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and the Plaintiff Class

Filed
June 6, 2023
Clerk of the Court
Superior Court of CA
County of Santa Clara
20CV363254
By: rwalker

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

JOSE LUIS VENANCIO ALTAMIRANO, on
behalf of himself and all others similarly
situated,

Plaintiff,

v.

COM TAM THIEN HUONG II, a California
corporation; HIEN C NGUYEN, an individual;
and DOES 1 through 50, inclusive,

Defendants.

Case No. 20CV363254

CLASS ACTION

**~~[PROPOSED]~~ ORDER AFTER HEARING
GRANTING PLAINTIFF'S *UNOPPOSED*
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: May 17, 2023
Time: 1:30 pm
Judge: Hon. Theodore C. Zayner
Dept.: 19

1 The Motion for Preliminary Approval of a Class Action Settlement of Plaintiff JOSE LUIS
2 VENANCIO ALTAMIRANO came for hearing before this Court, the Honorable Theodore C.
3 Zayner presiding, on May 17, 2023 at 1:30 p.m. in Department 19. This Order incorporates by
4 reference the terms and conditions of the Joint Stipulation of Class Action Settlement and Release
5 (“Settlement”) filed with the Court and unless indicated otherwise, all capitalized terms used herein
6 shall have the same meaning as defined by the Settlement.

7 This Court, for good cause shown, having considered the papers submitted in support of the
8 application of the parties, **HEREBY ORDERS THE FOLLOWING:**

- 9 1. This Court grants preliminary approval of the Joint Stipulation of Class Action Settlement
10 and Release (the “Settlement”) filed herewith as “Exhibit 1”. The Settlement appears to be
11 fair, adequate, and reasonable to the Class.
- 12 2. The Settlement falls within the range of reasonableness and appears to be presumptively
13 valid, subject only to any objections that may be raised at the final fairness hearing and final
14 approval by this Court. The Court further finds the Parties conducted extensive investigation
15 and research, were able to reasonably evaluate their respective positions, and evaluate the
16 strengths and weaknesses of the claims and the ability to certify them. The Parties provided
17 the Court with enough information about the nature and magnitude of the claims being
18 settled, as well as the impediments to recovery, to make an independent assessment of the
19 reasonableness of the terms to which the Parties have agreed. The Court also finds
20 settlement now will avoid additional and potentially substantial litigation costs, as well as
21 delay and risks if the Parties were to continue to litigate the Action.
- 22 3. A final fairness hearing on the question of whether the proposed Settlement, attorneys’ fees
23 and costs to Class Counsel, and the Class Representative Incentive Award should be finally
24 approved as fair, reasonable and adequate as to the members of the Class is scheduled in
25 accordance with the Implementation Schedule set forth below.
- 26 4. This Court approves, as to form and content, the Notice of Proposed Class Action Settlement
27 (“Notice”), in substantially the form attached to the Declaration of Daniel A. Menendez
28 Regarding Amended Notice of Proposed Class Action Settlement as Exhibit “B”, filed May

- 17, 2023, filed herewith as “Exhibit 2”. This Court approves the procedure for Class Members to opt-out of or to object to the Settlement as set forth in the Notice. The rights of any potential dissenters to the proposed Settlement are adequately protected in that they may exclude themselves from the Settlement and proceed with any alleged claims they may have against Defendants, or they may object to the Settlement and appear before this Court.
5. This Court directs the mailing of the Notice by first class mail to the Class Members in accordance with the Implementation Schedule set forth below. This Court finds the dates selected for the mailing and distribution of the Notice, as set forth in the Implementation Schedule, meet the requirements of due process and provide the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.
 6. It is ordered the Class is preliminarily certified for settlement purposes only, as defined by the Settlement, consisting of: All individuals who worked as non-exempt or hourly employees of for Com Tam Thien Huong II in California at any time during the Class Period. The Class Period is from February 7, 2016 to December 7, 2022, inclusive, as defined in the Settlement.
 7. This Court confirms Plaintiff JOSE LUIS VENANCIO ALTAMIRANO as Class Representative, and Kevin R. Allen of Allen Attorney Group and Daniel A. Menendez of Law Office of Daniel A Menendez as Class Counsel.
 8. This Court confirms Phoenix Settlement Administrators as the Settlement Administrator.
 9. The Court finds the Parties’ proposed *cy pres* recipient for uncashed checks, Legal Aid at Work, fulfills the requirements of Code of Civil Procedure Section 384.
 10. The Class Representative shall file a declaration specifically detailing his participation in the action with an estimate of time spent no later than 16 court days prior to the Final Approval Hearing for consideration and approval of Class Representative’s requested \$7,500 Incentive Award.
 11. Class Counsel shall submit lodestar information of attorneys fees, evidence of actual litigation costs, and evidence of any settlement administration costs no later than 16 court days prior to the Final Approval Hearing for consideration and approval.

12. The Court orders the following Implementation Schedule for further proceedings (and expressly reserves the right to continue or adjourn the final fairness hearing from time to time without further notice to the Class):

a.	Defendants to Provide Class List to Settlement Administrator.	Within 10 calendar days of Preliminary Approval. [<i>Settlement</i> , §III(F)(4)(a)]
b.	Deadline for Settlement Administrator to Mail Notice to Class Members.	Within 14 calendar days after receipt of Class List. [<i>Settlement</i> , §III(F)(4)(b)]
c.	Deadline for Class Members to Postmark Requests for Exclusions or Objections.	60 calendar days after mailing of the Notice to Class Members. [<i>Settlement</i> , §§I(LL), III(H)(5)(b),(c)]
d.	Deadline for Class Counsel to file Motion for Final Approval Order and Judgment.	At least 16 court days before Final Approval Hearing.
e.	Final Approval Hearing	November 8, 2023 at 1:30 p.m. in Department 19
f.	Deadline for Defendants to deposit Maximum Settlement Amount with Settlement Administrator.	Within 21 calendar days after Final Approval. [<i>Settlement</i> , §III(F)]
g.	Deadline for Settlement Administrator to distribute Individual Settlement Payments, Incentive Award, LWDA Payments, and wire Fees and Costs Award to Class Counsel.	Within 15 days after receipt of the Maximum Settlement Amount from Defendants. [<i>Settlement</i> , §III(H)(4)(c)]
h.	Deadline for Class Members to cash or deposit Individual Settlement Payments and PAGA Payments or else checks will be cancelled.	180 days after mailing date of issuance. [<i>Settlement</i> , §III(H)(4)(e)]

i.	Deadline for Settlement Administrator to cancel uncashed checks and pay funds from uncashed checks to Court-approved <i>cy pres</i> organization.	180 days after mailing date of issuance. [Settlement, §III(H)(4)(e)]
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IT IS SO ORDERED.

Dated: June 6, 2023



Hon. Theodore C. Zayner

JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

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Attorneys for Representative Plaintiff
Individually and on behalf of the Plaintiff Class

Additional Counsel Listed on Next Page

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
(UNLIMITED JURISDICTION)**

JOSE LUIS VENANCIO ALTAMIRANO, on
behalf of himself and all others similarly
situated

Plaintiff,

vs.

COM TAM THIEN HUONG II, a California
corporation; HIEN C NGUYEN, an individual;
and DOES 1 through 50, inclusive;

Defendants.

Case No. 20CV363254

CLASS ACTION

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AND RELEASE**

Judge: Hon. Patricia M. Lucas
Dept.: 03

Complaint Filed: February 7, 2020

1 JOHN F. McINTYRE, JR. (SBN 172128)

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5 Attorneys for Defendants

6 COM TAM THIEN HUONG II

HIEN C NGUYEN

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1 **JOINT STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE**

2 This Joint Stipulation of Class Action Settlement and Release (the “Settlement”) is made and
3 entered into by and between Plaintiff JOSE LUIS VENANCIO ALTAMIRANO, (“Plaintiff” or “Class
4 Representative”), as an individual and on behalf of all others similarly situated, and Defendants COM
5 TAM THIEN HUONG II and HIEN C NGUYEN (“Defendants”), (collectively with Plaintiffs, the
6 “Parties”).

7 I. **DEFINED TERMS.**

8 As used herein, the following terms are defined as:

9 A. “Action” means the case entitled *Altamirano, et al. v. Com Tam Thien Huong II, et al.*
10 (Santa Clara County Superior Court Case No. 20CV363254).

11 B. “Administrator” or “Settlement Administrator” means Phoenix Settlement
12 Administrators, or other third-party settlement administrator mutually agreed to by the Parties and
13 approved by the Court.

14 C. “Administration Costs” means any fees or costs of claims administration services
15 rendered in administering the Settlement and payable to the Settlement Administrator, estimated to
16 be approximately Seven Thousand, Five Hundred Dollars and No Cents (\$7,500.00) based on
17 Defendant’s estimate of 150 Class Members, subject to Court approval.

18 D. “Agreement” and/or “Settlement” means this Joint Stipulation of Class Action
19 Settlement and Release.

20 E. “Class” means the aggregate group of Class Members, defined below.

21 F. “Class Counsel” means Kevin R. Allen of Allen Attorney Group and Daniel A.
22 Menendez of Law Office of Daniel A Menendez;

23 G. “Class List” means the list of Class Members that Defendants will diligently and in
24 good faith compile from their records and provide to the Settlement Administrator in computer-
25 readable format, which shall include the full name, last known mailing address, last known telephone
26 number, social security number, as well as each Class Member’s number of weeks worked in a covered
27 position during both the Class Period and separately the PAGA Period (if applicable), as determined
28 from Defendants’ records.

1 H. "Class Members" refers to all individuals who worked as non-exempt or hourly
2 employees for Com Tam Thien Huong II ("Com Tam") in California at any time between the Class
3 Period.

4 I. "Class Period" means February 7, 2016 and December 7, 2022, inclusive.

5 J. "Class Representative" means Plaintiff Jose Luis Venancio Altamirano (also referred
6 to as "Plaintiff")

7 K. "Costs Award" means Class Counsel's actual and reasonable litigation costs incurred
8 in prosecuting the Action, in an amount not to exceed Ten Thousand Dollars and No Cents
9 (\$10,000.00), as approved by the Court.

10 L. "Court" means the Superior Court of the State of California for the County of Santa
11 Clara.

12 M. "Defendants" means defendants Com Tam Thien Huong II (California corporation
13 entity number 3572818) and Hien C Nguyen, collectively.

14 N. "Defendants' Counsel" means John F. McIntyre, Jr. of Shea & McIntyre, A P.C.

15 O. "Effective Date" means the date that the Court grants Final Approval unless there are
16 objector/objections to the Settlement in which case the Effective Date shall be the first regular business
17 day after the appeal period runs (if no appeal is filed) or the first day after all appeals are denied or
18 otherwise finally resolved or decided in favor of the Settlement.

19 P. "Employee Taxes" means the Settlement Class Members' share of all applicable
20 payroll taxes or withholdings related to Individual Settlement Payments received under the Settlement.
21 Plaintiff and Settlement Class Members bear full responsibility for payment of any personal income
22 taxes, interest or penalties arising from Individual Settlement Payments or Incentive Awards paid to
23 them.

24 Q. "Employer Taxes" means Defendants' share of applicable payroll taxes, such as FICA
25 and FUTA, for that portion of the Individual Settlement Payments attributed to wages. Any payroll
26 taxes owed by Defendants as a result of the Individual Settlement Payments to Settlement Class
27 Members shall be paid solely from the Maximum Settlement Amount.

1 R. “Estimated Settlement Payment” means the amount each Settlement Class Member
2 could receive as an Individual Settlement Payment, if they do not request exclusion, as set forth in the
3 Notice. The actual Individual Settlement Payments distributed to Settlement Class Members following
4 Final Approval may vary from the Estimated Settlement Payments depending on the number of Class
5 Members who request exclusion from the Settlement and Court approval of all other amounts set forth
6 herein.

7 S. “Excluded Class Members” means all Class Members who timely submit valid written
8 requests to be excluded from the Settlement on or before the Response Deadline.

9 T. “Fees and Costs Award” means the aggregate total of the Fees Award and the Costs
10 Award, as approved by the Court.

11 U. “Fees Award” means the fee amount authorized by the Court to be paid to Class
12 Counsel for services rendered in prosecuting the Action, in an amount not to exceed thirty-three and
13 one-third percent (33-1/3%) of the Settlement Amount, *i.e.*, One Hundred Thousand Three Hundred
14 and Thirty-Three Thousand Dollars and Thirty-Three Cents (\$133,333.33).

15 V. “Final Approval” and/or “Final Approval Order and Judgment” means the Court’s
16 order granting final approval of the Settlement and entering judgment thereon in a form to be agreed
17 upon by the Parties in advance, subject to approval and modification by the Court.

18 W. “Final Approval Date” means the date the Court signs the Final Approval Order and
19 Judgment.

20 X. “Final Approval Hearing” means the hearing at which the Court considers whether to
21 issue an order granting final approval to the Settlement.

22 Y. “Incentive Awards” means the amounts the Court authorizes to be paid to the Class
23 Representative (in addition to his Individual Settlement Payments) in recognition of his efforts in
24 assisting with the prosecution of the Action on behalf of the Class Members. This amount is not to
25 exceed Seven Thousand Five Hundred Dollars and No Cents (\$7,500.00) to Plaintiff.

26 Z. “Individual Settlement Payment” means the amount each Settlement Class Member is
27 eligible to recover from the Net Settlement Fund, subject to applicable payroll deductions or
28 withholdings as required by law.

1 AA. “Judgment” means the Final Approval Order and Judgment issued by the Court, which
2 is intended to be immediately appealable and shall constitute a final judgment respecting the Parties
3 and permanently bar the Class Representative and all Settlement Class Members from prosecuting any
4 and all Released Claims against the Released Parties.

5 BB. “Net Settlement Fund” means the funds available for distribution to participating
6 Settlement Class Members who do not timely Opt-Out after deducting from the Maximum Settlement
7 Amount the following, as approved by the Court: (1) the Fees and Cost Award, (2) the Incentive
8 Awards, (3) the Administration Costs, (4) the PAGA Payment, and (5) Employer Taxes.

9 CC. “Notice” or “Notice Package” means the Court-approved form of notice to Class
10 Members that will notify Class Members of the nature of the Action, summary of the Settlement,
11 definition of the Class, conditional certification of the Class, Preliminary Approval of the Settlement,
12 the procedures for requesting exclusion or objecting to the Settlement, and scheduling of the Final
13 Approval Hearing, substantially in the form attached hereto as **Exhibit “A”**.

14 DD. “Maximum Settlement Amount” means the maximum amount Defendants could be
15 required to pay under the terms of this Settlement, not to exceed the total of Four Hundred Thousand
16 Dollars and No Cents (\$400,000.00). The Maximum Settlement Amount will be used to pay Court-
17 approved Administration Costs, Incentive Awards, Fees and Costs Award, the PAGA Payment,
18 Employer Taxes, and Individual Settlement Payments to Settlement Class Members. The Maximum
19 Settlement Amount is non-reversionary meaning no part will revert to the Defendants.

20 EE. “PAGA Payment” means that portion of the Maximum Settlement Amount allocated
21 to settle claims brought pursuant to the Private Attorneys General Act, California Labor Code Section
22 2698 *et seq.*, not to exceed Forty Thousand Dollars and No Cents (\$40,000.00), as approved by the
23 Court, which shall be distributed to the California Labor and Workforce Development Agency and
24 Class Members employed during the PAGA Period as set forth herein. The PAGA Payment shall be
25 allocated as follows: twenty-five percent (25%) to the qualifying Settlement Class Members and
26 seventy-five percent (75%) to the California Labor and Workforce Development Agency. If it should
27 be determined by the Court that an additional amount is needed to effectuate a full and complete
28

1 release of all California Labor Code Private Attorneys' General Act claims, Labor Code Section 2698
2 *et seq.*, any additional amounts shall be deducted from the Maximum Settlement Amount.

3 FF. "PAGA Period" means February 7, 2019 to December 7, 2022, inclusive.

4 GG. "Parties" means the Class Representative, the Class, and Defendants.

5 HH. "Preliminary Approval Date" means the date the Court serves a signed notice of entry
6 of the Preliminary Approval Order.

7 II. "Preliminary Approval Order" means an order to be issued by the Court preliminarily
8 approving the terms of the Settlement set forth herein.

9 JJ. "Released Claims" refers to claims released by the Class Members including, but not
10 limited to, any and all claims of any nature and description whatsoever, that were alleged in the
11 Complaint or could have been asserted based on the factual allegations in the Action. Specifically,
12 without limitation, Settlement Class Members will release claims under California Labor Code
13 sections 201, 202, 203, 204, 210, 221, 226, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194,
14 1194.2, 1197, 1198; claims under the Private Attorneys General Act, Labor Code Section 2698, *et*
15 *seq.*; claims for unlawful and/or unfair business practices under Business and Professions Code
16 Section 17200, *et seq.*, to the extent such claims are predicated on a released claim; and any claim for
17 attorneys' fees and costs related to the above-referenced released claims. The doctrines of res judicata,
18 claim preclusion, issue preclusion, primary rights, and collateral estoppel shall fully and broadly apply
19 to Released Claims and the release in this Settlement to the greatest effect and extent permitted by
20 law.

21 KK. The "Released Parties" include Defendants, and their past or present officers, directors,
22 shareholders, employees, agents, principals, heirs, representatives, accountants, auditors attorneys,
23 consultants, insurers, and their respective successors and predecessors in interest, assigns, subsidiaries,
24 affiliates, and parents, including Hien C. Nguyen.

25 LL. "Response Deadline" means the date, no later than sixty (60) calendar days after the
26 date the Notice Package is mailed (judged by the postmark date) by the Settlement Administrator,
27 prior to which Class Members may validly submit Opt-Outs or written Objections to the Settlement.

1 MM. “Settlement Class Members” or the “Settlement Class” means those Class Members
2 who do not submit a timely and valid Request for Exclusion.

3 NN. “Workweeks” means the total number of weeks each Class Member worked in a
4 covered position during the Class Period.

5 This Stipulation is made by the Class Representative on behalf of themselves and the Class
6 Members, on the one hand, and Defendants, on the other hand, in this Action, and is subject to approval
7 of the Court.

8
9 II. BACKGROUND AND PRELIMINARY REPRESENTATIONS.

10 A. The Action. On February 3, 2020, Plaintiff Jose Luis Venancio Altamirano sent a letter
11 to Defendants and the California Labor Workforce Development Agency (LWDA) pursuant to Labor
12 Code section 2699.3(a)(1) notifying them of Plaintiff’s intent to seek penalties under the Private
13 Attorneys General Act (PAGA) for alleged violations of the California Labor Code, including meal
14 and rest break violations, unpaid minimum and overtime wages, and wage statement violations, among
15 other wage and hour claims. The LWDA thereafter assigned Case No. LWDA-CM-770394-20 to
16 Plaintiff’s claim. On February 7, 2020, Plaintiff filed a class action complaint against Defendants Com
17 Tam Thien Huong II and Hien C Nguyen for violations of the Labor Code and applicable Wage Order,
18 including failure to provide meal periods or pay meal period premiums, failure to authorize and permit
19 rest breaks or pay rest break premiums, failure to pay overtime and minimum wages, failure to provide
20 accurate itemized wage statements, waiting time penalties, seeking restitution and injunctive relief
21 pursuant to California’s Unfair Competition law, and recovery under the Private Attorneys General
22 Act.

23 B. Mediation. On August 24, 2021, the Parties attended a full-day mediation with mediator
24 Cynthia Remmers of Remmers Global, in an attempt to resolve the Action on a class-wide basis. The
25 Action did not settle that day but the Parties agreed to continue settlement discussions. The Parties
26 later reached a tentative agreement, and executed a memorandum of understanding capturing the basic
27 terms of the tentative agreement on October 8, 2022, after which the Parties continued to negotiate to
28 finalize the terms of this Settlement.

1 C. Conditional Certification. The Parties stipulate and agree to the conditional
2 certification of the Class for purposes of this Settlement only. Should for whatever reason the
3 Settlement not become final and effective as herein provided, the conditional class certification shall
4 immediately be dissolved without prejudice. The fact that the Parties were willing to stipulate to
5 conditional class certification as part of the Settlement shall have no bearing on, and shall not be
6 admissible for any reason including in connection with, the issue of whether a class should be certified
7 in a non-settlement context in the Action and shall have no bearing on, and shall not be admissible for
8 any reason including in connection with, the issue of whether a class should be certified in any other
9 lawsuit. Defendants expressly reserve all rights to oppose class certification should this Settlement
10 not become final and effective.

11 D. Investigation. The Parties have conducted significant investigation of the facts and
12 law. Such discovery and investigation included interviews with the Class Representative and other
13 percipient witnesses as well as the review of documents and data necessary to calculate potential
14 damages. The Parties produced a large volume of documents and data concerning the Class Members
15 in advance of mediation with mediator Cynthia Remmers. Counsel for the Parties investigated the law
16 as applied to the facts discovered regarding the alleged claims of the Class Members and potential
17 defenses thereto, and the damages claimed by the Class Members.

18 E. Defendants' Reasons for Settlement. Defendants concluded any further defense of this
19 litigation would be protracted and expensive for all Parties. Substantial amounts of time, energy and
20 resources of Defendants have been and, unless this Settlement is made, will continue to be devoted to
21 the defense of the Released Claims. Defendants have also taken into account the risks of further
22 litigation in reaching its decision to enter into this Settlement. Defendants have, therefore, agreed to
23 settle in the manner and upon the terms set forth in this Settlement to put to rest the Released Claims
24 as set forth in the Action.

25 F. Defendants' Denials of Wrongdoing. Defendants denied and continue to deny each of
26 the claims and contentions alleged by Class Members in the Action. Defendants asserted, and continue
27 to assert, defenses thereto, and expressly denied and continue to deny any wrongdoing or legal liability
28 arising out of any of the facts or conduct alleged in the Action. Defendants also denied and continue

1 to deny, *inter alia*, the allegations: the Class Members have suffered damage; Defendants in any way
2 failed to pay Class Members for all hours worked; Defendants violated any laws regarding minimum
3 wage; Defendants violated any laws regarding overtime compensation; Defendants violated the law
4 regarding meal and rest periods; Defendants failed to provide accurate wage statements; Defendants
5 failed to timely pay Class Members all wages owed upon termination/resignation or otherwise when
6 due; Defendants engaged in any unlawful, unfair or fraudulent business practices; Defendants engaged
7 in any wrongful conduct as alleged in the Action; or Class Members were harmed by the conduct
8 alleged in the Action. Neither this Agreement, nor any document referred to or contemplated herein,
9 nor any action taken to carry out this Agreement, is, may be construed as, or may be used as an
10 admission, concession or indication by or against Defendants of any fault, wrongdoing or liability
11 whatsoever.

12 G. Plaintiff's Claims. The Class Representative has claimed and continues to claim the
13 Released Claims have merit and give rise to liability on the part of Defendants. This Agreement is a
14 compromise of disputed claims. Nothing contained in this Agreement and no documents referred to
15 herein and no action taken to carry out this Agreement may be construed or used as an admission by
16 or against the Class Representative or Class Counsel as to the merits or lack thereof of the claims
17 asserted.

18 **NOW, THEREFORE, IT IS HEREBY STIPULATED**, by and among the Class Representative on
19 behalf of the Class Members on the one hand, and Defendants on the other hand, and subject to Court
20 approval, that the Action is hereby being compromised and settled pursuant to the terms and conditions
21 set forth in this Settlement as a final disposition of the Action in its entirety and that upon the Effective
22 Date, for the duration of the Class Period, each and every Settlement Class Member shall be deemed
23 to have conclusively released and forever discharged the Released Parties for any and all respective
24 Released Claims, and shall be permanently barred and enjoined from the institution or prosecution of
25 any and all applicable Released Claims against the Released Parties, except as to such rights or claims
26 as may be created by the Settlement, subject to the continuing jurisdiction of the Superior Court as set
27 forth below, pursuant to the following terms and conditions:

1 III. AGREEMENT

2 A. Release As To All Settlement Class Members. As of the Effective Date, and for the
3 duration of the Class Period, all Settlement Class Members (including the Class Representative)
4 release the Released Parties from the Released Claims and agree not to sue or otherwise make a claim
5 against any of the Released Parties for the Released Claims. It is the desire of the Parties and the
6 Settlement Class Members to fully, finally, and forever settle, compromise, and discharge the Released
7 Claims. Each Settlement Class Member, except those who timely Opt-Out, will be bound to the release
8 of Released Claims as a result of this Agreement and to the terms of the final judgment and the
9 satisfaction of such judgment.

10 B. Release As to All Class Members Regarding PAGA. As of the Effective Date, and for
11 the duration of the PAGA Period, all Class Members (including Class Representative) who worked
12 during the PAGA Period release the Released Parties for any claims for penalties under the Private
13 Attorneys General Act, Labor Code Section 2698, *et seq.*, based on the Released Claims, irrespective
14 of status as Settlement Class Members. Class Members may not opt out of the release of PAGA claims.

15 C. Additional General Release of All Claims by Class Representative Only. In addition
16 to the releases made by the Settlement Class Members described above, as of the Effective Date and
17 for the duration of the Class Period, Plaintiff (on his behalf and on behalf of his heirs, executors,
18 administrators, and assigns), by signing this Agreement, knowingly and voluntarily releases and
19 forever discharges the Released Parties from any and all claims, demands, rights, liabilities and causes
20 of action of every nature and description whatsoever, known or unknown, asserted or that might have
21 been asserted, whether in tort, contract, or for violation of any state or federal statute, rule or regulation
22 arising out of, relating to, or in connection with any act or omission by or on the part of any of the
23 Released Parties committed or omitted prior to the Effective Date (the “General Release”). Such
24 claims include, but are not limited to: breaches of contract, whether written, oral or implied; violations
25 of any public policy; tort claims, including but not limited to intentional infliction of emotional distress
26 and negligent infliction of emotional distress, defamation, misrepresentation, and fraud; retaliation
27 claims; common law claims; any other claims for damages, costs, fees, or other expenses, including
28 attorneys’ fees; and any violations of the following statutes, laws, and regulations: Title VII of the

1 Civil Rights Act of 1964, as amended; The Civil Rights Act of 1991; Sections 1981 through 1988 of
2 Title 42 of the United States Code, as amended; The Americans with Disabilities Act of 1990, as
3 amended; The Age Discrimination in Employment Act of 1967, as amended; the Older Workers
4 Benefit Protection Act; the Employment Retirement Income Security Act of 1974, as amended; the
5 Occupational Safety and Health Act, as amended; the Sarbanes-Oxley Act of 2002; the Family and
6 Medical Leave Act of 1993, as amended; the Fair Labor Standards Act; the California Fair
7 Employment and Housing Act – Government Code Section 12900 *et seq.*; the California Family
8 Rights Act – Government Code Section 12945.2 *et seq.*; the California Unruh Civil Rights Act – Civil
9 Code Section 51 *et seq.*; the California Whistleblower Protection Law – Labor Code Section 1102-
10 5(a) to (c); the California Occupational Safety and Health Act, as amended, Labor Code Section 6300
11 *et seq.*, and any applicable regulations thereunder; the Labor Code; the Private Attorneys General Act
12 of 2004 – Labor Code Section 2698 *et seq.*; The California Unfair Competition Law – Business and
13 Professions Code Section 17200 *et seq.*; and any other federal, state, or local civil employment law,
14 statute, regulation, or ordinance capable of being released by Plaintiff, excluding any claims that
15 cannot be released as a matter of law.

16 This General Release includes any unknown claims that Class Representative does not know
17 or suspect to exist in his favor at the time of the General Release, which, if known by him, might have
18 affected his settlement with, and release of, the Released Parties or might have affected his decision
19 not to object to this Settlement or the General Release.

20 With respect to the General Release, Class Representative stipulates and agrees that, upon the
21 Effective Date, he shall be deemed to have, and by operation of the Court's Final Approval Order,
22 shall have expressly waived and relinquished, to the fullest extent permitted by law, the provisions,
23 rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under
24 federal or state law, which provides:

25 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
26 **THAT THE CREDITOR OR RELEASING PARTY DOES NOT**
27 **KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT**
28 **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.

1 Class Representative may hereafter discover facts in addition to or different from those he now
2 knows or believes to be true with respect to the subject matter of the General Release, but upon the
3 Effective Date, shall be deemed to have, and by operation of the Court's Final Approval Order, shall
4 have, fully, finally, and forever settled and released any and all of the claims released pursuant to the
5 General Release whether known or unknown, suspected or unsuspected, contingent or non-contingent,
6 which now exist, or heretofore have existed upon any theory of law or equity now existing or coming
7 into existence in the future, including, but not limited to, conduct that is negligent, intentional, with or
8 without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or
9 existence of such different or additional facts. Plaintiff assumes any and all risks of any mistake in
10 connection with the true facts involved in the matters, disputes, or controversies described in this
11 Settlement or with regard to any facts now unknown to Plaintiff relating to such matters.
12 Notwithstanding the above, the scope of the General Release provided to Defendants and the Released
13 Parties by the Class Representative does not include any claims that cannot be released as a matter of
14 law or claims that accrued after the Effective Date.

15 Nothing in this Agreement shall affect, impact, preclude, or prevent Defendants from pursuing
16 claims against third parties, including, without limitation, claims for express, implied or equitable
17 indemnity or contribution, including claims against payroll companies, payroll processors,
18 management companies and related individuals and entities.

19 Plaintiff hereby agrees not to request exclusion or otherwise object to the Settlement.

20 **In accordance with the Older Worker's Benefit Protection Act of 1990, Plaintiff**
21 **represents he is aware of the following with respect to any possible claims he might have under**
22 **the Age Discrimination in Employment Act:**

- 23 • He has been advised of the right to consult with an attorney and has done so before
24 signing this Agreement.
- 25 • He has twenty-one days to review and consider this Agreement and the release of any
26 Age Discrimination in Employment Act claims and that he may use as much of this 21-
27 day period as he wishes prior to signing.

- For a period of seven days following the execution of this Agreement, he may revoke this Agreement with regard to the release of claims under the Age Discrimination in Employment Act and it shall not be effective or enforceable with respect to the claims under the Age Discrimination in Employment Act until the revocation period has expired.
- This Agreement and the releases contained within it shall become effective as to any Age Discrimination in Employment Act claim eight days after it is signed. Plaintiff understands that he cannot revoke this waiver of any Age Discrimination in Employment Act claim after such 8 day period and that it will, at that point, become binding upon him.
- To revoke the waiver of claims based upon the Age Discrimination in Employment Act, Plaintiff must give timely written notice to defense counsel as follows: John F. McIntyre, Shea & McIntyre, A P.C., counsel for Defendants, email: jmcintyre@sheameintyre.com.
- To the extent Plaintiff timely revokes the waiver of claims based upon the Age Discrimination in Employment Act, Defendants may cancel and revoke this Agreement in its entirety and will have no obligation to make the payments specified in this Agreement, including any portion of the Maximum Settlement Amount.

D. Tax Liability. Twenty-percent (20%) of each Settlement Class Member's Individual Settlement Payment shall be treated as wages (reported on IRS Form W-2) and eighty-percent (80%) equally as interest and penalties (reported on IRS Form 1099). Employer-side payroll taxes (including Employer Taxes) shall be paid out of the Maximum Settlement Amount. Defendants, their counsel and Plaintiff's counsel make no representations as to the tax treatment or legal effect of the payments to Plaintiff and Class Members called for hereunder and Plaintiff is not relying on any statement or representation by Defendants, their counsel and Plaintiff's counsel in this regard. Plaintiff understands and agrees Class Members will be solely responsible for the payment of any taxes or penalties predicated on the payments to them described herein. Defendants shall be held harmless from and against any claims resulting from treatment of such payments as non-taxable damages, including the

1 treatment of such payments as not subject to withholding or deduction for payroll and employment
2 taxes.

3 E. CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS AGREEMENT (FOR
4 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO
5 THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”)
6 ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND
7 NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES
8 OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR
9 SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE
10 CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED
11 STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2)
12 THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
13 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
14 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS
15 AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY
16 ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY
17 UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO
18 ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
19 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
20 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF
21 ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER
22 SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
23 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
24 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
25 AGREEMENT.

26 F. Funding of the Settlement Amount. Defendants shall fund the entire Maximum
27 Settlement Amount through the following four-part payment schedule with installment payments of
28 \$100,000.00 each: September 30, 2022; December 31, 2022; March 31, 2023; and June 30, 2023. All

installment payments prior to Final Approval shall be paid into Defendants' attorney's attorney-client trust account with the understanding it shall be paid over to the Settlement Administrator within twenty-one (21) days of Final Approval. Defendants' counsel shall confirm the amounts of dates of installment payments received into its attorney-client trust account in connection with this Settlement upon request by Plaintiff's counsel. All installment payments after Final Approval shall be made directly to the Settlement Administrator. The Settlement Administrator shall make all payments or distributions required pursuant to this Settlement from the Maximum Settlement Amount. Distributions from the Maximum Settlement Amount shall be as follows:

1. Class Representative. The Incentive Award ultimately approved by the Court shall be paid from the Maximum Settlement Amount to the Class Representative within fifteen (15) days after its receipt of entire Maximum Settlement Amount, provided the Court's Final Approval and judgment has become final. The Parties agree that a decision by the Court to award the Class Representative an amount less than applied for herein shall not be a basis for the Class Representative or Class Counsel to void this Stipulation. The Settlement Administrator shall issue the Class Representative a Form 1099 for their Incentive Award. Class Representative shall be solely and legally responsible to pay their applicable taxes on these payments and shall hold harmless Defendants from any claim or liability for taxes, penalties, or interest owed by the Class Representative as a result of these payments. The Incentive Award shall be in addition to the Class Representative's Individual Settlement Payments.

2. Class Counsel. Defendants agree not to oppose or impede any application or motion by Class Counsel for the Fees Award not to exceed thirty-three and one-third percent (33-1/3%) of the Maximum Settlement Amount (*i.e.*, \$133,333.33) and the Costs Award (not to exceed \$10,000.00). The Fees and Costs Award ultimately approved by the Court shall be paid from the Maximum Settlement Amount to Class Counsel within fifteen (15) days after its receipt of entire Maximum Settlement Amount, provided the Court's Final Approval and judgment has become final. . Class Counsel shall be solely and legally responsible to pay their applicable taxes on the payment made pursuant to this Paragraph. Class Counsel further agree that Class Counsel shall be solely responsible for any allocation of the Fees and Costs Award as between or among attorneys who have claims for such fees. The Settlement Administrator shall issue Forms 1099 to Class Counsel for the payments made pursuant to this Paragraph. In consideration of their awarded attorneys' fees and expenses, Class Counsel waive any and all claims to any further attorneys' fees and expenses in connection with the Lawsuit. The Parties agree that a decision by the Court to award Class Counsel a Fees and/or Costs award less than what Class Counsel seek shall not be a basis for Class Counsel or any party to void this Stipulation.

3. Settlement Administrator. The Settlement Administrator shall be paid for the costs of settlement administration from the Maximum Settlement Amount. Total Claims Administration costs are estimated to cost Seven Thousand, Five Hundred Dollars and No Cents (\$7,500.00) based on Defendants' estimate of 168 Class Members. This estimate includes all tasks required of the Settlement Administrator by this Agreement including distribution of the Notice, collecting and processing Claims and requests for Exclusion, all required tax reporting in connection with distributions from the Maximum Settlement Amount, issuance of Individual Settlement Payment

1 checks, including issuance of W2 and 1099 forms as applicable, the handling of Class
2 Member questions and disputes, as well as calculation of Employee Taxes and
3 Employer Taxes to be remitted to the tax authorities. Not more than ten (10) calendar
4 days prior to the date for filing of the motion for Final Approval of the Settlement, the
5 Settlement Administrator shall provide counsel for the Parties with a statement
6 detailing the final costs of administration to be filed with the Court. The Parties agree
7 to cooperate in the settlement administration process and to make all reasonable efforts
8 to control and minimize the costs and expenses incurred in the administration of the
9 Settlement. The Total Claims Administration Costs ultimately approved by the Court
10 shall be paid from the Maximum Settlement Amount within fifteen (15) days after its
11 receipt of entire Maximum Settlement Amount, provided the Court's Final Approval
12 and judgment has become final.

13
14 4. Class Members. Payments to Class Members shall be managed and
15 administered as follows:

16 a) Defendants shall provide the Settlement Administrator with the Class
17 List within ten (10) calendar days after the Preliminary Approval Date (but
18 Defendants need not provide the Class List earlier than February 23, 2023). The
19 Class List will be treated as confidential by the Settlement Administrator and
20 will not be disclosed by the Settlement Administrator to anyone, except as
21 permitted by this Agreement, as may be required to applicable tax authorities,
22 pursuant to the express written consent of Defendants, by order of the Court, or
23 as may be necessary to carry out the reasonable steps described in this
24 Settlement to locate missing Class Members.

25 b) Within fourteen (14) calendar days of receiving the Class List, the
26 Settlement Administrator shall mail the Notice Package to each Class Member.
27 Prior to mailing, the Settlement Administrator will perform a search based on
28 the National Change of Address Database information to update and correct for
any known or identifiable address changes. For each Notice Package returned
as undeliverable, without a forwarding address, the Settlement Administrator
will perform one "skip trace" search to obtain an updated address for the Class
Member.

c) Individual Settlement Payments and PAGA Payments shall be paid by
the Settlement Administrator from the Maximum Settlement Amount within 15
days after receipt of the Maximum Settlement Amount, provided the Court's
Final Approval and judgment has become final.

d) Payments under the Settlement shall be calculated as follows:

(1) Class Members employed during the PAGA Period shall receive
a pro-rata share of 25% of the PAGA Payment, based on the number of
Workweeks worked during the PAGA Period relative to the total
Workweeks worked by all Class Members during the PAGA Period.

(2) Settlement Class Members shall receive Individual Settlement
Payments calculated as a pro-rata share of the Net Settlement Fund,
based on the number of Workweeks worked during the Class Period
relative to the total Workweeks worked by all Settlement Class
Members during the Class Period.

(3) The Settlement Administrator may combine the pro-rata PAGA
Payment and Individual Settlement Payment for Settlement Class

Members who worked during the PAGA Period into a single payment.

(4) Class Members who timely and properly request to be excluded will not receive an Individual Settlement Payment and the amount otherwise allocated to that Class Member shall revert to the Net Settlement Fund for distribution amongst Settlement Class Members. Under no circumstances shall any of the Settlement Amount revert to Defendants.

(5) Class Members' pro-rated PAGA Payments shall be allocated as payment of penalties, reported on IRS Form 1099. Twenty percent (20%) of each Individual Settlement Payment to Settlement Class Members shall be allocated to payment of wages (the "Wage Component"), reported on IRS Form W2. Eighty percent (80%) of each Individual Settlement Payment to Settlement Class Members shall be allocated equally to penalties and interest (the "Non-Wage Component"), reported on IRS Form 1099. Each Settlement Class Member's Wage Component shall be subject to Employee Taxes and reduced by the amount of applicable payroll deductions or withholdings calculated by the Settlement Administrator, resulting in a "Net Wage Component." No withholding shall be made on the Non-Wage Component of the Individual Settlement Payments to Settlement Class Members or pro-rated PAGA Payments to Class Members.

(6) Class Members will have the opportunity, should they disagree with Defendants' records regarding their number of Workweeks, as presented on the Notice, to provide documentation and/or an explanation to show contrary Workweeks during the Class Period. Class Members must notify the Settlement Administrator of the dispute and submit documentation to support their dispute (such as, without limitation, payroll or time keeping records, paycheck stubs) prior to the Response Deadline. Moreover, a Class Member can only dispute their Workweeks outside of the PAGA Period if they do not exclude themselves from the Settlement. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Parties shall engage in a good faith effort to reach an agreement as to whether a workweek adjustment for the Class Member is warranted and, if the Parties are unable to reach an agreement, the determination of the Settlement Administrator shall be deemed final.

e) The Settlement Administrator, on Defendants' and Class Counsels' collective behalf, shall have the authority and obligation to make payments, credits and disbursements, including payments and credits in the manner set forth herein, to Settlement Class Members calculated in accordance with the methodology set out in this Agreement and consistent with subsequent orders of the Court.

f) No person shall have any claim against Defendants, Defendants' Counsel, the Class Representative, the Class, Class Counsel, or the Settlement Administrator based on any errors or omissions in the distributions and payments that are required to be made in accordance with the terms of this Agreement.

1 G. Settlement Administration.

2 1. The Parties agree to cooperate in the settlement administration process and to
3 make all reasonable efforts to control and minimize the costs and expenses incurred in
4 administration of the Settlement.

5 2. The Settlement Administrator shall be responsible for: printing and mailing the
6 Notices to the Class Members as directed by the Court; skip-tracing; receiving and
7 reporting the Opt-Out Forms submitted by Class Members; issuing and mailing pro-
8 rated PAGA Payments to Class Members; issuing and mailing Individual Settlement
9 Payments to Settlement Class Members who did not make a timely and proper request
10 for exclusion; remitting all amounts due to the appropriate federal, state, and local tax
11 authorities, and other tasks as the Parties mutually agree or the Court orders the
12 Settlement Administrator to perform. The Settlement Administrator shall keep
13 Defendants' Counsel and Class Counsel timely apprised of the performance of all
14 Claims Administration responsibilities.

15 3. Any tax return filing required by this Agreement shall be made by the
16 Settlement Administrator. Any expenses incurred in connection with such filing shall
17 be a cost of administration of the Settlement.

18 H. Notice/Approval of Settlement and Settlement Implementation. As part of this
19 Settlement, the Parties agree to the following procedures for obtaining preliminary Court approval of
20 the Settlement, certifying the proposed Class, notifying Class Members, obtaining final Court approval
21 of the Settlement, and processing the Individual Settlement Payments and other distributions from the
22 Settlement Amount:

23 1. Preliminary Settlement Approval Hearing. Plaintiff has and/or shall request a
24 hearing before the Court to request preliminary approval of the Settlement and to
25 request the entry of the Preliminary Approval Order for certification of the Class for
26 settlement purposes only. In conjunction with this hearing, Plaintiff will submit this
27 Agreement and the proposed Notice (attached hereto as **Exhibit "A"**) as part of the
28 Order issued by the Court on the Motion for Preliminary Approval.

1 2. Certification of the Class for Settlement Purposes. Simultaneous with the filing
2 of the Preliminary Approval Motion and solely for purposes of this Settlement, Plaintiff
3 will request that the Court enter an order preliminarily approving the proposed
4 Settlement, certifying the Class for settlement purposes only, and setting a date for a
5 Final Approval Hearing. The Preliminary Approval Order shall be in a form to be
6 agreed upon by the Parties prior to the hearing on the Motion for Preliminary Approval
7 and provide for Notice of the Settlement and related matters to be sent to Class
8 Members as specified herein.

9 3. Notice to Class Members. The Notice shall be provided to Class Members, and
10 Class Members shall submit objections to the Settlement and/or requests for exclusion
11 from the Class, pursuant to the following procedures:

12 a) Notice By First-Class Mail. Within fourteen (14) calendar days after
13 receiving the Class List from Defendants, the Settlement Administrator shall
14 send the Notice Package to each Class Member via First Class regular U.S.
15 mail. The Notice Package shall be provided in English, Spanish, and
16 Vietnamese. Prior to mailing, the Settlement Administrator shall check all
17 addresses on the Class List against the National Change of Address (NCOA)
18 database. The Settlement Administrator shall mail the Notice to the most
19 current mailing address as identified by reference to the Class List and/or the
20 National Change of Address (NCOA) database.

21 b) Procedure For Undeliverable Notices. Any Notices returned to the
22 Settlement Administrator as non-delivered within fourteen (14) calendar days
23 shall be sent to the forwarding address affixed thereto. If no forwarding address
24 is provided, then the Settlement Administrator shall promptly attempt to
25 determine a correct address using a skip-trace, computer or other search using
26 the name, address and/or Social Security number of the individual involved,
27 and shall then perform a single re-mailing. The deadline for Class Members
28 who receive a re-mailed Notice to object or request exclusion from the

1 Settlement shall be the later of the original Response Deadline or twenty-one
2 (21) days from the date of re-mailing. In the event the procedures in this
3 Paragraph are followed and the intended recipient of a Notice still does not
4 receive the Notice, the intended recipient shall be deemed a Settlement Class
5 Member and shall be bound by all terms of the Settlement and any Final
6 Approval Order and Judgment entered by the Court unless they have timely
7 opted out as set forth in the Notice.

8 4. Procedure for Distribution of Individual Settlement Payments and Pro-Rated
9 PAGA Payments.

10 a) Only Class Members who do not request exclusion from the Settlement
11 on or before the Response Deadline (referred to as “Settlement Class
12 Members”) are eligible to receive an Individual Settlement Payment. Class
13 Members remain eligible to receive the pro-rated PAGA Payment even if they
14 request to be excluded from the Class.

15 b) Individual Settlement Payments and the pro-rated PAGA Payments
16 shall be paid exclusively from the Net Settlement Fund, pursuant to the *pro rata*
17 formula set forth herein.

18 c) Individual Settlement Payments and the pro-rated PAGA Payments
19 shall be issued within fifteen (15) days after the Class Administrator receives
20 the Maximum Settlement Amount.

21 d) Should any question arise regarding the determination of eligibility for,
22 or the amounts of, any Individual Settlement Payments or pro-rated PAGA
23 Payments under the terms of this Agreement, Class Counsel and Defendants’
24 Counsel shall meet and confer in an attempt to reach agreement. The Parties
25 shall engage in a good faith effort to reach an agreement and, if the Parties are
26 unable to reach an agreement, the determination of the Settlement
27 Administrator shall be deemed final and binding.

1 e) Each payment check distributed to a Class Member or Settlement Class
2 Member shall remain valid and negotiable for one hundred and eighty (180)
3 days from the date of issuance. This check-cashing deadline shall not be
4 extended unless approved by the Court. In the event that there are any pro-rated
5 PAGA Payment or Individual Settlement Payment funds that are not deposited
6 or cashed within the 180-day period, said funds shall be tendered to Legal Aid
7 at Work as the *cy pres* pursuant to Code of Civil Procedure Section 384. The
8 Settlement Administrator shall provide periodic updates on the number/amount
9 of pro-rated PAGA Payment and Individual Settlement Award checks that have
10 been cashed or cancelled. The failure of a Settlement Class Member to deposit
11 checks shall not affect the enforceability of the release of wage and hour claims
12 as stated herein, as the Parties jointly agree that valid consideration for same is
13 the offer of monetary consideration by means of the offer of settlement and
14 mailing of settlement checks.

15 5. Procedure for Claiming Individual Settlement Payment, Objecting to or
16 Requesting Exclusion From Class Action Settlement.

17 a) Procedure for Claiming Individual Settlement Payments or Pro-rated
18 PAGA Payments. Settlement Class Members need take no action to receive an
19 Individual Settlement Payment or pro-rated PAGA Payment under the
20 Settlement.
21

22 b) Procedure for Objecting. The Notice shall inform Settlement Class
23 Members that they may object to the Settlement in writing and may also appear
24 at the Final Approval Hearing at their expense, either in person, telephonically
25 or through an attorney, provided they notice the Court of their intent to do so.
26 Settlement Class Members who wish to object to the Settlement in writing must
27 (i) submit a statement of objection (“Notice of Objection”) to the Court either
28 by mailing the Objection to: Clerk of the Court, Superior Court of California,

1 County of Santa Clara, 191 N. First Street, San Jose, California 95113, or by
2 filing in person at the same location and (ii) also submit a copy to Class Counsel
3 and Defense Counsel via mail or email. Settlement Class Members who wish
4 to appear without filing or mailing a written objection must still file or mail a
5 notice of intent to appear with the Court and provide notice to Class Counsel
6 and Defense Counsel via mail as set forth in the Notice. The Notice of
7 Objection and/or notice of intent to appear at the hearing must be filed or
8 postmarked on or before the Response Deadline. Only Settlement Class
9 Members (*i.e.*, not Excluded Class Members) may submit objections and have
10 their objections heard. The Notice of Objection must state the basis for the
11 objection. At no time shall any of the Parties or their counsel seek to solicit or
12 otherwise encourage Settlement Class Members to submit written objections to
13 the Settlement or to appeal from any order of the Court approving the
14 Settlement. Class Counsel shall not represent any Settlement Class Member
15 with respect to any such objection.

16 c) Procedure for Requesting Exclusion. The Notice shall provide that Class
17 Members who wish to exclude themselves from the Settlement Class and, in so
18 doing, become an Excluded Class Member, must submit a written request to be
19 excluded from the Settlement Class on or before the Response Deadline via
20 facsimile or mail. Such request for exclusion: (1) must contain the name,
21 address, telephone number and the last four digits of the Social Security number
22 of the person requesting exclusion and the location and years of his or her
23 employment by Defendant; (2) must be returned by mail to the Settlement
24 Administrator at the specified address; (3) and must be postmarked on or before
25 the Response Deadline. If it is returned via Mail, then the date of the postmark
26 shall be used to determine whether a request for exclusion has been timely
27 submitted except that requests returned without a postmark will be considered
28 timely so long as they are actually received by the Settlement Administrator

1 within seven (7) calendar days of the Response Deadline. Any Class Member
2 who requests exclusion will not be entitled to submit objections to the
3 Settlement, will not be entitled to any recovery under the Settlement beyond
4 their pro-rated PAGA Payment (if any), and will not be bound by the Settlement
5 or have any right to object, appeal or comment thereon. All Class Members
6 who fail to submit a valid and timely request for exclusion on or before the
7 Response Deadline shall be Settlement Class Members and shall be bound by
8 all terms of the Settlement, if the Settlement is approved by the Court, and
9 regardless of whether or not they submitted a timely request for exclusion.

10 d) Within fourteen (14) calendar days after the Response Deadline, the
11 Settlement Administrator shall provide counsel for Defendants with a complete
12 list of all Class Members who have timely requested exclusion from the
13 Settlement, and shall notify Class Counsel of the number of Class Members
14 who requested exclusion. At no time shall any of the Parties or their counsel
15 seek to solicit or otherwise encourage Class Members to submit requests for
16 exclusion from the Settlement.

17 6. Claims Deemed Waived. Any Class Member who is not excluded pursuant to
18 the process set forth above shall be deemed a Settlement Class Member and, upon the
19 Effective Date, to have released all Released Claims against Released Parties as set
20 forth herein. Class Members who submit timely and proper requests for exclusion will
21 not be eligible to receive an Individual Settlement Payment and will remain bound by
22 the Release.

23 7. Final Settlement Approval Hearing. Upon expiration of the Response Deadline,
24 with the Court's permission, a Final Approval Hearing shall be conducted to determine
25 final approval of the Settlement along with the amount properly payable for (i)
26 attorneys' fees and costs, (ii) Incentive Awards, (iii) to the LWDA for the release of
27 PAGA claims, (iv) pro-rated PAGA Payments to Class Members; and (v) costs of
28 administration. The Final Approval Hearing shall be held as soon as reasonably

1 practical following the Response Deadline, and the date of the hearing shall be jointly
2 selected by the Parties. After entry of an order finally approving the settlement, the
3 Court shall have continuing jurisdiction solely for purposes of addressing: (i) the
4 interpretation and enforcement of the terms of the settlement, (ii) settlement
5 administration matters and (iii) such other matters as may be appropriate under the
6 California Rules of Court or as set forth in this Agreement.

7 8. Defendants' Option to Terminate Settlement. Within fourteen (14) days after
8 the Response Deadline, the Settlement Administrator shall inform the Parties how
9 many Class Members have made timely requests to be excluded from the Settlement.
10 If the number of Class Members who have submitted timely requests for exclusion
11 from the Settlement Class exceeds three percent (3%) of all Class Members or if the
12 named Plaintiff requests exclusion, Defendants shall have, in their sole discretion, the
13 option (but not obligation) to terminate this Settlement. Defendants shall have ten (10)
14 days after receiving notification from the Settlement Administrator regarding how
15 many Class Members made timely exclusion requests to exercise this termination
16 option, but under no circumstance shall Defendants exercise this option after Plaintiff
17 files their Motion for Final Approval. If Defendants exercise this option to terminate,
18 the Settlement will be void *ab initio* and of no force and effect, and will not be
19 admissible in any judicial, administrative, or arbitral proceeding for any purpose or
20 with respect to any issue, substantive or procedural. In addition, none of the Parties to
21 this Settlement will be deemed to have waived or assigned any claims, objections,
22 defenses, or arguments in the Action, including with respect to the issue of class
23 certification. In the event Defendants terminate the Agreement pursuant to this
24 provision, the Parties shall be responsible for equal splitting of costs, if any, incurred
25 by the Settlement Administrator prior to the date Defendants notify the Settlement
26 Administrator in writing (with a copy to Class Counsel) that they are exercising this
27 option.

1 9. Plaintiff's Reliance on Defendants' Data Points and Option to Terminate.

2 Defendants represent there are approximately 168 Class Members during the Class
3 Period. If the actual number of Class Members exceeds 168, Plaintiff may, in their sole
4 option, elect to terminate the Settlement. This option shall be exercised, if at all, prior
5 to the date the Settlement Administrator sends out notice of the Settlement to the
6 Settlement Class. If Plaintiff exercises their right to terminate under this provision, the
7 Settlement will be void *ab initio* and of no force or effect, and will not be admissible
8 in any judicial, administrative, or arbitral proceeding for any purpose or with respect to
9 any issue, substantive or procedural. Furthermore, the Parties shall be responsible for
10 equal splitting of costs, if any, incurred by the Settlement Administrator prior to the
11 date Plaintiff terminates the Agreement.

12 10. Nullification of Settlement Agreement. In the event: (i) the Court does not enter
13 the orders specified herein; (ii) the Court does not issue an order finally approving the
14 Settlement or said order does not become final as a result of the occurrence of the
15 Effective Date; (iii) any party elects to terminate the Settlement as set forth herein; or
16 (iv) the Settlement does not become final for any other reason, this Agreement shall be
17 null and void and any order entered by the Court in furtherance of this Settlement shall
18 be treated as void from the beginning, unless otherwise stated herein. In such a case,
19 the Parties shall be returned to their respective statuses in the Action as of the date and
20 time immediately prior to the execution of this Agreement, and the Parties shall proceed
21 in all respects as if this Agreement had not been executed, except for payment of any
22 costs to the Settlement Administrator as provided herein. In the event appellate review
23 is sought prior to the Effective Date, administration of the Settlement shall be stayed
24 pending final resolution of the appeal(s).

25 11. Certification By Settlement Administrator. Upon completion of administration
26 of the distributions, the Settlement Administrator shall provide written certification of
27 such completion to counsel for the Parties for filing with the Court in connection with
28 a final accounting.

1 I. No Effect on Employee Benefits. Any Incentive Awards or Individual Settlement
2 Payments distributed to the Class Representative, Class Members, or Settlement Class Members shall
3 be deemed not to be pensionable earnings and shall not have any effect on the eligibility for, or
4 calculation of, any of the employee benefits (*e.g.*, vacations, holiday pay, retirement plans, etc.) of the
5 respective Class Representative, Class Members, or Settlement Class Members. The Parties agree that
6 any Individual Settlement Payments to Settlement Class Members under the terms of this Agreement
7 do not represent any modification of Settlement Class Members' previously credited hours of service
8 or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan
9 sponsored by Defendants. Further, any Individual Settlement Payments or Incentive Awards hereunder
10 shall not be considered "compensation" in any year for purposes of determining eligibility for, or
11 benefit accrual within, an employee pension benefit plan, employee welfare benefit plan, or incentive
12 compensation plan sponsored by Defendants.

13 J. Exhibit(s) and Headings. The terms of this Agreement include the terms set forth in
14 any attached Exhibit(s), which are incorporated by this reference as though fully set forth herein. Any
15 Exhibit(s) to this Agreement are an integral part of the Settlement. The descriptive headings of any
16 paragraphs or sections of this Agreement are inserted for convenience of reference only and do not
17 constitute a part of this Agreement.

18 K. Interim Stay of Proceedings. The Parties agree to stay all proceedings and deadlines in
19 the Action, except such proceedings necessary to implement and complete the Settlement, in abeyance
20 pending the Preliminary and Final Approval Hearings to be conducted by the Court presiding over this
21 Action. Said stay shall terminate if and when (1) the Court permanently denies approval (preliminary
22 or final) of the Settlement, (2) any party terminates the Agreement as provided herein, (3) the Court
23 issues an order terminating the stay; or (4) the Settlement does not become final for any other reason.

24 L. Section 583.310 of the California Code of Civil Procedure, in pertinent part, states "An
25 action shall be brought to trial within five years after the action is commenced against the defendant."
26 The Parties hereby stipulate and agree that the five-year period for bringing the Action to trial is
27 extended by the period of the stay until the stay is lifted.

1 M. Amendment or Modification. This Agreement may be amended or modified only by a
2 written instrument signed by the Parties, their successors-in-interest, or counsel for the Parties on
3 behalf of the Parties.

4 N. Entire Agreement. This Agreement and any attached Exhibit(s) constitute the entire
5 agreement among these Parties, and no oral or written representations, warranties or inducements have
6 been made to any Party concerning this Agreement or its Exhibit(s) other than the representations,
7 warranties and covenants contained and memorialized in such documents. Defendants shall not be
8 required as part of the Settlement to modify or eliminate any of their personnel, compensation or
9 payroll practices, or adopt any new personnel, compensation or payroll practices. This Agreement
10 supersedes and replaces the Memorandum of Understanding between the Parties dated October 8,
11 2022.

12 O. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and
13 represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement
14 and to take all appropriate action required or permitted to be taken by such Parties pursuant to this
15 Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms
16 of this Agreement. The Parties and their counsel will cooperate with each other and use their best
17 efforts to affect the implementation of the Settlement. In the event the Parties are unable to reach
18 agreement on the form or content of any document needed to implement the Settlement, or on any
19 supplemental provisions that may become necessary to effectuate the terms of this Settlement, the
20 Parties may seek the assistance of the Court to resolve such disagreement. The persons signing this
21 Agreement on behalf of each Defendant represent and warrant that they are authorized to sign this
22 Agreement on behalf of each respective Defendant.

23 P. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure
24 to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

25 Q. California Law Governs. All terms of this Agreement and the Exhibit(s) hereto shall
26 be governed by and interpreted according to the laws of the State of California.

27 R. Counterparts. This Agreement may be executed in one or more counterparts. All
28 executed counterparts and each of them shall be deemed to be one and the same instrument provided

1 that counsel for the Parties to this Agreement shall exchange among themselves original signed
2 counterparts.

3 S. This Settlement Is Fair, Adequate, and Reasonable. The Parties believe this Settlement
4 is a fair, adequate and reasonable settlement of the Action and have arrived at this Settlement after
5 extensive arms-length negotiations, taking into account all relevant factors, present and potential.

6 T. Class Action Certification for Settlement Purposes Only. The Parties agree to stipulate
7 to class action certification for purposes of the Settlement only. If, for any reason, the Settlement is
8 not approved, the stipulation to certification will be void. The Parties further agree that certification
9 for purposes of the Settlement is not an admission that class action certification is proper under the
10 standards applied to contested certification motions and that this Settlement will not be admissible in
11 this or any other proceeding as evidence that either (i) a class action should be certified or (ii)
12 Defendants are liable to Plaintiffs or any Class Member, other than according to the Settlement's
13 terms.

14 U. Non-Admission of Liability. The Parties enter into this Settlement to resolve the
15 dispute that has arisen between them and to avoid the burden, expense and risk of continued litigation.
16 In entering into this Settlement, Defendants do not admit, and specifically deny, violation of any
17 federal, state, or local law; violation of any regulations or guidelines promulgated pursuant to any
18 statute or any other applicable laws, regulations or legal requirements; breach of any contract; violation
19 or breach of any duty; any misrepresentation or deception; or any other unlawful conduct with respect
20 to Defendants' employees. Neither this Settlement, nor any of its terms or provisions, nor any of the
21 negotiations connected with it, will be construed as an admission or concession by Defendants of any
22 such violations or failures to comply with any applicable law. Except as necessary in a proceeding to
23 enforce the terms of this Settlement, this Settlement and its terms and provisions will not be offered
24 or received as evidence in any action or proceeding to establish any liability or admission on the part
25 of Defendants or to establish the existence of any condition constituting a violation of, or a non-
26 compliance with, federal, state, local or other applicable law.

27 V. Jurisdiction of the Court. The Court shall retain jurisdiction with respect to the
28 interpretation, implementation, and enforcement of the terms of this Agreement and all orders entered

1 in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court
2 for purposes of interpreting, implementing and enforcing the settlement terms embodied in this
3 Agreement and all orders entered in connection therewith.

4 W. Cooperation and Drafting. Each of the Parties has cooperated in the drafting and
5 preparation of this Agreement. Hence, in any construction made to this Agreement, the same shall not
6 be construed against any of the Parties.

7 X. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,
8 the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent
9 with applicable precedents so as to define all provisions of this Agreement valid and enforceable. The
10 Parties agree that this agreement is enforceable pursuant to Code of Civil Procedure Section 664.6.

11 Y. Class Representative's Waiver of Right to be Excluded and Object. The Class
12 Representative agrees to sign this Agreement and by signing this Agreement is bound by the terms
13 herein stated and further agrees not to request to be excluded from the Class and agrees not to object
14 to any of the terms of this Agreement. Non-compliance by the Class Representative with this
15 Paragraph shall be void and of no force or effect. Any such requests for exclusion or objections shall
16 therefore be void and of no force or effect.

17 Z. No Public Comment: Class Counsel shall do nothing to publicize this Settlement or
18 use it for marketing purposes, including on web sites and on the Internet and in any form of electronic
19 or no-electronic press whatsoever, although this confidentiality obligation shall not be construed to
20 interfere with Class Counsel's communications with Settlement Class Members and will not preclude
21 Class Counsel from referring to the Settlement in any future Court filings in support of class
22 certification and/or prevailing party attorneys' fees and/or settlement approval. The Parties further
23 agree that, so as to not cause confusion with the court approved Notice Package, not to send or
24 distribute any notices or communications or solicitations urging Class Members to object or request
25 exclusion from the Settlement. This Paragraph does not limit Class Counsel's ability to reference the
26 Settlement in documents they file with the Court relating to any future motion for fees or declaration
27 supporting adequacy to act as class counsel.

1 AA. Nondisclosure Prior to Preliminary Approval. The Parties agree not to disclose the
2 Settlement with Class Members (other than Plaintiff) or the public at large until Plaintiff files their
3 motion for preliminary approval with the Court. Provided, however, details of the Settlement may be
4 disclosed as reasonably necessary in order to secure a Claims Administrator and otherwise
5 consummate the Settlement.

6 BB. Counterparts. This Agreement may be executed in one or more counterparts, each of
7 which shall be deemed an original and all of which shall constitute one single instrument. Where
8 convenient for the Parties to do so, the signed signature pages may be facsimile or scanned PDF
9 transmissions. The Parties agree their signatures on the facsimile or scanned PDF transmissions shall
10 be fully binding upon them in the same manner as if the Parties had each signed the same original
11 document.

12 Dated: 1-26-23

DEFENDANT

13 By:

Hein C. Nguyen
Name: Hein C. Nguyen
Title: CEO
Com Tam Thien Huong II

16 Dated: 1-26-23

DEFENDANT

18 By:

Hein C. Nguyen
Hien C Nguyen

21 Dated: _____

REPRESENTATIVE PLAINTIFF

23 By:

Jose Luis Venancio Altamirano

26 *Additional Signatures on Following Page*

1 AA. Nondisclosure Prior to Preliminary Approval. The Parties agree not to disclose the
2 Settlement with Class Members (other than Plaintiff) or the public at large until Plaintiff files their
3 motion for preliminary approval with the Court. Provided, however, details of the Settlement may be
4 disclosed as reasonably necessary in order to secure a Claims Administrator and otherwise
5 consummate the Settlement.

6 BB. Counterparts. This Agreement may be executed in one or more counterparts, each of
7 which shall be deemed an original and all of which shall constitute one single instrument. Where
8 convenient for the Parties to do so, the signed signature pages may be facsimile or scanned PDF
9 transmissions. The Parties agree their signatures on the facsimile or scanned PDF transmissions shall
10 be fully binding upon them in the same manner as if the Parties had each signed the same original
11 document.

12 Dated: _____

DEFENDANT

13 By: _____
14 Name: Hein C. Nguyen
15 Title: CEO
16 **Com Tam Thien Huong II**

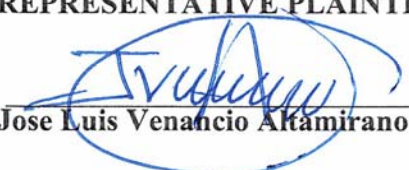
17 Dated: _____

DEFENDANT

18 By: _____
19 **Hien C Nguyen**

20
21 Dated: 01/21/23

REPRESENTATIVE PLAINTIFF

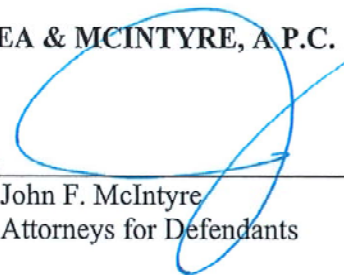
22 By: 
23 **Jose Luis Venancio Altamirano**

24
25 *Additional Signatures on Following Page*
26
27
28

1 **APPROVED AS TO FORM:**

2
3 Dated: Jan. 27, 2023

SHEA & MCINTYRE, A P.C.

4
5 By: 
6 John F. McIntyre
7 Attorneys for Defendants

8 Dated: January 26, 2023

ALLEN ATTORNEY GROUP

9
10 By: /s/ Kevin R. Allen
11 Kevin R. Allen
12 Attorneys for Plaintiff

13 Dated: January 26, 2023

LAW OFFICE OF DANIEL A MENENDEZ

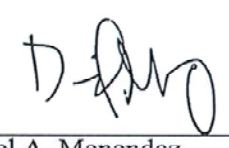
14
15 
16 By: Daniel A. Menendez
17 Attorneys for Plaintiff
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EXHIBIT 2

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF SANTA CLARA
ALTAMIRANO V. COM TAM THIEN HUONG II, ET AL., CASE NO. 20CV363254

ATTENTION: IF YOU WERE EMPLOYED BY COM TAM THIEN HUONG II IN CALIFORNIA BETWEEN FEBRUARY 7, 2016 AND DECEMBER 7, 2022 YOU COULD GET A PAYMENT FROM THIS SETTLEMENT.

A court authorized this notice. This is not a solicitation from a lawyer.

- If approved by the Court the Settlement will provide \$400,000.00 to resolve claims of individuals who were employed by defendant Com Tam Thien Huong II (“Com Tam”) as a non-exempt worker at defendant’s restaurant in San Jose, California between February 7, 2016 and December 7, 2022, inclusive.
- The Settlement involves a lawsuit over whether Defendant Com Tam paid all wages owed and provided timely meal periods and rest breaks. Plaintiff Jose Luis Venancio Altamirano also sought recovery from Defendant Hien C Nguyen as the alter ego or joint employer of Defendant Com Tam.
- The two sides disagree over how much money, if any, could have been won at trial.
- Your legal rights are affected whether or not you act or don’t act. **READ THIS NOTICE CAREFULLY!**

OVERVIEW OF YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT	
DO NOTHING	Get a payment in exchange for a release of covered legal claims.
EXCLUDE YOURSELF	Get <u>no</u> payment, except a PAGA Payment (if you qualify). This is the <u>only</u> option that allows you to be a part of another lawsuit (if any) against the Defendants for the legal claims in this lawsuit.
OBJECT	Tell the Court about why you don’t like the Settlement.

- These rights and options – and the deadlines to exercise them- are explained in this notice.
- The Court handling this case still has to decide whether to approve the Settlement. Settlement payments will only be issued if the Court approves the Settlement and all appeals are resolved. Please be patient.
- Additional information and settlement documents are available by contacting Class Counsel.

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BASIC INFORMATION

1. Why did I get this notice?

Defendant Com Tam's records show that you were employed as a non-exempt worker Com Tam out of its San Jose, California location between February 7, 2016 and December 7, 2022, inclusive. This is referred to as the "Class Period." This notice explains the lawsuit, the Settlement, and your legal rights.

The lawsuit is known as *Altamirano v. Com Tam Thien Huong II, et al.*, and is pending in the Superior Court of California for the County of Santa Clara, Case No. 20CV363254 (the "Action"). Jose Luis Venancio Altamirano is called the Plaintiff or Class Representative, and the companies/individuals they sued are called the Defendants (i.e., Com Tam Thien Huong II and Hien C Nguyen).

2. What is this lawsuit about?

The lawsuit involves claims under California's wage and hour laws. Plaintiff worked in a covered position at Defendant's San Jose, California restaurant within the Class Period. They allege that Defendants failed to pay them and other Settlement Class Members all wages owed for all hours worked, overtime premiums, provide complaint meal or rest breaks, provide meal or rest break premium pay where breaks were not provided, all due wages at termination of employment, and other related violations during the course of their employment. As a result, Plaintiff alleges that they, and the members of the Settlement Class (defined in Section 4 below), are entitled to recover unpaid wages (including overtime and meal/rest break premium pay), interest, and statutory and civil penalties. Plaintiff also alleges Defendants are liable for additional penalties under the Private Attorneys General Act of 2004, and seeks to recover monetary penalties for those violations.

Defendants deny engaging in any wrongful conduct or that they violated the law in any way, and believe that Plaintiff and the Settlement Class were properly compensated, including final wages, and that they were provided lawful meal and rest periods.

Both Plaintiff and Defendants believe that the Settlement is fair, adequate, and reasonable, and that it is in the best interest of the members of the Settlement Class.

3. What is a class action lawsuit?

In a class action, one or more people called the "Plaintiff" or "Plaintiffs" (in this case, Jose Luis Venancio Altamirano) sue on behalf of people who have similar alleged claims. All of these similar people are a "class" or "class members." The Court resolves the issues for all class members, except for those who exclude themselves from the class. On **[PRELIMINARY APPROVAL ORDER DATE]**, the Court certified the class for purposes of settlement only.

Plaintiff's case also includes an action under the Private Attorneys General Act of 2004, commonly referred to as a "PAGA Action". In a PAGA Action, Plaintiff acts on behalf of the

State of California to recover penalties related to the alleged claims. Class members eligible for PAGA Settlement Payments (as discussed in Section 6, below) cannot exclude themselves from the PAGA portion of the Settlement but can still exclude themselves from the Settlement Class (as discussed in sections 6-7, below)

4. Who is in the Settlement Class?

“Settlement Class Members” or “Settlement Class” means all non-exempt employees of defendant Com Tam Thien Huong II who worked at Defendants’ San Jose, California restaurant between February 7, 2016 and December 7, 2022, inclusive.

Settlement Class Members who worked between the PAGA Period of February 7, 2019 and December 7, 2022, may also be entitled to a share of the PAGA Settlement Payment as described in Section 2, below.

5. Why is there a settlement?

After conducting substantial investigation, including review of policies, payroll records and personnel files, both sides agreed to the Settlement to avoid the cost and risk of further litigation. The Settlement does not mean that any law was broken. Defendants deny all of the claims asserted in the Action and deny that they have violated any laws. Plaintiff and their lawyers think the Settlement is in the best interests of all Settlement Class Members.

THE SETTLEMENT BENEFITS

6. What do I get?

Under the terms of the Settlement, Defendants agreed to pay a total of \$400,000.00 which is referred to as the Maximum Settlement Amount. This Maximum Settlement Amount will be used to pay attorneys’ fees (not to exceed 33% of the Maximum Settlement Amount, i.e., \$133,333.33), attorneys’ actual litigation costs of up to \$10,000.00, Employer-side payroll taxes, a Class Representative Enhancement Award to Plaintiff (not to exceed \$7,500.00), a payment of \$40,000.00 for alleged penalties under the Private Attorneys General Act (“PAGA”), and the fees and expenses of the Settlement Administrator (estimated to cost \$7,500.00). The remainder, referred to as the Net Settlement Amount, will be distributed in full to Settlement Class Members.

PAGA Settlement Payment

The employees shall first share 25% of the payment to the LWDA (i.e., \$10,000.00) which shall be split equally amongst all Class Members that worked for Com Tam between February 7, 2019 and December 7, 2022, inclusive (the “PAGA Period”). This payment will be distributed to Class Members based on the number of Workweeks worked for Defendants in covered positions during the PAGA Period relative to the total number of Workweeks worked by all Class Members during the PAGA Period.

According to Defendants' records, you worked for ____ weeks in a covered position during the PAGA Period. **Based on these dates, your portion of the PAGA settlement payment is estimated to be at least \$ _____.**

Class Members will receive their portion of the PAGA settlement payment regardless of whether they request exclusion or object to the Settlement. This payment shall be reported as penalties and reported by IRS Form 1099.

Defendants' records shall be presumed correct, unless evidence to the contrary is timely submitted to the Settlement Administrator. Class Members who disagree with Defendants' records of their workweeks total, as presented above, must notify the Settlement Administrator of the dispute and submit documentation to support their claimed dates of employment (such as, without limitation, payroll or time keeping records, paycheck stubs). The dispute must be received by **[RESPONSE DEADLINE]** or else it will be disregarded and you will be paid according to the dates listed in Defendant's records.

NOTE: A Class Member can only dispute his/her workweeks outside the PAGA Period if he/she does not exclude himself/herself from the Settlement. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Parties shall engage in a good faith effort to reach an agreement as to whether a workweek adjustment for the Class Member is warranted and, if the Parties are unable to reach an agreement, the determination of the Settlement Administrator shall be deemed final.

Individual Settlement Payment

Class Members *who do not file a timely request for exclusion* will receive an additional Individual Settlement along with the PAGA Settlement Payment described above.

The Net Settlement Amount will be distributed to Settlement Class Members based on the number of Workweeks worked for Defendants in covered positions during the Class Period relative to the total number of Workweeks worked by all Settlement Class Members during the Class Period.

According to Defendants' records, you worked for ____ weeks in a covered position during the Class Period. **Based on these dates, your Individual Settlement Award is estimated to be at least \$ _____.** Your actual Individual Settlement Award may be for more than this amount depending on the number of Settlement Class Members who participate and/or request to opt out of the Settlement.

The parties have agreed that twenty-percent (20%) of each Settlement Class Member's Individual Settlement Payment shall be treated as wages (reported on IRS Form W-2) and eighty-percent (80%) equally as interest and penalties (reported on IRS Form 1099). The employee's share of payroll taxes (FICA, EDD) shall be withheld from the W2 wage payment.

7. What am I giving up?

If the Settlement is approved then Plaintiff and each member of the Settlement Class who do not submit a timely Request for Exclusion (defined in response to Question 10 below) will release Com Tam Thien Huong II, its part or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors attorneys, consultants, insurers, and their respective successors and predecessors in interest, assigns, subsidiaries, affiliates, and parents, including Hien C Nguyen (collectively, the “Released Parties”) from those wage and hour class claims which were alleged in the operative Complaint or that could be brought based on the specific factual allegations contained therein (“Released Claims”). The Released Claims include: (1) Failure to Pay All Wages (Labor Code §§ 510, 1194, 1197); (2) Failure to Provide Meal or Rest Periods or to Pay Meal and Rest Period Premiums (Labor Code §§ 226.7 and 512); (3) Failure to Pay All Wages On Termination (Labor Code Section 203); (4) Failure to Provide Accurate Itemized Wage Statements (Cal. Labor Code Section 226); (5) Unfair Business Practices (Business & Professions Code § 17200 *et seq.*) to the extent predicated on a Released Claim; and, (6) Recovery Under the Private Attorneys General Act (California Labor Code § 2698 *et seq.*) to the extent predicated on a Released Claim.

The Released Claims do not apply to claims that arise outside the Class Period.

HOW TO GET A SETTLEMENT PAYMENT

8. How do I get a settlement payment?

You need not do anything in order to receive a pro-rated PAGA Settlement Payment or Individual Settlement Payment from this Settlement. If you do not make a timely request to be excluded then, provided the Settlement is approved by the Court, you will be sent both settlement payment(s) (to the extent you are eligible) at the address where this Notice was mailed.

If this was sent to the wrong address, or you move before receiving all settlement checks and tax return documents, then it is very important that you provide a forwarding address to the Settlement Administrator! Otherwise your settlement check(s) and/or your tax return documentation could be sent to the wrong address.

9. When will I get my check?

If approved then Defendants will be required to fund the \$400,000.00 Maximum Settlement Amount by June 30, 2023. The Settlement Administrator will issue settlement payment(s), after the Effective Date, and within 15 days of receipt of the full Maximum Settlement Amount.

The “Effective Date” is defined as the date that the Court grants Final Approval unless there are objector/objections to the Settlement in which case the Effective Date shall be the first regular business day after the appeal period runs (if no appeal is filed) or the first day after all appeals are denied or otherwise finally resolved or decided in favor of the settlement. If there are any appeals, resolving them could take some time, so please be patient.

Please be advised that you will only have 180 days from the date that the check is issued to cash it. This is why it is so important to ensure the Settlement Administrator has your most up to date contact information. If Class Members fail to cash their settlement checks within 180 days, the respective funds will be sent to a Court-approved non-profit organization. The Parties have proposed that the Legal Aid at Work be appointed as *cy pres* for this purpose.

EXCLUDING YOURSELF FROM THE SETTLEMENT

10. How do I ask the Court to exclude me from the Settlement Class?

If you do not want to participate in the Settlement (“opt-out”), you must complete and send a timely request to Opt Out or exclude yourself from the Settlement. Class Members who timely request exclusion will no longer be eligible to receive an Individual Settlement Award but will also not be bound by the release of claims in the Settlement. Class Members cannot, however, seek exclusion from the PAGA component of the Settlement and will receive a PAGA Settlement Payment even if they file a timely request, to the extent they worked during the PAGA Period.

In order to be valid, your Opt-Out must be signed, dated and mailed by First Class U.S. Mail, or the equivalent, postmarked no later than **[+60 days from date of mailing]** to:

INSERT SETTLEMENT ADMINISTRATOR INFO

Opt-Outs that do not include all required information and/or that are not timely submitted will be deemed null, void, and ineffective. Class Members who fail to submit a valid and timely Opt Out on or before the above-specified deadline shall be converted to Settlement Class Members, bound by all terms of the Settlement, and any Final Judgment entered in the Action if the Settlement is approved by the Court.

You do not need to opt-out or provide a written objection to attend the Final Approval Hearing. Any Class Member may appear and make an oral objection at the Final Approval Hearing without filing or serving any written objection or providing a notice of intent to appear.

11. If I exclude myself, can I get anything from the settlement?

Yes. If you exclude yourself now you will still get a PAGA Settlement Payment, if you are eligible for one. You will not get an Individual Settlement Payment and you will not be bound by the non-PAGA component of the Settlement.

12. If I don’t exclude myself, can I sue later?

No. Unless you exclude yourself, you give up the right to sue Defendants for the claims in this lawsuit that are released by the Settlement. You must exclude yourself from the Settlement Class to start or continue your own lawsuit.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

The Court has appointed Kevin R. Allen of Allen Attorney Group and Daniel A. Menendez of the Law Office of Daniel A Menendez as class counsel. They represent the named Plaintiff and the Settlement Class Members in this lawsuit. Their contact information is listed in Section 21 (“Getting More Information”).

14. How will the costs of the lawsuit and the settlement be paid?

Subject to Court approval, the Maximum Settlement Amount will be used to pay Class Counsel their actual litigation costs of up to \$10,000.00; and up to \$133,333.33 in attorneys’ fees (i.e., 33-1/3% of the Settlement Amount). It will also be used to pay Plaintiff up to \$7,500.00 as a “Class Representative Enhancement Award” for their participation in this lawsuit and for taking on the risk of litigation. The Maximum Settlement Amount will also be used to pay the Settlement Administrator’s costs and fees associated with administering the Settlement, estimated at \$7,500.00, as well as Employer-side payroll taxes stemming from the wage-component of the Settlement.

The Court may award *less* than these amounts. If lesser amounts are awarded, the difference will be distributed to Settlement Class Members as part of the Net Settlement Amount.

OBJECTING TO THE SETTLEMENT

15. How do I object to the Settlement?

If you do not think the Settlement is fair then you may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing at your expense, either in person, remotely via Microsoft Teams, or through an attorney and make an oral objection without filing or serving any written objection or providing a notice of intent to appear.. All written objections, supporting papers and/or notices of intent to appear at the Final Approval Hearing must (a) clearly identify the case name and number (Altamirano v. Com Tam Thien Huong II, et al., Case Number (20CV363254)), (b) be submitted to the Settlement Administrator by mailing the objection to: Phoenix Settlement Administrators [ADDRESS]; and (c) be filed or postmarked on or before [REDACTED], 20**

A written objection must also include the objecting person’s full name, current address, and the basis your objection and include any supporting papers you wish the Court to consider. Late or incomplete written objections will be considered invalid, although you may still make an oral objection at the Final Approval Hearing.

A Settlement Class Member who submits a timely objection may ask the Court to speak at the Final Approval Hearing. Please review the Court’s current COVID-19 protocols for details on making a personal or virtual appearance prior to attending the Final Approval Hearing. The

Court's current COVID-19 protocols can be found here:
https://www.sccourt.org/general_info/news_media/covid19.shtml

If you opt out of the Settlement, you may not object. You must be a Settlement Class Member in order to object to the Settlement. Any Settlement Class Member who files an objection remains eligible to get paid from the Settlement.

16. What's the difference between objecting and asking to be excluded?

Objecting is simply telling the Court you do not like something about the Settlement. Excluding yourself is telling the Court that you do not want to be part of the Settlement.

THE COURT'S FINAL APPROVAL HEARING

The Court will hold a hearing to decide whether to approve the settlement. If you have filed an objection or filed a notice of your intent to appear on time you may appear and you may ask to speak, but you don't have to. *See* Section 11 for more details.

17. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Approval Hearing on November 8, 2023, at 1:30 p.m. in Department **19** at the Superior Court of California for the County of Santa Clara, located at **191 N. First Street, San Jose, California**. The hearing may be moved to a different date and/or time without additional notice. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. The Court will also decide how much to pay Class Counsel. If there are objections, the Court will consider them. You do not need to appear at the hearing. Any Class Member may appear and make oral objection at the Final Approval Hearing without filing or serving any written objection or providing a notice of intent to appear. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

18. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Judge may have. But, you are welcome to appear at your own expense. See Section 11 for more information.

Please also review the Court's current COVID-19 protocols for details on making a personal or virtual appearance prior to attending the Final Approval Hearing. The Court's current COVID-19 protocols can be found here:

https://www.scsccourt.org/general_info/news_media/covid19.shtml

Class Members may appear at the Final Approval Hearing remotely using the Microsoft Teams link for Department 19 (Afternoon Session). Instructions for appearing remotely are provided at https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml and should be reviewed in advance. Class Members who wish to appear remotely are encouraged to contact Class Counsel at least three (3) days before the hearing, if possible, so that potential technology or audibility issues can be avoided or minimized.

You may also appear at the Final Approval Hearing in person. Please review instructions for appearing in person in advance. Instructions for appearing in person can be found here:

https://www.scsccourt.org/general_info/news_media/courtAppearances.shtml

If you send a written objection, you don't have to come to Court to talk about it. As long as you mailed/filed your written objection on time, the Court will consider it. You may also pay (at your own expense) another lawyer to attend, but it is not required.

19. May I speak at the hearing?

You do not need to file a written objection in order to appear at the hearing. Any Settlement Class Member, or person purporting to object on behalf of any Settlement Class Member, may be received or considered by the Court at the Final Approval Hearing, regardless of whether a written notice of objection is filed or delivered to the Parties. Settlement Class Members who wish to appear but do not file a written objection must still mail or file a Notice of Intent to Appear with the Court and inform the law firms identified in Section 16(B) by the response deadline of _____. This will ensure that the Parties and the Court are aware in advance of your intent to appear at the hearing.

IF YOU DO NOTHING

20. What happens if I do nothing at all?

If you do nothing, you will be bound by the release of claims described in this notice and will receive settlement payment(s).

GETTING MORE INFORMATION

21. How do I get more information?

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you may review the detailed “Joint Stipulation Re: Class Action Settlement and Release” which is on file with the Clerk of Court. The pleadings and other records in the Action, including the proposed Settlement, may be examined at any time during regular business hours at the Office of the Clerk of Court for the Superior Court of California, County of Santa Clara, 191 North 1st Street, San Jose, California, 95113. You may also review most of the filings, including the initial complaint, the Motion for Preliminary Approval of the proposed Settlement, and the Settlement itself on the Court’s website which is located at <https://portal.scscourt.org/>

If you want additional information about the Action and its proceedings, or copies of settlement paperwork, then you may contact Class Counsel:

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