such investigation of the facts pertaining to this Agreement and of all other matters pertaining hereto  
22 as he or it deems necessary.

23 ///

24 ///

25 ///

26 ///

27 ///