

**AMENDED CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE OF
CLAIMS**

This Class Action Settlement Agreement and Release of Claims is entered into by and between Plaintiffs Cecilia Esquivel and Bertha Solorzano, individually and as a representative of the Settlement Class, as defined below and on behalf of all others similarly situated, and Defendants Morris National, Inc., Very Special Chocolats, Inc., The McKeever & Danlee Confectionery Company, and Gerry Morris Zubatoff, and is approved by their respective counsel of record, subject to the terms and conditions hereof and the Court's approval.

A. Definitions

1. “Action” or “Lawsuit” means and refers to the case entitled *Cecilia Esquivel, et al. v. Morris National, Inc., et al.*, Los Angeles County Superior Court Case No. 20STCV16741 which is comprised of and includes the Complaint, First Amended Complaint and the PAGA Claims.

2. “Aggrieved employees” includes all current and former non-exempt employees employed by Defendants in California at any time during the PAGA Period.

3. “Agreement,” “Settlement Agreement,” “Settlement,” or “Stipulation” shall mean this Class Action Settlement Agreement and Release of Claims, including any attached Exhibits.

4. “Class Counsel” refers to Mehrdad Bokhour of Bokhour Law Group, P.C. and Jonathan Melmed of Melmed Law Group PC.

5. “Class Data” means a complete list that Defendants will diligently and in good faith compile from its records and provide to the Settlement Administrator on one spreadsheet and shall include the Settlement Class Members’ full names; last known addresses; telephone numbers; Social Security Numbers; and dates of employment and/or number of Workweeks Worked as non-exempt employees of Defendants during the Class Period for each Settlement Class Member.

6. “Class Period” is deemed to be the period of April 29, 2016, through October 15, 2021.

1 7. “Class Representatives” or “Plaintiffs” means and refers to Cecilia Esquivel and
2 Bertha Solorzano.

3 8. “Complaint” refers to the Complaint and First Amended Complaint filed in the
4 Los Angeles County Superior Court action entitled *Cecilia Esquivel, et al. v. Morris National,*
5 *Inc., et al.*, Case No. 20STCV1674.

6 9. “Court” means the California Superior Court, County of Los Angeles or any
7 Court of competent jurisdiction.

8 10. “Defendants” means and refers to Morris National, Inc., Very Special Chocolats,
9 Inc., The McKeever & Danlee Confectionery Company, and Gerry Morris Zubatoff.

10 11. “Defendants’ Counsel” or “Defense Counsel” means and refers to David Binder
11 and Zena M. Kalioundji of Binder Kalioundji LLP.

12 12. “Effective Date” means the latest of the following dates: (i) if no Class Member
13 objects, timely and properly intervenes, or files a motion to vacate the judgment approving the
14 Settlement Agreement under Code of Civil Procedure § 663, then the date the Court enters an
15 order granting Final Approval of the Settlement; (ii) if a Class Member objects, intervenes, or
16 files a motion to vacate the judgment approving the Settlement Agreement, then sixty-one (61)
17 calendar days following the date the Court enters an order granting final approval of the
18 Settlement, assuming no appeal is filed; or (iii) if a timely appeal is filed, the date of final
19 resolution of that appeal (including any requests for rehearing and/or petitions for *certiorari*),
20 resulting in final judicial approval of the Settlement. In this regard, it is the intention of the
21 Parties that the Class Settlement shall not become effective until the Settlement has been fully
22 funded and the Court’s Order approving the Class Settlement is completely final and there is no
23 further recourse by an appellant or objector who seeks to contest the Class Settlement.

24 13. “Final” means that the Settlement has been granted “Final Approval” by the
25 Court and the “Effective Date” has occurred.

26 14. “Final Approval” refers to the order of the Court granting final approval of this
27 Settlement Agreement and entering a judgment approving this Settlement on substantially the
28 terms provided herein or as the same may be modified by subsequent agreement of the Parties

or order of the Court.

15. “Final Settlement Class” means, collectively, all Settlement Class Members who have not opted out of the Settlement Class by submitting timely Requests for Exclusion.

16. “Individual Settlement Amount” shall have the meaning ascribed to it in Paragraph 46(d) below.

17. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 46(c) below.

18. “Notice” means the Notice of Pending Class Action Settlement that will be sent to the Settlement Class Members as set forth in the form of Exhibit 1 attached hereto.

19. “Notice Response Deadline” is 45 calendar days from the date the Notice is mailed to the Settlement Class Members.

20. “Objecting Settlement Class Member” means a Settlement Class Member, other than Plaintiffs, who submits a valid and timely objection to the terms of this Agreement, pursuant to Paragraph 63(a) below.

21. “PAGA Claims” shall include any and all claims for civil penalties pursuant to PAGA based on the allegations set forth in the PAGA Notice and that were pled in the operative First Amended Complaint or that could have been pled based on the facts alleged therein, including claims for (1) failure to pay wages for all hours worked, including, but not limited to, due to rounding of time (Labor Code §§1194, 1194.2, 1197.1), (2) failure pay overtime wages, including, without limitation, failure to properly calculate the regular rate at which overtime was paid (Labor Code §§510, 1194, IWC Wage Order 1), (3) failure to provide meal breaks and/or pay missed meal period premiums (Labor Code §§226.7, 512, and IWC Wage Orders 1, 14), (4) failure to provide rest breaks and/or pay missed rest period premiums (Labor Code §§226.7 and IWC Wage Order 1), (5) failure to pay all wages owed in a timely manner (Labor Code §§204 and 210), (6) failure to pay due wages at separation of employment (Labor Code §§ 201-203), (7) failure to provide accurate itemized wage statements (Labor Code §§226, 226.3, 246), (8), failure to reimburse business expenses including, but not limited to, personal protective equipment and shoes (Labor Code §2802), and (9) unfair business practices (Business &

Professions Code §17200) and, (10 failure to pay sick leave (Labor Code §246). Aggrieved employees will be bound by the release of the PAGA Claims even if class members request exclusion from the class.

22. “PAGA Notice” shall refer to the notice sent by Plaintiffs, by and through counsel, on or about April 3, 2020, to the LWDA and to Defendants, alleging that Defendants engaged in violations of the California Labor Code as identified in paragraph 21.

23. “PAGA Period” and “PAGA Release Period” shall mean April 3, 2019, through October 15, 2021.

24. “Participating Class Member” means any and all Settlement Class Members who are deemed to participate and receive an Individual Settlement Amount and do not opt-out by submitting timely valid Requests for Exclusion.

25. “Parties” or “Settling Parties” mean Plaintiffs, the Settlement Class, and Defendants, collectively.

26. “Shifts Worked” for each Settlement Class Members means any shift worked during the Class Period in which the Settlement Class Member was employed as a non-exempt employee in California.

27. “Preliminary Approval Date” means the date the Court preliminarily approves the Settlement Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

28. “Preliminary Approval Order” means the judicial Order to be entered by the Court, upon the application or motion of the Plaintiffs, preliminarily approving this Settlement and providing for the issuance of the Notice to the Settlement Class, an opportunity to opt out of the Settlement, an opportunity to submit timely objections to the Settlement, and setting a hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees and costs. Defendants will not object to Plaintiffs’ motion for preliminary approval as long as it comports with the terms of this Agreement.

29. “QSF” means the Qualified Settlement Fund set up by the Settlement Administrator for the benefit of the Final Settlement Class, and from which the settlement payments shall be made, and which is intended to be a fund that qualifies under Internal

1 Revenue Code Sec. 468.

2 30. “Released Claims” by the Participating Class Members upon when Defendants
3 fully fund the Settlement and the Final Approval of the Settlement shall mean any and all
4 claims, causes of action, damages, expenses, and penalties, which arise out of the facts and
5 occurrences alleged in the Action which were pled in the operative First Amended Complaint or
6 that could have been pled based on the facts alleged therein including, but not limited to claims
7 for (1) failure to pay wages for all hours worked, including, but not limited to, due to rounding
8 of time (Labor Code §§1194, 1194.2, 1197.1), (2) failure pay overtime wages, including,
9 without limitation, failure to properly calculate the regular rate at which overtime was paid
10 (Labor Code §§510, 1194, IWC Wage Order 1), (3) failure to provide meal breaks and/or pay
11 missed meal period premiums (Labor Code §§226.7, 512, and IWC Wage Orders 1, 14), (4)
12 failure to provide rest breaks and/or pay missed rest period premiums (Labor Code §§226.7 and
13 IWC Wage Order 1), (5) failure to pay all wages owed in a timely manner (Labor Code §§204
14 and 210), (6) failure to pay due wages at separation of employment (Labor Code §§201-203),
15 (7) failure to provide accurate itemized wage statements (Labor Code §§226, 226.3, 246), (8),
16 failure to reimburse business expenses, including, but not limited to, personal protective
17 equipment and shoes (Labor Code §2802), and (9) unfair business practices (Business &
18 Professions Code §17200.

19 The term “Released Claims” when applied to the Class Representatives shall constitute a
20 general release and shall include any and all charges, complaints, claims, liabilities, obligations,
21 promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands,
22 costs, losses, debts and expenses (including attorney fees and costs), known or unknown, at law
23 or in equity, which the Class Representatives may now have or may have after the signing of
24 this Agreement.

25 29. Released Parties” means Defendants, Morris National, Inc., Very Special
26 Chocolats, Inc., The McKeever & Danlee Confectionery Company, and Gerry Morris Zubatoff,
27 together with their principals, parent companies, member companies, corporate affiliates,
28 attorneys in fact, subsidiaries, affiliates, and their respective current and former officers,

1 directors, members, managers, shareholders, agents, affiliates, operators, partners, agents,
2 attorneys, predecessors, representatives, successors and assigns, and any person that could be
3 liable for the payment of wages under Labor Code section 558.1 or any similar statute or legal
4 authority.

5 30. "Release Period" shall mean April 29, 2016, through October 15, 2021.

6 31. "Release" shall mean the release and discharge of the Released Claims by
7 Plaintiffs and all of the Participating Class Members.

8 32. "Request for Exclusion" shall have the meaning ascribed to it in Paragraph 65(a)
9 below.

10 33. "Service Payment" or "Service Award" means the amount approved by the Court
11 to be paid to the Class Representatives in addition to their Individual Settlement Amount as a
12 Participating Class Member.

13 34. "Settlement Administrator" means and refers to the third-party class action
14 settlement administrator agreed to by the Parties, that will provide the Notice to the Class
15 Members and distribute the settlement amounts as described in this Agreement.

16 35. "Settlement Administration Costs" means the costs payable from the Settlement
17 Amount to the Settlement Administrator for administering this Settlement, including, but not
18 limited to, printing, distributing, and tracking documents for this Settlement, translating the
19 class notice into Spanish, tax reporting, unclaimed property due diligence, reporting and
20 remittance obligations, distributing the Settlement Amount, and providing necessary reports and
21 declarations, as requested by the Parties. The Settlement Administration Costs shall be paid
22 from the Settlement Amount.

23 36. "Settlement Amount" or "Gross Settlement Amount" shall have the meaning
24 ascribed to it in Paragraph 46(a) below.

25 37. "Settlement Class" is defined as "All current and former non-exempt employees
26 employed by Defendants in California at any time during the Class Period."

27 38. "Settlement Class Member" or "Class Member(s)" refers to individual members
28 of the Settlement Class, or if such person is incompetent or deceased, the person's legal

guardian, executor, heir, or successor in interest.

B. General Terms

39. On or about April 29, 2020, Plaintiffs Cecilia Esquivel and Bertha Solorzano filed a class and representative action Complaint in the Court against Defendants Morris National, Inc., Very Special Chocolats, Inc., and The McKeever & Danlee Confectionery. On or about June 20, 2020, Plaintiffs filed a First Amended Complaint class and representative PAGA claims, including: (1) failure pay overtime wages, (2) failure to provide meal breaks and/or pay missed meal period premiums, (3) failure to provide rest breaks and/or pay missed rest period premiums, (4) failure to pay all wages owed in a timely manner, (5) failure to pay due wages at separation of employment/ waiting time penalties, (6) failure to provide accurate itemized wage statements, (7), failure to reimburse business expenses (8) unfair business practices, and (9) PAGA penalties based on the foregoing violations. The First Amended Complaint added Gerry Morris Zubatoff as a co-defendant.

40. Defendants deny Plaintiffs' claims and allegations asserted in the Complaint, First Amended Complaint, and the PAGA Claims and contend that the Action is not suitable for class certification and/or representative treatment.

41. The Class Representatives believe they can proceed with their representative PAGA Claims and class claims, that the Action is meritorious, and that class certification is appropriate.

42. The Parties have conducted a thorough investigation into the facts of the Action. This includes conducting extensive exchange of formal and informal discovery, including Defendants' written policies and practices and the production of payroll and timekeeping records for Settlement Class Members. The Parties are both knowledgeable about and have done extensive research with respect to the applicable law and potential defenses to the claims of the Settlement Class. The Parties have diligently pursued an investigation of the Class Members' claims against Defendant. Based on the foregoing data and on their own independent investigation and evaluation, the Parties are of the opinion that the settlement with Defendants for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable,

1 and adequate and is in the best interest of the Class Members in light of all known facts and
2 circumstances, including the risk of significant delay and uncertainty associated with litigation,
3 various defenses asserted by Defendants, and numerous potential appellate issues.

4 43. On August 16, 2021, the Parties participated in a private mediation before Lynn
5 S. Frank, Esq., a highly experienced wage and hour class action mediator. Ultimately, Ms.
6 Frank issued a mediator's proposal, which both parties accepted.

7 44. The Parties agree that neither the Parties' Settlement, this Agreement, nor the
8 acts to be performed or judgments to be entered pursuant to the terms of the Settlement and
9 Agreement, shall be construed as an admission by Defendants of any wrongdoing or violation of
10 any statute or law or liability on the claims or allegations in the Action.

11 45. Stipulation for Class Certification. For settlement purposes only, Defendants will
12 stipulate that the Settlement Class Members described herein who do not Request Exclusion
13 from the Settlement Class may be conditionally certified as a settlement class. This conditional
14 stipulation to certification is in no way an admission that class action certification and/or
15 representative treatment is proper and shall not be admissible in this or in any other action
16 except for the sole purposes of enforcing this Agreement. Should, for whatever reason, the
17 Court fail to issue Final Approval, the Parties' stipulation to class certification as part of the
18 Settlement shall become null and void *ab initio* and shall have no bearing on and shall not be
19 admissible in connection with the issue of whether or not class certification and/or
20 representative treatment would be appropriate in a non-settlement context. Defendants
21 expressly reserves their rights and declare that they will continue to oppose class certification
22 and the substantive merits of the case should the Court fail to issue Final Approval. Plaintiffs
23 expressly reserve their rights and declare that they will continue to pursue class certification and
24 representative treatment and a trial should the Court fail to issue Final Approval.

25 **C. Terms of Settlement**

26 46. The financial terms of the Settlement are as follows:

27 (a) Gross Settlement Amount: The Parties agree to settle this Action for Five
28 Hundred Fifty Thousand Dollars and Zero Cents (\$550,000.00) ("the Settlement Amount").

1 The Settlement Amount is the maximum amount that will be paid by Defendants and includes
2 as full and final settlement of: Individual Settlement Amounts, attorneys' fees of Class Counsel,
3 costs and expenses, the Service Payment to the Class Representatives, all Settlement
4 Administration Costs, and payment to the Labor Workforce Development Agency (LWDA) for
5 PAGA penalties. Defendants shall separately pay the employers' share of the payroll taxes for
6 the portion of the Individual Settlement Amount that is allocated to wages.

7 (b) The Settlement is based on Defendants' representation that there are
8 approximately 79,598 Shifts Worked in the Class Period. If it is determined that the number of
9 Shifts Worked exceeds 79,598 by eleven percent (11%) or more, Defendants shall *pro rata*
10 increase the Gross Settlement Sum for any number of Shifts Worked that is in excess of the
11 11% threshold.

12 (c) Net Settlement Amount: The "Net Settlement Amount" is defined as the Gross
13 Settlement Amount less attorneys' fees of Class Counsel approved and awarded by the Court,
14 costs and expenses of Class Counsel as approved and awarded by the Court, the Service
15 Payment to the Class Representatives as approved and awarded by the Court, the Settlement
16 Administration Costs, and the ten thousand dollars (\$10,000.00) allocated to payment for
17 PAGA penalties as described in paragraph 46(i) below. In the event the Court reduces the
18 attorneys' fees and litigation costs or, Service Awards, or either increases or decreases the
19 amount allocated to PAGA penalties, the Net Settlement Sum shall be increased or decreased
20 accordingly.

21 (d) Individual Settlement Amounts for the Settlement Class: The Settlement
22 Administrator will use the Class Data provided by Defendants to calculate each Participating
23 Class Member's Individual Settlement Amounts based on the following formula:

24 i. PAGA Amount: \$10,000.00 of the Gross Settlement Amount has been
25 designated to the PAGA Claims. Twenty-five percent (25%) of the \$10,000.00, or \$2,500.00
26 shall be paid out to Settlement Class Members. Each Settlement Class Member shall receive a
27 portion of the \$2,500.00 proportionate to the number of Shifts Worked by the Settlement Class
28 Member during the PAGA Period compared to the total number of Shifts Worked by all

Settlement Class Members during the PAGA Period.

ii. Class Amount: The Net Settlement Amount shall be allocated to Participating Class Members based on his or her proportionate Shifts Worked during the Class Period. This is determined by multiplying the Net Settlement Amount by a fraction, the numerator which is the Participating Class Member's total Shifts Worked during the Class Period, and the denominator of which is the total Shifts Worked by all Participating Class Members during the Class Period. If there are any timely submitted Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement Amounts for each Participating Class Member so that the amount actually distributed to Participating Class Members equals 100% of the Net Settlement Amount.

(e) Allocation of Individual Settlement Amounts: The Individual Settlement Amounts will be allocated based on the allegations in the Action as follows: forty (40%) percent will be paid as wages subject to withholding of all applicable local, state, and federal taxes; forty percent (40%) allocated to interest; and twenty percent (20%) will be paid as penalties (pursuant to, e.g., California Labor Code sections 203, 226) from which no taxes will be withheld. For purposes of this Settlement Agreement, money paid as wages and interest is intended to be restitutionary to the Settlement Class Members. The Settlement Administrator will issue to each Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with respect to the penalties and interest allocations.

(f) Service Payment to Class Representatives: The amount awarded to the Class Representatives as a Service Payment will be set by the Court in its discretion, not to exceed \$7,500 each. Defendants agree not to oppose this request. The Service Payment to Plaintiffs will be paid out of the Gross Settlement Amount. The Class Representative will be issued IRS Form 1099 in connection with this payment. Plaintiffs shall be solely and legally responsible to pay any and all taxes with respect to this payment and shall hold Defendants harmless from any and all liability with regard thereto. The Parties agree that any amount awarded as the Service Payment to Plaintiffs less than the requested amount shall not be a basis for Plaintiffs or Class

Counsel to void this Stipulation. Should the Court approve a lesser amount for the Service Payment, the difference shall be added to the Net Settlement Amount to be distributed to the Participating Class Members.

(g) Attorneys' Fees and Costs: Defendants agree to not oppose a request by Class Counsel to the Court for an award of attorneys' fees of one-third of the Gross Settlement Amount, plus reasonable litigation costs not to exceed \$20,000.00 ("Attorney's Fees and Cost Award"). For purposes of this Settlement, Defendants agree not to oppose any contention by Class Counsel that attorneys' fees should be based on the common fund theory. The Attorney's Fee and Cost Award shall be paid from the Gross Settlement Amount, and except for this award, Defendants shall have no further obligation to pay any attorneys' fees, costs or expenses to Class Counsel. Should the Court approve a lesser amount than what is sought by Class Counsel, the difference shall be added to the Net Settlement Amount to be distributed to the Participating Class Members. Any Court Order awarding less than the amount sought by Class Counsel shall not be grounds to rescind the Settlement Agreement or otherwise void the Settlement. The Settlement Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and costs awarded by the Court. Class Counsel agrees that any allocation of fees between or among Class Counsel and any other attorney representing or claiming to represent the Class Members shall be the sole responsibility of Class Counsel. Class Counsel agree that the Attorney's Fees, Costs, and Expenses approved by the Court shall encompass all work performed and costs and expenses incurred through the date of this Agreement in addition to all work to be performed and costs and expenses to be incurred through to the Effective Date and dismissal of the Action and that no additional attorney's fees, costs, and expenses shall be sought by Class Counsel or due and owing to them.

(h) Settlement Administration Costs: The fees and other charges of the Settlement Administrator in performing all duties pursuant to this Agreement will be paid from the Gross Settlement Amount.

(i) PAGA Penalties: The Parties agree that \$10,000.00 is allocated to PAGA Penalties and is to be paid from the Gross Settlement Amount, subject to Court approval. Of

1 this amount, \$7,500.00 (75%) shall be paid to the LWDA in satisfaction of Plaintiffs' claims for
2 penalties under the Private Attorney General Act of 2004 ("PAGA") and \$2,500.00 (25%) will
3 be included in the Individual Settlement Amounts, payable to the Aggrieved Employees who
4 worked during the PAGA Period. Each Aggrieved Employee shall receive a portion of the
5 \$7,500 proportionate to the number of Shifts Worked by the Aggrieved Employees during the
6 PAGA Period compared to the total number of Shifts Worked by all Aggrieved Employees
7 during the PAGA Period. Aggrieved Employees shall have their settlement amount for the
8 Released PAGA Claims paid one hundred percent (100%) as civil penalties for which no taxes
9 will be withheld and for which a Form 1099 will be issued by the Settlement Administrator

10 (j) Tax Liability: Class Counsel, Defendants and Defendants' Counsel make no
11 representations as to the tax treatment or legal effect of Settlement Amounts called for
12 hereunder, and Plaintiffs and the Settlement Class Members are not relying on any statement or
13 representation by Class Counsel, Defendants, or Defendants' Counsel in this regard. Plaintiffs
14 and Participating Class Members understand and agree that they will be solely responsible for
15 the payment of any taxes and penalties assessed on their respective Settlement Amounts
16 described herein. Income tax withholding will also be made pursuant to applicable federal, state
17 and/or local withholding codes or regulations. Forms W-2 and/or Forms 1099 will be distributed
18 at times and in the manner required by the Internal Revenue Code of 1986 (the "Code") and
19 consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other
20 applicable tax law, is changed after the date of this Agreement, the processes set forth in this
21 Section may be modified in a manner to bring Defendants into compliance with any such
22 changes.

23 (k) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS AGREEMENT
24 (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH
25 PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN
26 "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF
27 THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE
28 BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER

1 ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
2 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
3 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
4 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
5 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
6 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
7 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
8 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
9 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
10 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
11 ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
12 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
13 ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
14 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
15 ADVISOR'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
16 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
17 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
18 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

19 47. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under
20 no circumstances will any portion of the Settlement Amount revert to Defendants. Participating
21 Class Members will not have to make a claim in order to receive an Individual Settlement
22 Amount. Distributions, in the form of Individual Settlement Amounts, will be made directly to
23 each Participating Class Member. The Settlement Administrator shall be responsible for
24 accurately and timely reporting any remittance obligations with respect to unclaimed funds as a
25 result of a Participating Class Member not cashing an Individual Settlement Amount by the
26 check cashing deadline, as set forth herein.

27 48. Class Counsel and Plaintiffs believe that the Settlement is fair and reasonable,
28 and adequate, and will so represent same to the Court.

1 **D. Release by Plaintiffs and the Settlement Class**

2 49. Upon the Effective Date of this Settlement and the date Defendants fully fund
3 the Settlement, Plaintiffs and each Participating Class Member, for themselves and for their
4 heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees,
5 conservators, guardians, personal representatives, will forever completely release and discharge
6 the Released Parties from the Released Claims for the Release Period.

7 **Release of PAGA Claims:** Upon the Effective Date of this Settlement and the date
8 Defendants fully fund the Settlement, all Aggrieved employees (regardless of whether or not
9 they request exclusion or otherwise opt out) shall forever and completely release and discharge
10 the Released Parties from all PAGA Claims for civil penalties under PAGA arising during the
11 PAGA Period as disclosed in Plaintiff's Notification Letter to the Labor and Workforce
12 Development Agency and which shall include all claims for civil penalties pursuant to PAGA
13 based on the allegations that were plead in the operative Complaint or that could have been pled
14 based on the facts alleged therein.

15 50. Each Participating Class Member will be deemed to have made the foregoing
16 Release as if by manually signing it.

17 51. Plaintiffs and Defendants intend that the Settlement described in this
18 Agreement will release and preclude any claim, whether by lawsuit, administrative claim or
19 action, arbitration, demand, or other action of any kind, by each and all of the Participating
20 Class Members to obtain a recovery based on, arising out of, and/or related to any and all of the
21 Released Claims. The Class Members shall be so notified in the Notice. This paragraph does
22 not apply to any Class Member who timely and validly opts out of the Settlement.

23 52. Class Representatives, on behalf of themselves and the Settlement Class,
24 acknowledge and agree that the claims for unpaid wages and unreimbursed expenses in the
25 Action, and untimely payment of wages in the Action, are disputed, and that the payments set
26 forth herein constitute payment of all sums allegedly due to them. Class Representatives, on
27 behalf of themselves and the Settlement Class, acknowledge and agree that California Labor
28 Code Section 206.5 is not applicable to the Parties hereto. Section 206.5 provides in pertinent

part as follows:

An employer shall not require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made.

E. Release by Class Representatives

53. As a material inducement to Defendants to enter into this Settlement Agreement, in addition to the Class Representatives' release of the Released Claims as discussed in Paragraph 49 above, Class Representatives do hereby, for themselves and for their respective spouses, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, personal representatives, and assigns forever and completely release and discharge the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses (including back wages, statutory penalties, civil penalties, liquidated damages, exemplary damages, interest, attorneys' fees, and costs) of any nature whatsoever, from the beginning of time through the execution of this Stipulation, whether known or unknown, suspected or unsuspected, including but not limited to all claims arising out of, based upon, or relating to Class Representatives' employment with Defendants or the remuneration for or termination of such employment (collectively, the "Class Representatives' Claims").

54. Without limiting the generality of the foregoing, Class Representatives expressly release all claims or rights against Released Parties arising out of or relating to alleged violations of any contracts, express or implied (including but not limited to any contract of employment); any contract or covenant of good faith and fair dealing (express or implied); any tort, including but not limited to, negligence, fraud, misrepresentation and violation of California Labor Code section 970, negligent infliction of emotional distress, intentional infliction of emotional distress, defamation, "retaliation" claims and claims for violation of public policy, any claim for improper or unauthorized wage deductions, failure to pay the applicable wage, unpaid wages, unpaid vacation benefits, penalties, liquidated damages, other

1 damages, overtime, and alleged “off the clock” work under federal and state law, including, but
2 not limited to, California Labor Code Sections 204 and 558, waiting time penalties pursuant to
3 California Labor Section 203, damages or penalties pursuant to California Labor Code Section
4 226, meal period and rest break payments and penalties pursuant to California Labor Code
5 Sections 226.7 and 512, failure to provide itemized wage statements pursuant to California
6 Labor Code Section 226, statutory or civil penalties pursuant to California Labor Code Sections
7 210, failure to indemnify for business expenses pursuant to Labor Code section 2802, unfair
8 competition and unfair business practices pursuant to Business and Professions Code Section
9 17200 et seq., interest and costs pursuant to California Civil Code Section 3287 and California
10 Labor Code Section 218.6, statutory or common law rights to attorneys’ fees and costs,
11 including those pursuant to California Labor Code Section 1194 *et seq.*; claims under the
12 Private Attorneys General Act of 2004, Labor Code section 2699 *et seq.*, and the alleged
13 violation or breach of any other state or federal statute, rule and or regulation; including all
14 applicable Industrial Welfare Commission Wage Orders, and all similar causes of action,
15 including but not limited to, any claim for restitution, equitable relief, interest, penalties, costs
16 or attorneys’ fees in connection with any of the foregoing, negligent infliction of emotional
17 distress, intentional infliction of emotional distress, and defamation; any “wrongful discharge,”
18 “constructive discharge,” and “retaliation” claims; any claims relating to any breach of public
19 policy; any legal restrictions on Defendant’s right to discharge employees; and any federal,
20 state, or other governmental statute, regulation, or ordinance, including, without limitation: (1)
21 Title VII of the Civil Rights Act of 1964 (race, color, religion, sex, and national origin
22 discrimination or harassment, including retaliation for reporting discrimination or harassment);
23 (2) 42 U.S.C. § 1981 (discrimination); (3) Equal Pay Act, 29 U.S.C. § 209(d)(1) and California
24 Labor Code 1197.5 (equal pay); (4) Americans with Disabilities Act, 42 U.S.C. § 12100 et seq.
25 (disability discrimination); (5) Family and Medical Leave Act, 29 U.S.C. § 2601 et
26 seq.(family/medical leave); (6) California Fair Employment and Housing Act, Cal. Government
27 Code § 12900 et seq. (discrimination or harassment in employment and/or housing, including
28 discrimination or harassment based on race, religious creed, color, national origin, ancestry,

1 disability, marital status, sex (including pregnancy), or age, including retaliation for reporting
2 discrimination or harassment); (7) California Family Rights Act, Cal. Government Code §
3 12945.1 et seq. (family/medical leave); (8) California Labor Code, including Section 1720 et
4 seq., or any Industrial Welfare Commission Wage Order; (9) Executive Order 11246 (race,
5 color, religion, sex, and national origin discrimination or harassment); (10) Executive Order
6 11141 (age discrimination); (11) Sections 503 and 504 of the Rehabilitation Act of 1973
7 (handicap discrimination); (12) the Fair Labor Standards Act; and (13) Employee Retirement
8 Income Security Act, 29 U.S.C. § 1000 et seq. (employee benefits).

9 55. Class Representatives expressly waive and relinquish all rights and benefits
10 afforded by Section 1542 of the Civil Code of the State of California and does so understanding
11 and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil
12 Code of the State of California states:

13 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
14 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT
15 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
16 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
17 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
18 DEBTOR OR RELEASED PARTY.

19 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
20 full and complete release and discharge of all parties, Class Representatives and Class Counsel
21 expressly acknowledge that this Settlement Agreement is intended to include in its effect,
22 without limitation, all claims that Class Representatives knew of, as well as all claims that they
23 do not know or suspect to exist in their favor against the Released Parties, or any of them, for
24 the time period from the beginning of time to the execution of this Settlement Agreement, and
25 that this Settlement Agreement contemplates the extinguishment of any such Class
26 Representatives' claims.

27 **F. Interim Stay of Proceedings**

28 56. Pending completion of all of the prerequisites necessary to effectuate this

Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action except such as are necessary to effectuate the Settlement.

G. Notice Process

57. Appointment of Settlement Administrator. The Parties have agreed to the appointment of the Settlement Administrator to perform the duties of a settlement administrator, including mailing the Notice, using standard devices to obtain forwarding addresses, handling inquiries from Settlement Class Members concerning the Class Notice, independently reviewing and verifying documentation associated with any claims or opt-out requests, determining Individual Settlement Amounts, resolving any disputes regarding the calculation or application of the formula for determining the Individual Settlement Amounts, drafting and mailing the settlement checks to Participating Class Members, issuing W-2 and 1099 Tax Forms, reporting to taxing authorities, unclaimed funds due diligence, reporting and remittance obligations, tendering the portion of the PAGA Payment to the LWDA, and performing such other tasks as set forth herein or as the Parties mutually agree or that the Court orders.

58. Disputes Regarding Settlement Administration. Any and all disputes relating to administration of the Settlement by the Settlement Administrator (except for disputes regarding Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement Agreement, until Plaintiffs and Defendants notify the Court that all payments and obligations contemplated by this Settlement Agreement have been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the dispute without the necessity of Court intervention. The Settlement Administrator shall also be responsible for issuing to Plaintiffs, Settlement Class Members, and Class Counsel any W-2, 1099, or other Tax Forms as may be required by law for all amounts paid pursuant to this Agreement. The Settlement Administrator shall also be responsible for setting up all necessary tax accounts and forwarding all payroll taxes and penalties to the appropriate government authorities.

59. Class Data. Within fourteen (14) days after entry of the Preliminary Approval Order, Defendants shall provide the Class Data to the Settlement Administrator. The Settlement

1 Administrator will run a check of the Class Members' addresses against those on file with the
2 U.S. Postal Service's National Change of Address List.

3 The Class Data provided to the Settlement Administrator will remain confidential, shall be used
4 solely to administer the Settlement, and will not be used or disclosed to anyone, except as
5 required by applicable tax authorities, pursuant to Defendant's express written consent, or by
6 order of the Court. Class Data shall be marked "Confidential-Settlement Administrator's Eyes
7 Only", and Class Counsel shall not receive a copy of the Class Data. Defendant will provide to
8 Class Counsel a numeric summary of the information that it provided to the Settlement
9 Administrator pursuant to this Agreement and any information received from the Settlement
10 Administrator such as the number of valid requests for exclusion and opt-outs. The confidential
11 designation of the Class Data shall not impede Class Counsel's ability to discharge its fiduciary
12 duties during the settlement administration.

13 60. Notice. The Notice, as approved by the Court, shall be sent by the Settlement
14 Administrator to the Settlement Class Members, by first class mail, in English and Spanish,
15 within fourteen (14) calendar days following the Settlement Administrator's receipt of the Class
16 Data. The Settlement Administrator shall use standard devices, including a skip trace, to obtain
17 forwarding addresses of Settlement Class Members if any envelopes are returned. The parties
18 shall use the form of the Notice as attached hereto as Exhibit 1 which shall inform Settlement
19 Class Member, among other things, of his/her share of the settlement and number of Shifts
20 Worked during the Class/PAGA period. The Notice shall also contain an easily understood
21 statement alerting the Settlement Class Members that unless they elect to exclude themselves
22 from the Settlement, the Settlement Class Member will be bound by the Settlement and
23 resulting Judgment and releasing and waiving all Released Claims.

24 61. Returned Notices. The Settlement Administrator will take steps to ensure that
25 the Notice is received by all Settlement Class Members, including utilization of the National
26 Change of Address Database maintained by the United States Postal Service to review the
27 accuracy of and, if possible, update a mailing address. Notices will be re-mailed to any Class
28 Member for whom an updated address is located within ten (10) calendar days following both

1 the Settlement Administrator learning of the failed mailing and its receipt of the updated
2 address. The Notice shall be identical to the original Notice, except that it shall notify the Class
3 Member that the exclusion (opt-out) request or objection must be returned by the later of the
4 Notice Response Deadline or fifteen (15) days after the remailing of the Notice.

5 62. Presumption Regarding Receipt of Notice. It will be conclusively presumed that
6 if an envelope has not been returned within the Notice Response Deadline (i.e., forty-five (45))
7 days of the mailing that the Settlement Class Member received the Notice.

8 63. Disputes Regarding Class Data. Class Members are deemed to participate in the
9 Settlement, unless they opt-out. The Notice will inform Class Members of his/her estimated
10 Individual Settlement Amount and the number of Shifts Worked during the Class Period. Class
11 Members may dispute their Shifts Worked if they feel they were employed more shifts in the
12 Class Period in California than Defendants' records show by timely submitting evidence to the
13 Settlement Administrator. Defendants' records will be presumed determinative absent reliable
14 evidence to rebut Defendants' records, but the Settlement Administrator will evaluate the
15 evidence submitted by the Class Member and provide the evidence submitted to Class Counsel
16 and Defense Counsel who agree to meet and confer in good faith about the evidence to
17 determine the Class Member's actual number of Shifts Worked and estimated Individual
18 Settlement Amount. If Class Counsel and Defense Counsel are unable to agree, they agree to
19 submit the dispute to the Settlement Administrator to render a final decision. Class Members
20 will have until the Notice Response Deadline to dispute Shifts Worked, object or opt out, unless
21 extended by the Court. In the event that the Settlement Administrator increases the number of
22 Shifts Worked for any Settlement Class Member, then the Settlement Administrator will
23 recalculate the Pay Period Value; accordingly, in no event will Defendants be required to
24 increase the Gross Settlement Amount.

25 64. Declaration of Due Diligence. The Settlement Administrator shall provide
26 counsel for the Parties, at least twenty-five (25) days prior to the final approval hearing, a
27 declaration of due diligence and proof of mailing with regard to the mailing of the Notice.
28

65. Settlement Class Members' Rights. Each Settlement Class Member will be fully advised of the Settlement, the ability to object to the settlement, and the ability to opt-out or request exclusion from the Settlement. The Notice will inform the Settlement Class Members of the Court-established deadlines for filing objections or requesting exclusion from the Settlement in accordance with the following guidelines:

(a) Requests for Exclusion from Settlement Class. Any Settlement Class Member, other than Plaintiffs, may request to be excluded from the Settlement Class by submitting a "Request for Exclusion" to the Settlement Administrator, postmarked on or before the Notice Response Deadline. The Request for Exclusion should state:

"I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS
IN THE ESQUIVEL ET AL. V. MORRIS NATIONAL LAWSUIT.
I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM
THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY
MONEY FROM THE SETTLEMENT OF THIS LAWSUIT."

Any Request for Exclusion must include the full name, address, telephone number, last four digits of the social security number or date of birth, and signature of the Settlement Class Member requesting exclusion. The Request for Exclusion must be returned by mail to the Settlement Administrator at the specified address. Any such Request must be made in accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only if postmarked by the Notice Response Deadline unless the Parties otherwise agree in writing. Any Settlement Class Member who timely requests exclusion in compliance with these requirements: (i) will not have any rights under this Agreement, including the right to object, appeal or comment on the Settlement; (ii) will not be entitled to receive any payments under this Agreement; and (iii) will not be bound by this Agreement, or the Judgment, except that Settlement Class Members who worked during the PAGA limitations period are nevertheless bound by the release of the PAGA Claims.

Prior to the tenth (10) day before the final approval hearing, any person who has elected to be excluded from the Settlement Class may withdraw that election by notifying the Claims Administrator in writing that he or she wishes to be a member of the Settlement Class. At any

1 time after the entry of the Final Approval Order, any person who has elected to Opt-Out of this
2 Agreement may withdraw that election only upon receiving the written consent of counsel for
3 the Parties and Court approval. Settlement Class members who properly withdraw their Opt-Out
4 request pursuant to this Section shall be treated as a Settlement Class Member.

5 (b) Binding Effect on Final Settlement Class Members. Except for those
6 Settlement Class Members who exclude themselves in compliance with the procedures set forth
7 above, all Settlement Class Members will: (i) be deemed to be Participating Class Members for
8 all purposes under this Agreement; (ii) will be bound by the terms and conditions of this
9 Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise
10 provided herein, will be deemed to have waived all objections and oppositions to the fairness,
11 reasonableness, and adequacy of the Settlement.

12 (c) Objections to Settlement. Any Settlement Class Member, other than
13 Plaintiffs, may object to the terms of this Agreement. To object, a Settlement Class Member
14 shall inform the Settlement Administrator, in writing, of his or her objection which must be
15 postmarked by the Notice Response Deadline at the address set forth in the Notice. Such
16 objection shall include the full name, address, telephone number, dates of employment with
17 Defendants of the Objecting Settlement Class Member, the case name and number, the basis for
18 the objection, including any legal support and each specific reason in support of the objection,
19 as well as any documentation or evidence in support thereof, and, if the Objecting Settlement
20 Class Member is represented by counsel, the name and address of his or her counsel. If any
21 Objecting Settlement Class Member wishes to speak at the Final Approval Hearing, that
22 Objecting Settlement Class Member's written submission should include a request to be heard,
23 and the Court will determine whether Objecting Settlement Class Members will be permitted to
24 speak. The Settlement Administrator shall provide objections, if any, to Class Counsel and
25 Defense Counsel within three (3) days of receipt, and the Settlement Administrator shall attach
26 the same to its declaration of due diligence filed with the Court prior to the Final Approval
27 Hearing. Any Participating Class Member who files an objection remains eligible to receive
28 monetary compensation from the Settlement. Plaintiffs and Defendants shall not be responsible

1 for any fees, costs, or expenses incurred by any Class Member and/or his or her counsel related
2 to any objections to the Settlement. Submitting an objection does not preserve the right to
3 appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record
4 by timely and properly intervening or filing a motion to vacate the judgment under Code of
5 Civil Procedure § 663. The Court will also hear from any Class Members who attend the final
6 approval hearing and asks to speak regarding his or her objection, regardless of whether they
7 submitted a written objection.

8 (d) Failure to Object. Any Settlement Class Member who desires to object
9 but fails to timely submit a written objection waives any right to object and will be foreclosed
10 from making any objection to this Settlement. Any Settlement Class Member who does not
11 timely and properly become a party of record by intervening or filing a motion to vacate the
12 judgment waives any and all rights to appeal from the Judgment, including all rights to any
13 post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment,
14 motion for new trial, a motion under California Code of Civil Procedure section 473, and
15 extraordinary writs.

16 (e) Responses to Objections. Counsel for the Parties may file a response to
17 any objections submitted by Objecting Settlement Class Members at least five (5) court days
18 before the date of the Final Approval Hearing.

19 66. Settlement Class Members will have until the Notice Response Deadline to
20 object or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The
21 Settlement Administrator shall disclose jointly to Class Counsel and Defendants' Counsel the
22 number of objections or valid Requests for Exclusion were timely submitted on a weekly basis,
23 and upon the request of Class Counsel or Defense Counsel.

24 67. Funding of the Settlement Amount. Defendants shall make a one-time deposit
25 into the QSF of the Settlement Amount, as described in Paragraph 46(a) that is necessary to
26 make all payments required under this Settlement, including its share of employer payroll taxes
27 as calculated and directed by the Settlement Administrator, within fourteen (14) calendar days
28 after the Effective Date.

1 68. Distribution of Funds. No later than seven (7) calendar days after deposit of the
2 payment into the QSF, the Settlement Administrator will mail the payments to the Participating
3 Class Members, the payment for the attorneys' fees and costs to Class Counsel, any Service
4 Payment to the Class Representatives, the payment to the LWDA for PAGA penalties, and will
5 pay itself the Settlement Administration Costs.

6 69. Deadline for Cashing Settlement Checks. Participating Class Members shall
7 have 180 calendar days after mailing by the Settlement Administrator to cash their settlement
8 checks. If any Participating Class Member's check is not cashed within that period, the check
9 will be void and a stop-payment will be issued, and the Settlement Administrator shall issue the
10 unclaimed funds to the California State Controller's Office in the name of the Class Member.
11 The release will be binding upon all Participating Class Members who do not cash their checks
12 within the 180-day period. In the event that any settlement check is returned to the Settlement
13 Administrator within 180 days of mailing, the Settlement Administrator will, within five (5)
14 business days of receipt of the returned settlement check, perform a skip trace to locate the
15 individual. If a new address is located by these means, the Administrator will have ten (10)
16 business days to re-issue the check and will notify Defense Counsel and Class Counsel that a re-
17 issued check has been sent. Neither Defendant, Defense Counsel, Class Counsel, Plaintiffs, nor
18 the Settlement Administrator will have any liability for lost or stolen settlement checks, forged
19 signatures on settlement checks, or unauthorized negotiation of settlement checks. Without
20 limiting the foregoing, in the event a Participating Class Member notifies the Settlement
21 Administrator that he or she believes that a settlement check has been lost or stolen, the
22 Settlement Administrator shall immediately stop payment on such check. If the check in
23 question has not been negotiated prior to the stop payment order, the Settlement Administrator
24 will issue a replacement check.

25 70. No person shall have any claim against Defendants (or designee), Defendants'
26 Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on mailings,
27 distributions, payments or reports made in accordance with or pursuant to this Agreement. This
28 provision does not, however, prevent a Party from seeking enforcement of this Agreement.

1 71. Without prejudice to any other remedies, the Settlement Administrator shall
2 agree to be responsible for any breach of its obligations (whether committed by the Settlement
3 Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless
4 from and against all liabilities, claims, causes of action, costs and expenses (including legal fees
5 and expenses) arising out of any breach committed by the Settlement Administrator or its
6 agents.

7 **H. Duties of the Parties Prior to the Court's Approval**

8 72. Plaintiffs will move the Court for Preliminary Approval of this Settlement and
9 entry of the Preliminary Approval Order accomplishing the following:

10 (a) Scheduling the Final Approval Hearing on the issue of whether this
11 Settlement should be finally approved as fair, reasonable and adequate as to the Class Members
12 and a hearing on fees, costs and the Service Payment;

13 (b) Approving as to form and content the proposed Notice;

14 (c) Directing the mailing of the Notice by first class mail to the Settlement
15 Class Members;

16 (d) Preliminarily approving this Settlement; and

17 (e) Preliminarily certifying the class for purposes of this Settlement.

18 **I. Duties of the Parties Following Court's Final Approval**

19 73. In connection with the Final Approval Hearing provided for in this Settlement
20 Agreement, Class Counsel shall submit a proposed Final Approval Order:

21 (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and
22 adequate, and directing consummation of its terms and provisions;

23 (b) Approving Class Counsel's application for an award of attorneys' fees and
24 reimbursement of litigation costs and expenses, the Service Payment to the Class
25 Representative, the PAGA Payment, and the payment to the Settlement Administrator for costs
26 of administering the settlement; and

27 (c) Entering judgment approving settlement, thereby permanently barring all
28 Settlement Class Members from prosecuting any Released Claims against any of the Released

Parties.

J. Voiding the Agreement

74. If the Court fails or refuses to issue the Final Approval Order or fails to approve any material condition of this Settlement Agreement which effects a fundamental change of the Settlement, the entire Settlement Agreement shall be rendered voidable and unenforceable as to all Parties herein at the option of either Party. If either Party decides to void the Settlement, then the Settlement and conditional class certification shall be considered void, and neither the Settlement Agreement, conditional class certification, nor any of the related negotiations or proceedings, shall be of any force or effect, and the Parties shall stand in the same position, without prejudice, as if this Stipulation had been neither entered into nor filed with the Court.

75. If ten percent (10%) or more of the Class Members timely submit a Request for Exclusion, Defendants shall have the option of terminating or modifying this Agreement and Defendants being relieved of any obligation to pay the Settlement Amount or any other obligations from the Settlement by giving notice to Plaintiffs' Counsel and the Settlement Administrator within fourteen (14) days of the Notice Response Deadline.

76. If the Settlement is voided or fails for any reason, Plaintiffs and Defendants will have no further obligations under the Settlement, including any obligation by Defendants to pay the Settlement Amount, or any amounts that otherwise would have been owed under this Settlement.

77. If the Settlement is voided or fails for any reason, any costs incurred by the Settlement Administrator shall be borne equally by Defendants and Plaintiffs, unless otherwise specified in this Agreement.

K. Other Terms

78. Waiver. The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

79. No Publicity. The Parties agree that Class Counsel or any other attorneys acting for Class Members or Plaintiffs shall not make any press releases or conduct any press conferences regarding the Lawsuit or the settlement of the Lawsuit with Defendant, including

1 the terms of the settlement.

2 80. Parties' Authority. The signatories hereto represent that they are fully authorized
3 to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions
4 hereof.

5 81. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
6 accomplish the terms of this Settlement Agreement, including but not limited to, execution of
7 such documents and to take such other action as may reasonably be necessary to implement the
8 terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their
9 best efforts, including all efforts contemplated by this Settlement Agreement and any other
10 efforts that may become necessary by order of the Court, or otherwise, to effectuate this
11 Settlement Agreement and the terms set forth herein. As soon as practicable after execution of
12 this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of
13 Defendants and Defendants' Counsel, take all necessary steps to secure the Court's preliminary
14 and final approval of the settlement, and the final entry of judgment.

15 82. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
16 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
17 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
18 cause of action or rights released and discharged by this Settlement Agreement.

19 83. No Admission. Defendants deny any and all liability to Plaintiffs and/or any
20 Settlement Class Member in this Action, as to any and all causes of action that were asserted or
21 that might have been asserted in this Action. Nonetheless, Defendants wish to settle and
22 compromise the matters at issue in the Complaint to avoid further substantial expense and the
23 inconvenience and distraction of protracted and burdensome litigation. Defendants also have
24 taken into account the uncertainty and risks inherent in litigation, and without conceding any
25 infirmity in the defenses that they have asserted or could assert against Plaintiffs, have
26 determined that it is desirable and beneficial that Plaintiffs' claims be settled in the manner and
27 upon the terms and conditions set forth in this Agreement.

1 Nothing herein shall constitute any admission by Defendants of wrongdoing or liability,
2 or of the truth of any factual allegations in the Action. Nothing herein shall constitute any
3 admission by Defendants regarding the merits of the Claims in this Action, including but not
4 limited to claims for unpaid wages under California and/or federal law. Nothing herein shall
5 constitute an admission by Defendants that the Action was properly brought as a class or
6 representative action other than for settlement purposes. To the contrary, Defendants have
7 denied and continue to deny each and every material factual allegation and all Claims. To this
8 end, the Class Settlement of the Action, the negotiation and execution of this Stipulation, and all
9 acts performed or documents executed pursuant to or in furtherance of this Stipulation or the
10 Class Settlement are not, shall not be deemed to be, and may not be used as, an admission or
11 evidence of any wrongdoing or liability on the part of Defendants or of the truth of any of the
12 factual allegations in the PAGA Claims or the Complaint, First Amended Complaint in the
13 Action; and are not, shall not be deemed to be, and may not be used as, an admission or
14 evidence of any fault or omission on the part of Defendants in any civil, criminal or
15 administrative proceeding in any court, administrative agency or other tribunal. Defendants
16 further dispute that the Class Representatives and/or Class Members were joint employers and
17 at all times have maintained that the Class Representatives and/or Class Members were
18 employed solely by Morris National Inc. The Settlement herein does not constitute an admission
19 of employment of the Class Representatives and/or Class Members by Defendants other than
20 Morris National Inc.

21 84. Inadmissibility of Agreement. Whether or not the Court issues the Final
22 Approval Order, nothing contained herein, nor the consummation of this Settlement Agreement,
23 is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing
24 on the part of Defendants or any of the other Released Parties. Each of the Parties hereto has
25 entered into this Settlement Agreement with the intention of avoiding further disputes and
26 litigation with the attendant inconvenience and expenses. This Settlement Agreement is a
27 settlement document, and it, along with all related documents such as the notices, and motions
28 for preliminary and final approval, shall, pursuant to California Evidence Code section 1152

1 and/or Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an
2 action or proceeding to approve the settlement, and/or interpret or enforce this Settlement
3 Agreement. The stipulation for class certification as part of this Settlement Agreement is for
4 settlement purposes only and if, for any reason the settlement is not approved, the stipulation
5 will be of no force or effect.

6 85. Notices. Unless otherwise specifically provided herein, all notices, demands or
7 other communications given hereunder shall be in writing and shall be deemed to have been
8 duly given as of the third business day after mailing by United States registered or certified
9 mail, return receipt requested, addressed:

10 To the Settlement Class:

11 Mehrdad Bokhour
12 *mehrdad@bokhourlaw.com*
13 1901 Avenue of the Stars, Suite 450
14 Los Angeles, California 90067
Tel: (310) 975-1493; Fax: (310) 675-0861

15 Jonathan Melmed
16 *jm@melmedlaw.com*
17 1801 Century Pak East, Suite 850
18 Los Angeles, California 90067
Tel: (310) 824-3828; Fax: (310) 862-6851

19 To Defendants:

20 David Binder
21 *david@binderkal.com*
22 Zena M. Kalioundji
23 *zena@binderkal.com*
24 20944 Sherman Way, Suite 215
Canoga Park, California 91303
Tel: (818) 479-7679; Fax: (818) 479-7690

25 86. Construction. The Parties hereto agree that the terms and conditions of this
26 Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the
27 Parties and that this Settlement Agreement shall not be construed in favor of or against any
28 Party by reason of the extent to which any Party or her or its counsel participated in the drafting
of this Settlement Agreement. Plaintiffs and Defendants expressly waive the common-law and

1 statutory rule of construction that ambiguities should be construed against the drafter of an
2 agreement and further agree, covenant, and represent that the language in all parts of this
3 Agreement shall be in all cases construed as a whole, according to its fair meaning.

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

8 88. Modification. This Settlement Agreement may not be changed, altered, or
9 modified, except in writing and signed by the Parties hereto, and approved by the Court. This
10 Settlement Agreement may not be discharged except by performance in accordance with its
11 terms or by a writing signed by all of the Parties hereto.

12 89. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
13 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall
14 provide written notice to the other Party and allow an opportunity to cure the alleged
15 deficiencies, and Plaintiffs and Defendants agree to seek the help of the mediator to resolve any
16 dispute they are unable to resolve informally. During this period, the Parties shall bear their own
17 attorneys' fees and costs. This provision shall not apply to any legal action or other proceeding
18 instituted by any person or entity other than Plaintiffs or Defendants.

19 90. Choice of Law. This Settlement Agreement shall be governed by and construed,
20 enforced and administered in accordance with the laws of the State of California.

21 91. Integration Clause. This Settlement Agreement contains the entire agreement
22 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
23 or contemporaneous agreements, understandings, representations, and statements, whether oral
24 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
25 hereunder may be waived except in writing.

26 92. Binding On Assigns. This Settlement Agreement shall be binding upon and inure
27 to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
28 successors and assigns.

1 93. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
2 because the members of the Settlement Class are numerous, it is impossible or impractical to
3 have each Class member execute this Settlement Agreement. The Notice will advise all
4 Settlement Class Members of the binding nature of the release provided herein and such shall
5 have the same force and effect as if this Settlement Agreement were executed by each
6 Settlement Class Member.

7 94. Counterparts. This Settlement Agreement may be executed in counterparts, and
8 when each Party has signed and delivered at least one such counterpart, each counterpart shall
9 be deemed an original, and, when taken together with other signed counterparts, shall constitute
10 one fully signed Settlement Agreement, which shall be binding upon and effective as to all
11 Parties. Electronic signatures shall have the same force and effect as an original.

12 **APPROVAL AND EXECUTION BY PARTIES:**

13 **CLASS REPRESENTATIVES:**

14
15 Dated: October __, 2022

Cecilia Esquivel

16
17
18
19 Dated: October __, 2022

Bertha Solorzano

20
21 Dated: October __, 2022

DEFENDANTS:
MORRIS NATIONAL, INC., VERY SPECIAL
CHOCOLATS, INC., THE MCKEEVER & DANLEE
CONFECTIONERY COMPANY, AND GERRY
MORRIS ZUBATOFF

22
23
24
25
26 By  _____
27 Title PRESIDENT
28

1 APPROVED AS TO FORM:

2 Dated: October ___, 2022

CLASS COUNSEL:

MELMED LAW GROUP P.C.

Jonathan Melmed
Attorneys for Plaintiffs and the Class

8 Dated: October ___, 2022

BOKHOUR LAW GROUP, P.C.

Mehrdad Bokhour
Attorneys for Plaintiffs and the Class

13 Dated: October 27, 2022

DEFENDANTS' COUNSEL:

BINDER KALIOUNDJI, LLP

David Binder
David Binder
Zena M. Kalioundji
Attorneys for Defendants

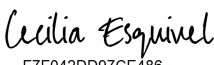
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94. Counterparts. This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

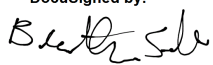
APPROVAL AND EXECUTION BY PARTIES:

CLASS REPRESENTATIVES:

10/27/2022
Dated: October __, 2022

DocuSigned by:

F7F042DD97CE486...
Cecilia Esquivel

10/26/2022
Dated: October __, 2022

DocuSigned by:

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Bertha Solorzano

Dated: October __, 2022

DEFENDANTS:

MORRIS NATIONAL, INC., VERY SPECIAL CHOCOLATS, INC., THE MCKEEVER & DANLEE CONFECTIONERY COMPANY, AND GERRY MORRIS ZUBATOFF

By _____
Title _____

1 APPROVED AS TO FORM:
2 10/27/2022

3 Dated: October ___, 2022

CLASS COUNSEL:

MELMED LAW GROUP P.C.

DocuSigned by:

Jonathan Melmed

52EE1569ED7D4C2

Jonathan Melmed

Attorneys for Plaintiffs and the Class

10/27/2022

8 Dated: October ___, 2022

BOKHOUR LAW GROUP, P.C.

DocuSigned by:

Mehrdad Bokhour

D8D3643F271940F

Mehrdad Bokhour

Attorneys for Plaintiffs and the Class

13 Dated: October ___, 2022

DEFENDANTS' COUNSEL:

BINDER KALIOUNDJI, LLP

David Binder

Zena M. Kalioundji

Attorneys for Defendants