

JOINT STIPULATION AND SETTLEMENT AGREEMENT OF CLASS ACTION AND PAGA CLAIMS

This Stipulation of Settlement (“Settlement Agreement” or “Settlement”) is reached by and between Martha Garcia (“Garcia”), Martha Arevalo (“Arevalo”), Briana Garibay (“Garibay”), and Noemi Rodriguez (“Rodriguez”) (collectively, “Plaintiffs”), individually and on behalf of all members of the Settlement Class (defined below), on the one hand, and Defendants Ball Grill, Inc. Superior Express, Inc., and Harbor 22, Inc. dba Waba Grill (collectively, “Defendants”), on the other hand. Plaintiffs and Defendants are referred to herein collectively as the “Parties.” Plaintiffs and the Settlement Class are represented by Farrah Mirabel of Law Offices of Farrah Mirabel and Amir Seyedfarshi of Employment Rights Law Group, APC (“Class Counsel”). Defendants are represented by Todd B. Scherwin, Brendan Y. Joy, and Cristina Medina of Fisher & Phillips LLP (“Defense Counsel”).

Plaintiffs filed a complaint against Defendants in Orange County Superior Court (the “Court”), titled *Martha Garcia et al. v. Ball Grill, Inc. et al.*, Orange County Superior Court Case No. 30-2020-01153124-CU-WT-CXC, on July 29, 2020 (the “Lawsuit”), alleging: (1) unpaid missed rest breaks; (2) unpaid missed meal breaks; (3) failure to pay for all overtime worked; (4) failure to pay minimum wage and pay for all wages earned; (5) failure to maintain accurate payroll records; (6) failure to pay wages upon separation; (7) unlawful discrimination; (8) wrongful termination in violation of public policy; (9) unlawful termination-retaliatory termination; (10) failure to accommodate; (11) failure to engage in interactive process; (12) failure to pay for sick days; (13) violation of California Labor Code § 1102.5; (14) failure to provide workers’ compensation coverage; (15) violation of California Business and Professions Code § 17200; (16) Civil Penalties Pursuant to Labor Code § 2699. The operative First Amended Complaint (“Complaint”), which was filed on August 18, 2021, added class action allegations and removed all individual causes of action. Plaintiffs allege in the Complaint that Defendants: (1) failed to pay non-exempt employees all minimum wages earned in violation of California law; (2) failed to pay non-exempt employees all overtime wages in violation of California law; (3) failed to provide meal periods in accordance with California law; (4) failed to authorize and permit rest periods in accordance with California law; (5) failed to provide accurate itemized wage statements to its non-exempt employees in violation of California law; (6) failed to pay non-exempt employees all wages owed upon termination of employment; (7) failed to pay non-exempt employees timely wages; and (8) failure to pay non-exempt employees for sick leave. As a result of the foregoing alleged violations, the Complaint alleges that Defendants are further liable to Plaintiffs and the Settlement Class (defined below) because they engaged in unlawful business practices pursuant to California Business & Professions Code § 17200 *et seq.* The Complaint further alleges that Defendants are liable for civil penalties pursuant to the Private Attorneys General Act of 2004 (“PAGA”), California Labor Code § 2698 *et seq.*, as a result of the aforementioned alleged violations of the California Labor Code.

DEFINITIONS

i. “**Action**” shall mean the action entitled Martha Garcia, Martha Arevalo, Briana Garibay and Noemi Rodriguez, individually and on behalf of all members of the Settlement Class against Ball Grill, Inc. Superior Express, Inc., and Harbor 22, Inc. dba Waba Grill, Case No. 30-2020-01153124-CU-WT-CXC.

ii. “**Class Counsel**” shall mean Farrah Mirabel Esq. from Law Offices Of Farrah

Mirabel and Amir Seyedfarshi, Esq. of Employment Rights Law Group, APC.

iii. **“Class Members”** shall mean Plaintiffs and all other California residents who are or were employed by Defendants as non-exempt employees (**“Settlement Class Members”**). Defendants represent that the Class consists of approximately 576 Class Members who worked approximately 30,020 during the Class Period up until May 17, 2021.

iv. **“Class Period”** shall mean July 29, 2016 through the date of the motion for preliminary approval.

v. **“Class Released Claims”** shall have the meaning ascribed to it in Paragraph 2(A) below.

vi. **“Class Representatives”** or **“Plaintiffs”** shall mean Plaintiffs Martha Garcia, Martha Arevalo, Briana Garibay and Noemi Rodriguez.

vii. **“Complaint”** shall mean the first amended complaint entitled Martha Garcia, Martha Arevalo, Briana Garibay and Noemi Rodriguez, individually and on behalf of all members of the Settlement Class against Ball Grill, Inc. Superior Express, Inc., and Harbor 22, Inc. dba Waba Grill, Case No. 30-2020-01153124-CU-WT-CXC currently pending in Orange County Superior Court.

viii. **“Court”** shall mean the Superior Court of the State of California for the County of Orange.

ix. **“Court’s Final Order and Judgment”** means the Final Order Approving Class Action and PAGA Settlement, and Judgment in a form to be agreed upon by the Parties and approved by the Court.

x. **“Defendants’ Counsel”** and **“Defense Counsel”** shall mean Todd B. Scherwin, Brendan Y. Joy, and Cristina Medina of Fisher & Phillips LLP.

xi. **“Effective date”** shall have the meaning ascribed to it in Paragraph 10, below.

xii. **“Final Approval Hearing”** shall mean the hearing whereat the Court shall consider, without limitations, any timely objections to the Settlement from Settlement Class Members, testimony from the Parties or their counsel, declarations regarding the notice process from the Settlement Administrator, and otherwise make a final determination regarding the fairness of the Settlement Agreement as set forth herein.

xiii. **“Gross Settlement Amount”** shall refer to Two Hundred Fifty Thousand Dollars and No Cents (\$250,000.00), which is the maximum amount that Defendants will pay pursuant to this Settlement, excluding Defendants’ share of payroll taxes (which shall be paid by Defendant separately).

xiv. **“Net Settlement Amount”** shall have the meaning ascribed to it in Paragraph 4(A), below.

xv. **“Notice of Proposed Settlement”** or **“Notice”** means the Notice of Pendency of Class Action in substantially the form attached hereto as Exhibit A, and as approved by the Court.

xvi. **"PAGA"** shall mean the California Labor Code Private Attorneys General Act, Labor Code §§ 2698 *et seq.*

xvii. **"PAGA Employee"** or **"Aggrieved Employee"** shall mean Plaintiffs and all other non-exempt individuals who are or were employed by Defendant as non-exempt employees in the State of California and who worked one or more shifts during the time period of February 18, 2019 through the date of preliminary approval. Defendants represent that the PAGA Employees consist of approximately 153 individuals during the PAGA Period.

xviii. **"PAGA Payment"** means the payment to the State of California LWDA and the PAGA Employees in settlement of all claims for PAGA penalties.

xix. **"PAGA Employee Payments"** means the payment issued to each PAGA Employee for his/her/their share of the PAGA Payment.

xx. **"PAGA Period"** shall mean February 18, 2019 through the date of the motion for preliminary approval of the settlement.

xxi. **"Released Parties"** is defined in Paragraph 2(A) below and collectively shall encompass Defendants and all of its parents, subsidiaries, and affiliates, and each of their respective officers, directors, shareholders, members, employees, attorneys, insurers, representatives, agents, predecessors, successors, and assigns.

xxii. **"Settlement Administrator"** shall mean ILYM Group, Inc., or another administrator to be agreed upon by the Parties after bidding out the project.

AGREEMENT

Given the costs, uncertainty, and disruption of litigation, Plaintiffs and Defendants wish to settle both individually and on behalf of the Settlement Class. Accordingly, Plaintiffs and Defendants stipulate and agree as follows:

1. **Settlement Class.** For purposes of this Settlement Agreement only, Plaintiffs and Defendants stipulate to the certification of the following Settlement Class:

All persons who are or were employed by Defendants in California as non-exempt employees at any time between July 29, 2016 and the date of preliminary approval of the Settlement (the "Class Period").

The Parties agree that certification for purpose of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure in a non-settlement context. If for any reason this Settlement is not approved or is terminated, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement.

2. **Releases.**

A. **Release by Settlement Class.** Once this Settlement Agreement receives final approval and the Court enters judgment, Plaintiffs and every participating

Settlement Class member (defined below) will release and discharge Defendants Ball Grill, Inc. Superior Express, Inc., and Harbor 22, Inc. dba Waba Grill, and their current and former officers, directors, employees, and agents, successors and assigns, including Waba Grill Franchise Corp. ("Released Parties") from any and all claims alleged or that could have been alleged based on the facts alleged in the Complaint and any claims based on facts alleged in the Complaint, including without limitation: (1) all claims for failure to pay overtime wages, (2) failure to pay minimum wage, (3) failure to provide meal periods or compensation in lieu thereof, (4) failure to authorize and permit rest periods or compensation in lieu thereof, (5) waiting time penalties, (6) failure to comply with itemized wage statement provisions, (7) failure to pay wages upon termination of employment, (8) failure to pay for sick leave; (9) violations of the IWC Wage Orders based on any of the above violations, claims of unfair business practices under the California Business and Professions Code based on any of the above violations, (10) claims for PAGA civil penalties based on any of the violations alleged in the Complaint, (11) any other claims or penalties under the wage and hour laws pleaded in the Complaint; and (12) all damages, penalties, interest, costs (including attorney's fees) and other amounts recoverable under said claims or causes of action as to the facts and/or legal theories alleged in the Complaint (collectively referred to as the "Released Claims"). The Released Claims include all claims meeting the above definition(s) under any and all applicable statutes, including without limitation California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 246.A, 510, 512, 516, 1174, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198; California Bus. & Prof. Code § 17200 *et seq.*; and the PAGA. The release period for the Released Claims shall run for the duration of the Class Period.

- B. **Plaintiffs' Waiver of Civil Code Section 1542 as to Released Claims.** In light of Plaintiffs' Class Representative Enhancement Payments (discussed below), Plaintiffs have agreed to waive, with respect to the Released Claims, all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

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

3. **Gross Settlement Amount.** As consideration, Defendants agree to pay a Gross Settlement Amount (or "GSA") of Two Hundred and Fifty Thousand Dollars and Zero Cents (\$250,000.00) in full and complete settlement of this matter, as follows:

- A. The Parties have agreed to engage ILYM Inc. as the "Settlement Administrator" to administer this Settlement.
- B. If no objections are filed, the GSA shall be deposited with the Settlement Administrator within ninety (90) calendar days after the Court enters an order granting final approval of the Settlement. Solely in the event that there are any objections to the Settlement (the filing of an objection being a prerequisite to the filing of an appeal), the GSA shall be deposited with the Settlement Administrator within the later of: (i) ninety (90) days after the last date on which any appeal might

be filed, with no appeal having been filed, or (ii) ninety (90) days after the resolution of any appeal(s), presuming that the appeal upholds the Settlement.

C. This is a non-reversionary settlement. The GSA includes:

- (1) All payments (including interest) to the Settlement Class;
- (2) All costs of the Settlement Administrator and settlement administration, which are anticipated to be no greater than \$12,000.00;
- (3) Up to \$2,500.00 to each Plaintiff for Plaintiffs' Class Representative Enhancement Payments, in recognition of Plaintiffs' contributions to the Lawsuit and their service to the Settlement Class, for a total of \$10,000.00;
- (4) Up to one-third (33.33%) of the GSA in Class Counsel's attorneys' fees (currently estimated to be \$83,325.00), plus verified litigation costs and expenses incurred by Class Counsel in relation to the Lawsuit as supported by declaration, which are currently estimated to be no greater than \$10,000.00. In the event that the Court reduces or does not approve the requested Class Counsel attorneys' fees and costs, Class Counsel shall not have the right to revoke this settlement, and it will remain binding (although Class Counsel will retain the right to appeal the Court's award if it is less than the amount sought);
- (5) The Parties have set aside \$25,000 of the GSA as PAGA civil penalties. Per Labor Code § 2699(i), 75% of such penalties, or \$18,750.00, will be payable to the Labor & Workforce Development Agency ("LWDA"), and the remaining 25%, or \$6,250.00, will be payable to certain of the Participating Settlement Class Members as the "PAGA Amount," as described below.

D. Defendants share of payroll taxes on the wage portion of the payments to the Settlement Class shall be paid by Defendants separately from, and in addition to, the GSA.

E. **Escalator Clause.** Defendants represent that Settlement Class members worked approximately 30,020 workweeks during the Class Period. The Parties agree that this is a material term of the Settlement. If, at the end of the Class Period, the number of workweeks worked by Settlement Class members has increased by more than 10% above 30,020, then the GSA shall increase proportionately over the 10% grace (e.g., if the actual number of workweeks is 11% greater than 30,020, the GSA will increase by 1%).

4. **Payments to the Settlement Class.** Settlement Class members are not required to submit a claim form to receive a payment from the Settlement ("Settlement Payment"). All members of the Settlement Class, except those who submit a valid and timely Request for Exclusion (described below), will be considered participating Settlement Class members and will receive a Settlement Payment.

Settlement Payments will be determined and paid as follows:

- A. The Settlement Administrator shall first deduct from the GSA the amounts approved by the Court for Class Counsel's attorneys' fees, Class Counsel's costs and expenses, Plaintiffs' Class Representative Enhancement Payments, the Settlement Administrator's administration costs, and the amount set aside as PAGA civil penalties. The remaining amount shall be known as the Net Settlement Amount (or "NSA").
- B. The Settlement Administrator will then calculate each participating Settlement Class member's Settlement Payment based on the following formula:
- i. Payments to all Participating Settlement Class Members: Eighty percent (80%) of the NSA will be distributed to all participating Settlement Class members based on each participating Settlement Class member's proportionate number of workweeks worked as a non-exempt employee for Defendants in California during the Class Period, by multiplying 80% of the NSA by a fraction, the numerator of which is the participating Settlement Class member's number of workweeks worked as a non-exempt employee for Defendants in California during the Class Period, and the denominator of which is the total workweeks worked by all participating Settlement Class members as non-exempt employees for Defendants in California during the Class Period.
 - ii. Waiting Time Amount: Ten percent (10%) of the NSA shall be designated the "Waiting Time Amount." Each participating Settlement Class member whose employment with Defendants terminated at any time from July 29, 2017, through the end of the Class Period (the "Waiting Time Period") shall receive an equal share of the Waiting Time Amount. In other words, the Waiting Time Amount will be divided equally among all participating Settlement Class members whose employment with Defendants terminated during the Waiting Time Period.
 - iii. Wage Statement Amount: Ten percent (10%) of the NSA shall be designated the "Wage Statement Amount." Each participating Settlement Class member who was employed by Defendants at any time from July 29, 2019 through the end of the Class Period ("Wage Statement Period"), shall receive a portion of the Wage Statement Amount proportionate to the number of pay periods worked by that participating Settlement Class member as a non-exempt employee for Defendants in California during the Wage Statement Period, and which will be calculated by multiplying 10% of the NSA by a fraction, the numerator of which is the participating Settlement Class member's number of pay periods worked as a non-exempt employee for Defendants in California during the Wage Statement Period, and the denominator of which is the total number of pay periods worked by all participating Settlement Class members as non-exempt employees for Defendants in California during the Wage Statement Period.
 - iv. PAGA Amount: In addition to the NSA, \$6,250.00 of the GSA has been designated as the "PAGA Amount," as described above. Each participating Settlement Class member who worked for Defendants in California at any

time from February 18, 2019 through the end of the Class Period "PAGA Period," shall receive a portion of the PAGA Amount proportionate to the number of pay periods worked by that participating Settlement Class member as a non-exempt employee for Defendants in California during the PAGA Period, and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the participating Settlement Class member's number of pay periods worked as a non-exempt employee for Defendants in California during the PAGA period, and the denominator of which is the total number of pay periods worked by all participating Settlement Class members as non-exempt employees for Defendants in California during the PAGA Period.

- C. Within seven (7) business days following Defendants' deposit of the GSA with the Settlement Administrator, the Settlement Administrator will calculate Settlement Payments, as well as calculate the employer's share of payroll taxes, and provide the same to Class Counsel and Defense Counsel for review and approval. Within five (5) business days of approval by counsel, the Settlement Administrator will prepare and mail Settlement Payments, less applicable taxes and withholdings, to participating Settlement Class members. The Settlement Administrator shall simultaneously pay the withholdings to the applicable authorities with the necessary reports, submitting copies to Defense Counsel. Defendants shall also remit the employer's share of payroll taxes within this time frame to the Settlement Administrator, who shall promptly transmit such sum to the appropriate taxing authorities.
- D. For purposes of calculating applicable taxes and withholdings for the participating Settlement Class members, each Settlement Payment shall be allocated as follows: 20% as wages and 80% as penalties and interest. The Settlement Administrator will be responsible for issuing to participating Settlement Class members an IRS Form W-2 for amounts deemed "wages" and an IRS Form 1099 for the portions allocated as penalties and interest. As stated above, Defendants are responsible for their share of the payroll taxes on the wages portion of the Settlement Payments, and these taxes will not be deducted from the GSA. Notwithstanding the treatment of the payments to each participating Settlement Class member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay, or compensation for any purpose of any applicable bonus, benefit or retirement plan, unless required by such plans.
- E. Each participating Settlement Class member who is mailed a Settlement Payment must cash his/her Settlement Payment check within 180 days from the date the Settlement Administrator mails it. All funds remaining from uncashed checks after 180 days shall be handled pursuant to California Code of Civil Procedure section 384. The Parties select Los Angeles Food Bank as the *cy pres* recipient. If the Court does not approve the *cy pres* designee, the parties shall select a new *cy pres* designee, with approval by the Court.
- F. Neither Plaintiffs nor Defendants shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless

responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

5. **Attorneys' Fees and Costs.** Class Counsel will request a total award of attorneys' fees of one-third (33.33%) of the GSA, which is currently estimated to be \$83,325.00, plus actual costs and expenses as supported by declaration, in an amount not to exceed \$10,000.00. These amounts will cover any and all work performed by Class Counsel and any and all costs incurred by Class Counsel in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. The Settlement Administrator will mail Class Counsel the attorneys' fees and cost award when it mails the Settlement Payments. The Settlement Administrator will issue Class Counsel IRS Forms 1099 when the Settlement Administrator pays the fee and cost award allowed by the Court.

6. **Class Representative Enhancement Payments.** Plaintiffs will request Class Representative Enhancement Payments of up to \$2,500.00 each from the GSA in recognition of Plaintiffs' waiver of Civil Code § 1542 with respect to the Released Claims, their time and risks in prosecuting this Lawsuit, and their service to the Settlement Class. This award will be in addition to Plaintiffs' Settlement Payments as Settlement Class members and shall be reported on an IRS Form 1099 by the Settlement Administrator. The Settlement Administrator will mail Plaintiffs the Class Representative Enhancement Payments and issue Plaintiffs IRS Forms 1099 when it mails the Settlement Payments.

7. **Settlement Administrator.** The parties will request the appointment of ILYM Group, Inc. as Settlement Administrator. Defendants will not object to Plaintiffs' seeking permission to pay up to \$12,000.00 from the GSA for the Settlement Administrator's services. The Settlement Administrator shall be responsible for sending notices and for calculating Settlement Payments and preparing all checks and mailings, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the GSA only after Settlement Payments have been mailed to all participating Settlement Class members.

8. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiffs shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement only;
- B. Appointing Farrah Mirabel of Law Offices of Farrah Mirabel and Amir Seyedfarshi of Employment Rights Law Group, APC as Class Counsel;
- C. Appointing Plaintiffs as Class Representatives for the Settlement Class;
- D. Approving ILYM Group, Inc. as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Packet (which is comprised of the Class Notice, Exclusion Form, and Objection Form, attached hereto as Exhibits A, B, and C, respectively), and directing the mailing of same; and

G. Scheduling a Final Approval hearing.

9. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within thirty (30) business days after entry of an order preliminarily approving this Agreement, Defendants will provide the Settlement Administrator with the names, last known addresses, last known phone numbers, social security numbers, dates of employment during the Class Period, number of workweeks worked in California during the Class Period, and number of pay periods worked in California during the Wage Statement/PAGA Period for all Settlement Class members (the "Class Data"). The Class Data shall be provided to the Settlement Administrator in an electronic format satisfactory to the Settlement Administrator.
- B. Within ten (10) business days from receipt of the Class Data, the Settlement Administrator shall (i) run the names of all Settlement Class members through the National Change of Address ("NCOA") database to determine any updated addresses for Settlement Class members; (ii) update the addresses of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Settlement Payment for each Settlement Class member; (iv) provide Class Counsel and Defense Counsel with (a) the number of Settlement Class members as well as the Settlement Administrator's estimated Settlement Payments for each Settlement Class member (with the names of Settlement Class members anonymized) and (b) formatted versions of the Notice Packets to be sent to Settlement Class members, including Spanish versions of same; and (v) after receiving approval from all counsel, mail a Notice Packet (in English and Spanish) to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. Requests for Exclusion. Any Settlement Class member who wishes to opt-out of the settlement must complete and mail an Exclusion Form (described below) to the Settlement Administrator on or before sixty (60) calendar days after the date of the initial mailing of the Notice Packets (the "Response Deadline").
 - i. The Notice Packet shall state that Settlement Class members who wish to exclude themselves from the settlement must complete, sign, and submit the Exclusion Form, attached hereto as Exhibit B, by the Response Deadline. To be valid, any Exclusion Form must be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement, will not be bound by the terms of the Settlement Agreement, and will not have any right to object, appeal, or comment thereon. The Settlement Administrator will notify the Parties of the total number of Exclusion Forms received within seven (7) calendar days after the Response Deadline.

- ii. If ten percent (10%) or more of the Settlement Class members validly request exclusion from the settlement, Defendants may unilaterally withdraw from and terminate the Settlement. In such case, all actions taken in furtherance of the Settlement will be null and void. Defendants must exercise this right by notifying Class Counsel and the Settlement Administrator in writing no later than five (5) days prior to the date of the Final Approval hearing. If Defendants elect to rescind the Settlement pursuant to this provision, it will be responsible for all settlement administration costs incurred to date by the Settlement Administrator.
 - iii. The Parties and their counsel agree not to take any action to encourage any Settlement Class member to opt out of or object to the settlement.
- D. Objections. Members of the Settlement Class who do not request exclusion may object to this Settlement Agreement by completing, signing, and submitting the Objection Form attached hereto as Exhibit C by the Response Deadline. The Settlement Administrator shall, within two (2) business days of receipt, serve any objection(s) as received on Class Counsel and Defense Counsel, who shall then promptly file all such objections with the Court. Defense Counsel and Class Counsel shall file and serve any responses to objections no later than five (5) calendar days prior to the Final Approval hearing. To be valid, any objection must: (1) contain the objecting Settlement Class member's full name and current address; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) be postmarked no later than the Response Deadline.
- E. Disputes. Each Class Notice mailed to a Settlement Class member shall disclose the amount of the Settlement Class member's estimated Settlement Payment as well as all of the information that was used from Defendants' records to calculate the Settlement Payment, including: (i) the Settlement Class member's number of workweeks worked in California for Defendants during the Class Period; (ii) whether the Settlement Class member separated from his or her employment with Defendants during the Waiting Time Period; (iii) the number of pay periods worked by the Settlement Class member in California for Defendants during the Wage Statement Period; and (iv) the number of pay periods worked by the Settlement Class member in California for Defendants during the PAGA Period. Settlement Class members will have the opportunity, should they disagree with Defendants' records regarding the above information as stated in Class Notice, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with Class Counsel and Defense Counsel to determine whether an adjustment to the Settlement Class member's Settlement Payment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Settlement Payment under the terms of this Settlement. The Settlement Administrator's determination of the eligibility for and amount of any Settlement Payment shall be binding upon the Settlement Class member and the Parties.

- F. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within three (3) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Class Member within two (2) business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. It will be conclusively presumed that, if an envelope so mailed has not been returned within thirty (30) days of the mailing, the Settlement Class member received the Notice Packet. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline, whichever is later, to submit a Request for Exclusion, Objection, or dispute. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline, if applicable. If a Settlement Class member's Notice Packet is returned to the Settlement Administrator more than once as non-deliverable, then an additional Notice Packet need not be mailed. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Defense Counsel to provide notice of the proposed settlement.

10. **Effective Date:** The Settlement embodied in this Stipulation of Settlement shall become effective when all of the following events have occurred ("Effective Date"): (i) this Stipulation of Settlement has been executed by Plaintiffs, Defendants, Class Counsel and Defense Counsel; (ii) the Court has given preliminary approval to the Settlement; (iii) the Notice has been sent to the Class Members, providing them the opportunity to object to the Settlement, and the opportunity to opt out of the Settlement; (iv) the Court has held a formal fairness hearing and entered the Court's Final Order and Judgment; and (v) the later of the following events: (A) when the period for filing any appeal, writ or other appellate proceeding opposing the Settlement has elapsed without any appeal, writ or other appellate proceeding having been filed; (B) when any appeal, writ or other appellate proceeding opposing the Settlement has been dismissed finally and conclusively with no right to pursue further remedies or relief; or (C) when any appeal, writ or other appellate proceeding has upheld the Court's Final Order and Judgment with no right to pursue further remedies or relief. Notwithstanding the foregoing, if there are no objections to the Settlement, the Effective Date shall be the date of entry of the Final Approval Order. If the Court declines to approve the Settlement, the entire Stipulation of Settlement is deemed void and unenforceable as if no settlement of any claim was ever reached. All negotiations, statements and proceedings and data relating thereto shall be protected by California Evidence Code §1152 and shall be without prejudice to the rights of any of the Parties.

11. **Final Approval.** Following preliminary approval and the close of the period for filing Requests for Exclusion, Objections, or disputes under this Settlement Agreement, Plaintiffs shall apply to the Court for entry of an Order:

- A. Granting final approval of the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiffs' and Class Counsel's application for attorneys' fees, costs, Class Representative Enhancement Payments, and settlement administration costs; and
- C. Entering judgment pursuant to California Rule of Court 3.769.

12. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this settlement. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code § 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code § 1152.

13. **Nondisclosure and Nonpublication.** Plaintiffs and Class Counsel agree not to disclose or publicize the Settlement Agreement contemplated herein, the fact of the Settlement Agreement, its terms or contents, or the negotiations underlying the Settlement Agreement, in any manner or form, directly or indirectly, to any person or entity, except to Settlement Class members and as shall be contractually required to effectuate the terms of the Settlement Agreement as set forth herein, and except to Plaintiffs' respective spouses (if any) or to their attorneys or tax preparers as necessary for those professionals to provide their professional services to Plaintiffs. Further, Plaintiffs and Class Counsel agree not to issue any press releases, initiate any contact with the press, respond to any press inquiry or have any communication with the press about this Lawsuit and/or the fact, amount or terms of the settlement. In addition, Plaintiffs and Class Counsel agree that they will not engage in any advertising or distribute any marketing materials relating to the Settlement, including but not limited to any postings on any websites maintained by Class Counsel; provided, however, that Class Counsel may include a statement on its website that includes the amount of this settlement and that the settlement involved food service workers, but may not include the name(s) of any of the Parties, or the case name or case number of the Lawsuit. Further, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions, Class Counsel may disclose the names of the Parties in this Action, the venue/case number of this Lawsuit, and a general description of the Lawsuit, to a court in a declaration by Class Counsel.

14. **Continuing Jurisdiction.** Except as otherwise specifically provided for herein, the Court shall retain jurisdiction to construe, interpret and enforce this Settlement, to supervise all notices, the administration of the Settlement, and to hear and adjudicate any dispute arising from or related to the Settlement. The Settling Parties agree that the Court has jurisdiction over the Settlement pursuant to California Code of Civil Procedure, Section 664.6.

15. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by counsel for all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

16. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Defendants: Brendan Y. Joy, Fisher & Phillips, LLP, 444 South Flower Street,
Suite 1500, Los Angeles, CA 90071; bjoy@fisherphillips.com

if to Plaintiffs: Amir Seyedfarshi, Employment Rights Law Group, APC, 1180 South
Beverly Drive, Suite 320 Los Angeles, CA 90035;
amir@employmentrightslawgroup.com

17. **Applicable Law.** All terms and conditions of this Settlement Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law or choice of law principles.

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

19. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

20. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

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

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[SIGNATURES ON FOLLOWING PAGE]

DATED: 11/4/, 2021

HARBOR 22, INC. DBA WABA GRILL

A. J. Mal.
By: Aliera J. Makoni
Its: _____

DATED: 11/4, 2021

BALL GRILL, INC.

A. J. Mal.
By: Aliera J. Makoni
Its: _____

DATED: 11/4, 2021

SUPERIOR EXPRESS, INC.

A. J. Mal.
By: Aliera J. Makoni
Its: _____

DATED: 11/02/, 2021

MARTHA GARCIA

M. Garcia
Plaintiff and Class Representative

DATED: 11/02, 2021

MARTHA AREVALO

M. Arevalo
Plaintiff and Class Representative

DATED: 11/2, 2021

BRIANA GARIBAY

B. Garibay
Plaintiff and Class Representative

DATED: 11-2, 2021

NOEMI RODRIGUEZ

N. Rodriguez
Plaintiff and Class Representative

APPROVED AS TO FORM:

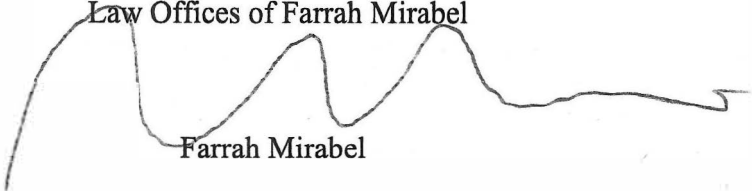
DATED: November 8, 2021

FISHER & PHILLIPS, LLP

By: 
Brendan Y. Joy
Attorneys for Defendants

Dated: 11/02, 2021

Law Offices of Farrah Mirabel


Farrah Mirabel

Attorney for Plaintiffs and the Settlement Class

DATED: 11/3/2021, 2021

EMPLOYMENT RIGHTS LAW GROUP, APC

By: 
Amir Seyedfarshi
Attorney for Plaintiffs and the Settlement Class