

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

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

8 **A. Definitions**

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

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

16 3. "Agreement," "Settlement Agreement," "Settlement," or "Stipulation" shall
17 mean this Class Action Settlement Agreement and Release of Claims, including any attached
18 Exhibits.

19 4. "Class Counsel" refers to Mehrdad Bokhour of Bokhour Law Group, P.C. and
20 Jonathan Melmed of Melmed Law Group PC.

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

27 6. "Class Period" is deemed to be the period of April 29, 2016, through October 15,
28 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 &

1 Professions Code §17200) and, (10 failure to pay sick leave (Labor Code §246).

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

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

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

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

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

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

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

24 29. “QSF” means the Qualified Settlement Fund set up by the Settlement
25 Administrator for the benefit of the Final Settlement Class, and from which the settlement
26 payments shall be made, and which is intended to be a fund that qualifies under Internal
27 Revenue Code Sec. 468.

1 30. “Released Claims” by the Participating Class Members upon when Defendants
2 fully fund the Settlement and the Final Approval of the Settlement shall mean any and all
3 claims, causes of action, damages, expenses, and penalties, which arise out of the facts and
4 occurrences alleged in the Action which were pled in the operative First Amended Complaint
5 and the PAGA Claims or that could have been pled based on the facts alleged therein including,
6 but not limited to claims for (1) failure to pay wages for all hours worked, including, but not
7 limited to, due to rounding of time (Labor Code §§1194, 1194.2, 1197.1), (2) failure pay
8 overtime wages, including, without limitation, failure to properly calculate the regular rate at
9 which overtime was paid (Labor Code §§510, 1194, IWC Wage Order 1), (3) failure to provide
10 meal breaks and/or pay missed meal period premiums (Labor Code §§226.7, 512, and IWC
11 Wage Orders 1, 14), (4) failure to provide rest breaks and/or pay missed rest period premiums
12 (Labor Code §§226.7 and IWC Wage Order 1), (5) failure to pay all wages owed in a timely
13 manner (Labor Code §§204 and 210), (6) failure to pay due wages at separation of employment
14 (Labor Code §§201-203), (7) failure to provide accurate itemized wage statements (Labor Code
15 §§226, 226.3, 246), (8), failure to reimburse business expenses, including, but not limited to,
16 personal protective equipment and shoes (Labor Code §2802), and (9) unfair business practices
17 (Business & Professions Code §17200), and (11) PAGA penalties as identified in paragraph 20
18 above.

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, employees,
2 agents, attorneys, predecessors, representatives, successors and assigns.

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

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

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

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

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

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

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

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

25 38. "Settlement Class Member" or "Class Member(s)" refers to individual members
26 of the Settlement Class, or if such person is incompetent or deceased, the person's legal
27 guardian, executor, heir, or successor in interest.

1 **B. General Terms**

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

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

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

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

1 circumstances, including the risk of significant delay and uncertainty associated with litigation,
2 various defenses asserted by Defendants, and numerous potential appellate issues.

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

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

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

24 **C. Terms of Settlement**

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

26 (a) Gross Settlement Amount: The Parties agree to settle this Action for Five
27 Hundred Fifty Thousand Dollars and Zero Cents (\$550,000.00) ("the Settlement Amount").
28 The Settlement Amount is the maximum amount that will be paid by Defendants, and includes

as full and final settlement of: Individual Settlement Amounts, attorneys' fees of Class Counsel, costs and expenses, the Service Payment to the Class Representatives, all Settlement Administration Costs, and payment to the Labor Workforce Development Agency (LWDA) for PAGA penalties. Defendants shall separately pay the employers' share of the payroll taxes for the portion of the Individual Settlement Amount that is allocated to wages.

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

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

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

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

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

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

20 (f) Service Payment to Class Representatives: The amount awarded to the Class
21 Representatives as a Service Payment will be set by the Court in its discretion, not to exceed
22 \$7,500 each. Defendants agree not to oppose this request. The Service Payment to Plaintiffs
23 will be paid out of the Gross Settlement Amount. The Class Representative will be issued IRS
24 Form 1099 in connection with this payment. Plaintiffs shall be solely and legally responsible to
25 pay any and all taxes with respect to this payment and shall hold Defendants harmless from any
26 and all liability with regard thereto. The Parties agree that any amount awarded as the Service
27 Payment to Plaintiffs less than the requested amount shall not be a basis for Plaintiffs or Class
28 Counsel to void this Stipulation. Should the Court approve a lesser amount for the Service

1 Payment, the difference shall be added to the Net Settlement Amount to be distributed to the
2 Participating Class Members.

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

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

26 (i) PAGA Penalties: The Parties agree that \$10,000.00 is allocated to PAGA
27 Penalties and is to be paid from the Gross Settlement Amount, subject to Court approval. Of
28 this amount, \$7,500.00 (75%) shall be paid to the LWDA in satisfaction of Plaintiffs' claims for

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

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

(k) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH

1 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
2 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
3 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
4 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
5 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
6 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
7 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
8 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
9 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
10 ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
11 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
12 ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
13 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
14 ADVISOR'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
15 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
16 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
17 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

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

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

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

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

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

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

15 52. Class Representatives, on behalf of themselves and the Settlement Class,
16 acknowledge and agree that the claims for unpaid wages and unreimbursed expenses in the
17 Action, and untimely payment of wages in the Action, are disputed, and that the payments set
18 forth herein constitute payment of all sums allegedly due to them. Class Representatives, on
19 behalf of themselves and the Settlement Class, acknowledge and agree that California Labor
20 Code Section 206.5 is not applicable to the Parties hereto. Section 206.5 provides in pertinent
21 part as follows:

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

25 **E. Release by Class Representatives**

26 53. As a material inducement to Defendants to enter into this Settlement Agreement,
27 in addition to the Class Representatives' release of the Released Claims as discussed in
28 Paragraph 49 above, Class Representatives do hereby, for themselves and for their respective

1 spouses, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees,
2 conservators, guardians, personal representatives, and assigns forever and completely release
3 and discharge the Released Parties from any and all charges, complaints, claims, liabilities,
4 obligations, promises, agreements, controversies, damages, actions, causes of action, suits,
5 rights, demands, costs, losses, debts, and expenses (including back wages, statutory penalties,
6 civil penalties, liquidated damages, exemplary damages, interest, attorneys' fees, and costs) of
7 any nature whatsoever, from the beginning of time through the execution of this Stipulation,
8 whether known or unknown, suspected or unsuspected, including but not limited to all claims
9 arising out of, based upon, or relating to Class Representatives' employment with Defendants or
10 the remuneration for or termination of such employment (collectively, the "Class
11 Representatives' Claims").

12 54. Without limiting the generality of the foregoing, Class Representatives expressly
13 release all claims or rights against Released Parties arising out of or relating to alleged
14 violations of any contracts, express or implied (including but not limited to any contract of
15 employment); any contract or covenant of good faith and fair dealing (express or implied); any
16 tort, including but not limited to, negligence, fraud, misrepresentation and violation of
17 California Labor Code section 970, negligent infliction of emotional distress, intentional
18 infliction of emotional distress, defamation, "retaliation" claims and claims for violation of
19 public policy, any claim for improper or unauthorized wage deductions, failure to pay the
20 applicable wage, unpaid wages, unpaid vacation benefits, penalties, liquidated damages, other
21 damages, overtime, and alleged "off the clock" work under federal and state law, including, but
22 not limited to, California Labor Code Sections 204 and 558, waiting time penalties pursuant to
23 California Labor Section 203, damages or penalties pursuant to California Labor Code Section
24 226, meal period and rest break payments and penalties pursuant to California Labor Code
25 Sections 226.7 and 512, failure to provide itemized wage statements pursuant to California
26 Labor Code Section 226, statutory or civil penalties pursuant to California Labor Code Sections
27 210, failure to indemnify for business expenses pursuant to Labor Code section 2802, unfair
28 competition and unfair business practices pursuant to Business and Professions Code Section

1 17200 et seq., interest and costs pursuant to California Civil Code Section 3287 and California
2 Labor Code Section 218.6, statutory or common law rights to attorneys' fees and costs,
3 including those pursuant to California Labor Code Section 1194 *et seq.*; claims under the
4 Private Attorneys General Act of 2004, Labor Code section 2699 *et seq.*, and the alleged
5 violation or breach of any other state or federal statute, rule and or regulation; including all
6 applicable Industrial Welfare Commission Wage Orders, and all similar causes of action,
7 including but not limited to, any claim for restitution, equitable relief, interest, penalties, costs
8 or attorneys' fees in connection with any of the foregoing, negligent infliction of emotional
9 distress, intentional infliction of emotional distress, and defamation; any "wrongful discharge,"
10 "constructive discharge," and "retaliation" claims; any claims relating to any breach of public
11 policy; any legal restrictions on Defendant's right to discharge employees; and any federal,
12 state, or other governmental statute, regulation, or ordinance, including, without limitation: (1)
13 Title VII of the Civil Rights Act of 1964 (race, color, religion, sex, and national origin
14 discrimination or harassment, including retaliation for reporting discrimination or harassment);
15 (2) 42 U.S.C. § 1981 (discrimination); (3) Equal Pay Act, 29 U.S.C. § 209(d)(1) and California
16 Labor Code 1197.5 (equal pay); (4) Americans with Disabilities Act, 42 U.S.C. § 12100 et seq.
17 (disability discrimination); (5) Family and Medical Leave Act, 29 U.S.C. § 2601 et
18 seq. (family/medical leave); (6) California Fair Employment and Housing Act, Cal. Government
19 Code § 12900 et seq. (discrimination or harassment in employment and/or housing, including
20 discrimination or harassment based on race, religious creed, color, national origin, ancestry,
21 disability, marital status, sex (including pregnancy), or age, including retaliation for reporting
22 discrimination or harassment); (7) California Family Rights Act, Cal. Government Code §
23 12945.1 et seq. (family/medical leave); (8) California Labor Code, including Section 1720 et
24 seq., or any Industrial Welfare Commission Wage Order; (9) Executive Order 11246 (race,
25 color, religion, sex, and national origin discrimination or harassment); (10) Executive Order
26 11141 (age discrimination); (11) Sections 503 and 504 of the Rehabilitation Act of 1973
27 (handicap discrimination); (12) the Fair Labor Standards Act; and (13) Employee Retirement
28 Income Security Act, 29 U.S.C. § 1000 et seq. (employee benefits).

1 55. Class Representatives expressly waive and relinquish all rights and benefits
2 afforded by Section 1542 of the Civil Code of the State of California and does so understanding
3 and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil
4 Code of the State of California states:

5 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
6 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT
7 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
8 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
9 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
10 DEBTOR OR RELEASED PARTY.

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

19 **F. Interim Stay of Proceedings**

20 56. Pending completion of all of the prerequisites necessary to effectuate this
21 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the
22 Action except such as are necessary to effectuate the Settlement.

23 **G. Notice Process**

24 57. Appointment of Settlement Administrator. The Parties have agreed to the
25 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
26 including mailing the Notice, using standard devices to obtain forwarding addresses, handling
27 inquiries from Settlement Class Members concerning the Class Notice, independently reviewing
28 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 Administrator will run a check of the Class Members' addresses against those on file with the U.S. Postal Service's National Change of Address List. The Class Data provided to the Settlement Administrator will remain confidential, shall be used solely to administer the Settlement, and will not be used or disclosed to anyone, except as required by applicable tax authorities, pursuant to Defendant's express written consent, or by order of the Court. Class Data shall be marked "Confidential-Settlement Administrator's Eyes Only", and Class Counsel shall not receive a copy of the Class Data.

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

12 61. Returned Notices. The Settlement Administrator will take steps to ensure that
13 the Notice is received by all Settlement Class Members, including utilization of the National
14 Change of Address Database maintained by the United States Postal Service to review the
15 accuracy of and, if possible, update a mailing address. Notices will be re-mailed to any Class
16 Member for whom an updated address is located within ten (10) calendar days following both
17 the Settlement Administrator learning of the failed mailing and its receipt of the updated
18 address. The Notice shall be identical to the original Notice, except that it shall notify the Class
19 Member that the exclusion (opt-out) request or objection must be returned by the later of the
20 Notice Response Deadline or fifteen (15) days after the remailing of the Notice.

21 62. Presumption Regarding Receipt of Notice. It will be conclusively presumed that
22 if an envelope has not been returned within thirty (30) days of the mailing that the Settlement
23 Class Member received the Notice.

24 63. Disputes Regarding Class Data. Class Members are deemed to participate in the
25 Settlement, unless they opt-out. The Notice will inform Class Members of his/her estimated
26 Individual Settlement Amount and the number of Shifts Worked during the Class Period. Class
27 Members may dispute their Shifts Worked if they feel they were employed more shifts in the
28 Class Period in California than Defendants' records show by timely submitting evidence to the

Settlement Administrator. Defendants' records will be presumed determinative absent reliable evidence to rebut Defendants' records, but the Settlement Administrator will evaluate the evidence submitted by the Class Member and provide the evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in good faith about the evidence to determine the Class Member's actual number of Shifts Worked and estimated Individual Settlement Amount. If Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the Settlement Administrator to render a final decision. Class Members will have until the Notice Response Deadline to dispute Shifts Worked, object or opt out, unless extended by the Court. In the event that the Settlement Administrator increases the number of Shifts Worked for any Settlement Class Member, then the Settlement Administrator will recalculate the Pay Period Value; accordingly, in no event will Defendants be required to increase the Gross Settlement Amount.

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

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

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

(c) Objections to Settlement. Any Settlement Class Member, other than Plaintiffs, may object to the terms of this Agreement. To object, a Settlement Class Member

1 shall inform the Settlement Administrator, in writing, of his or her objection which must be
2 postmarked by the Notice Response Deadline at the address set forth in the Notice. Such
3 objection shall include the full name, address, telephone number, dates of employment with
4 Defendants of the Objecting Settlement Class Member, the case name and number, the basis for
5 the objection, including any legal support and each specific reason in support of the objection,
6 as well as any documentation or evidence in support thereof, and, if the Objecting Settlement
7 Class Member is represented by counsel, the name and address of his or her counsel. If any
8 Objecting Settlement Class Member wishes to speak at the Final Approval Hearing, that
9 Objecting Settlement Class Member's written submission should include a request to be heard,
10 and the Court will determine whether Objecting Settlement Class Members will be permitted to
11 speak. The Settlement Administrator shall provide objections, if any, to Class Counsel and
12 Defense Counsel within three (3) days of receipt, and the Settlement Administrator shall attach
13 the same to its declaration of due diligence filed with the Court prior to the Final Approval
14 Hearing. Any Participating Class Member who files an objection remains eligible to receive
15 monetary compensation from the Settlement. Plaintiffs and Defendants shall not be responsible
16 for any fees, costs, or expenses incurred by any Class Member and/or his or her counsel related
17 to any objections to the Settlement. Submitting an objection does not preserve the right to
18 appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record
19 by timely and properly intervening or filing a motion to vacate the judgment under Code of
20 Civil Procedure § 663.

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

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

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

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

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

19 69. Deadline for Cashing Settlement Checks. Participating Class Members shall
20 have 180 calendar days after mailing by the Settlement Administrator to cash their settlement
21 checks. If any Participating Class Member's check is not cashed within that period, the check
22 will be void and a stop-payment will be issued, and the Settlement Administrator shall issue the
23 unclaimed funds to the California State Controller's Office in the name of the Class Member.
24 The release will be binding upon all Participating Class Members who do not cash their checks
25 within the 180-day period. In the event that any settlement check is returned to the Settlement
26 Administrator within 180 days of mailing, the Settlement Administrator will, within five (5)
27 business days of receipt of the returned settlement check, perform a skip trace to locate the
28 individual. If a new address is located by these means, the Administrator will have ten (10)

1 business days to re-issue the check and will notify Defense Counsel and Class Counsel that a re-
2 issued check has been sent. Neither Defendant, Defense Counsel, Class Counsel, Plaintiffs, nor
3 the Settlement Administrator will have any liability for lost or stolen settlement checks, forged
4 signatures on settlement checks, or unauthorized negotiation of settlement checks. Without
5 limiting the foregoing, in the event a Participating Class Member notifies the Settlement
6 Administrator that he or she believes that a settlement check has been lost or stolen, the
7 Settlement Administrator shall immediately stop payment on such check. If the check in
8 question has not been negotiated prior to the stop payment order, the Settlement Administrator
9 will issue a replacement check.

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

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

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

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

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

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

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

(d) Preliminarily approving this Settlement; and

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

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

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

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

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

(c) Entering judgment approving settlement, thereby permanently barring all 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 the terms of the settlement.

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

81. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of

Defendants and Defendants' Counsel, take all necessary steps to secure the Court's preliminary and final approval of the settlement, and the final entry of judgment.

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

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

Nothing herein shall constitute any admission by Defendants of wrongdoing or liability, or of the truth of any factual allegations in the Action. Nothing herein shall constitute any admission by Defendants regarding the merits of the Claims in this Action, including but not limited to claims for unpaid wages under California and/or federal law. Nothing herein shall constitute an admission by Defendants that the Action was properly brought as a class or representative action other than for settlement purposes. To the contrary, Defendants have denied and continue to deny each and every material factual allegation and all Claims. To this end, the Class Settlement of the Action, the negotiation and execution of this Stipulation, and all acts performed or documents executed pursuant to or in furtherance of this Stipulation or the Class Settlement are not, shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendants or of the truth of any of the factual allegations in the PAGA Claims or the Complaint, First Amended Complaint in the Action; and are not, shall not be deemed to be, and may not be used as, an admission or

evidence of any fault or omission on the part of Defendants in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Defendants further dispute that the Class Representatives and/or Class Members were joint employers and at all times have maintained that the Class Representatives and/or Class Members were employed solely by Morris National Inc. The Settlement herein does not constitute an admission of employment of the Class Representatives and/or Class Members by Defendants other than Morris National Inc.

84. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval Order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendants or any of the other Released Parties. Each of the Parties hereto has entered into this Settlement Agreement with the intention of avoiding further disputes and litigation with the attendant inconvenience and expenses. This Settlement Agreement is a settlement document, and it, along with all related documents such as the notices, and motions for preliminary and final approval, shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement. The stipulation for class certification as part of this Settlement Agreement is for settlement purposes only and if, for any reason the settlement is not approved, the stipulation will be of no force or effect.

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

To the Settlement Class:

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

-28-

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

To Defendants:

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

86. Construction. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any 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 statutory rule of construction that ambiguities should be construed against the drafter of an agreement and further agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

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

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

89. Dispute Resolution. Prior to instituting legal action to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, a Party shall

1 provide written notice to the other Party and allow an opportunity to cure the alleged
2 deficiencies, and Plaintiffs and Defendants agree to seek the help of the mediator to resolve any
3 dispute they are unable to resolve informally. During this period, the Parties shall bear their own
4 attorneys' fees and costs. This provision shall not apply to any legal action or other proceeding
5 instituted by any person or entity other than Plaintiffs or Defendants.

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

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

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

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

22 ///

23 ///

24 ///

25 ///

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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:

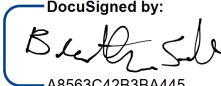
CLASS REPRESENTATIVES:

10/13/2021
Dated: October __, 2021

DocuSigned by:

4416A5B0290D4C4...
Cecilia Esquivel

10/12/2021
Dated: October __, 2021

DocuSigned by:

A8563C42B3BA445...
Bertha Solorzano

Dated: October __, 2021

DEFENDANTS:

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

By _____
Title _____

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

6 **APPROVAL AND EXECUTION BY PARTIES:**

7 **CLASS REPRESENTATIVES:**

8
9 Dated: October __, 2021

10 _____
Cecilia Esquivel

11
12
13 Dated: October __, 2021

14 _____
Bertha Solorzano

15 Dated: October __, 2021
16 Nov 15, 2021

DEFENDANTS:

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

17
18 *Gerry Morris Zubatoff*
19 Gerry Morris Zubatoff (Nov 15, 2021 15:17 PST)

20 _____
By Morris National Inc

21 Title President

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 APPROVED AS TO FORM:
10/13/2021

2 Dated: October ___, 2021

CLASS COUNSEL:

MELMED LAW GROUP P.C.

DocuSigned by:
Jonathan Melmed
52FF1569ED7D4C2...

Jonathan Melmed
Attorneys for Plaintiffs

10/13/2021
8 Dated: October ___, 2021

BOKHOUR LAW GROUP, P.C.

DocuSigned by:
Mehrdad Bokhour
D8D3643E271940F...

Mehrdad Bokhour
Attorneys for Plaintiffs

13 Dated: October ___, 2021

DEFENDANTS' COUNSEL:

BINDER KALIOUNDJI, LLP

David Binder
Zena M. Kalioundji
Attorneys for Defendants

1 APPROVED AS TO FORM:

2 Dated: October ___, 2021

CLASS COUNSEL:

MELMED LAW GROUP P.C.

Jonathan Melmed
Attorneys for Plaintiffs

8 Dated: October ___, 2021

BOKHOUR LAW GROUP, P.C.

Mehrdad Bokhour
Attorneys for Plaintiffs

13 Dated: October ___, 2021

DEFENDANTS' COUNSEL:

BINDER KALIOUNDJI, LLP

15
16

11/19/2021

Zena Kalioundji

David Binder
Zena M. Kalioundji
Attorneys for Defendants