

[Counsel listed on next page]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

MARITZA EVELYN MAGANA, YERENIA
GUADARRAMA, GLORIA TORRES,
ARNULFO RUIZ, and ROXANA AGUILAR,
individually, and on behalf of aggrieved
employees pursuant to the Private Attorneys
General Act,

Plaintiffs,

v.

OREN'S HUMMUS CATERING LLC, a
California Limited Liability Company;
OREN'S HUMMUS CUPERTINO LLC, a
California Limited Liability Company;
OREN'S HUMMUS MOUNTAIN VIEW LLC, a
California Limited Liability Company; OREN'S
HUMMUS SF1 LLC, a California Limited
Liability Company; OREN'S HUMMUS, LLC, a
California Limited Liability Company; and DOES
1 through 10, inclusive,

Defendants.

Case No. 20CV371894

*Assigned for all purposes to the
Honorable Sunil R. Kulkarni*

**STIPULATION OF PAGA
SETTLEMENT**

Complaint Filed: October 21, 2020
Trial Date: None set

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17 OREN'S HUMMUS, LLC
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This Stipulation of PAGA Settlement is made by and between the Named Plaintiffs, MARITZA EVELYN MAGANA, YERENIA GUADARRAMA, GLORIA TORRES, ARNULFO RUIZ, and ROXANA AGUILAR ("Named Plaintiffs"), on their own behalf, as representatives of the State of California, and on behalf of all members of the PAGA Group, as defined below, on the one hand, and OREN'S HUMMUS CATERING LLC, OREN'S HUMMUS CUPERTINO LLC, OREN'S HUMMUS MOUNTAIN VIEW LLC, OREN'S HUMMUS SF1 LLC, OREN'S HUMMUS, LLC ("Named Defendants," collectively with OREN'S HUMMUS EXPRESS LLC, and OREN'S HUMMUS LOS GATOS LLC "Defendants") on the other hand, in the lawsuit entitled *Magana et al. v. Oren's Hummus Catering, LLC et al.*, filed in Santa Clara County Superior Court, Case No. 20CV371894. This Stipulation of PAGA Settlement resolves all claims that were asserted or could have been asserted against Defendants pertaining to the claims in the Litigation.

I. DEFINITIONS

A. Administrative Costs. All administrative costs of settlement, including cost of notice to the Settlement Group, administration, and any fees and costs incurred or charged by the Settlement Administrator in connection with the execution of its duties under this Stipulation of PAGA Settlement.

B. Agreement. The terms "Agreement" or "Settlement Agreement" are used synonymously herein to mean this Stipulation of PAGA Settlement.

C. Court. The term "Court," as used herein, means the Superior Court of the State of California for the County of Santa Clara.

D. Date of Approval. The terms "Date of Approval" or "Approval," as used herein, means the date the PAGA Settlement Approval Order is served on Defendants.

E. Defendants. The term "Defendants" as used herein means OREN'S HUMMUS CATERING LLC, OREN'S HUMMUS CUPERTINO LLC, OREN'S HUMMUS MOUNTAIN VIEW LLC, OREN'S HUMMUS SF1 LLC, OREN'S HUMMUS, LLC, OREN'S HUMMUS LOS GATOS LLC, and OREN'S HUMMUS EXPRESS LLC.

F. Defense Counsel. The term "Defense Counsel," as used herein, means LITTLER

1 MENDELSON PC who are counsel for and acting on behalf of Defendants.

2 **G. Effective Date.** The term "Effective Date" means the date that is later of: (i) five
3 (5) business days after the period for filing any appeal, writ, or other appellate proceeding
4 opposing Approval of this Agreement (i.e., approximately sixty-five (65) days from the date the
5 court grants approval and enters judgment) has elapsed without any appeal, writ, or other
6 appellate proceeding having been filed; or (ii) if any appeal, writ, or other appellate proceeding
7 opposing Approval of this Agreement has been filed, five (5) business days after any appeal,
8 writ, or other appellate proceedings opposing this Agreement has finally and conclusively
9 dismissed with no right to pursue further remedies or relief. No funding of the settlement need
10 occur until at least fifteen (15) days after the Effective Date.

11 **H. Individual PAGA Payment.** The term "Individual PAGA Payment" shall mean
12 the portion of the Net Settlement Amount paid to each PAGA Group Member as part of this
13 Agreement, as calculated by the Settlement Administrator by dividing the Net Settlement
14 Amount by the total number of pay periods worked by all members of the PAGA Group during
15 the Settlement Period (the "Pay Period Amount") and then multiplying the Pay Period Amount
16 by the number of pay periods worked by the individual PAGA member.

17 **I. Litigation.** The term "Litigation," as used herein, means the action filed in Santa
18 Clara County Superior Court, Case No. 20CV371894.

19 **J. LWDA.** The term "LWDA" means the Labor Workforce Development Agency.

20 **K. LWDA Payment.** The term "LWDA Payment," as used herein, means seventy-
21 five percent (75%) of the remainder of the Settlement Amount after the deduction of any award
22 of attorneys' fees and litigation costs, enhancement awards, and Administrative Costs. This
23 amount shall be calculated as follows: Settlement Amount minus (Court approved amounts for
24 attorneys' fees, litigation costs, enhancement awards to Named Plaintiffs, and Administrative
25 Costs) times .75 rounded to the nearest whole cent.

26 **L. Named Defendants.** The Term "Named Defendants," as used herein, means
27 OREN'S HUMMUS CATERING LLC, OREN'S HUMMUS CUPERTINO LLC, OREN'S
28 HUMMUS MOUNTAIN VIEW LLC, OREN'S HUMMUS SF1 LLC, and OREN'S

1 HUMMUS, LLC.

2 M. **Named Plaintiffs.** The term "Named Plaintiffs," as used herein, means
3 MARITZA EVELYN MAGANA, YERENIA GUADARRAMA, GLORIA TORRES,
4 ARNULFO RUIZ, and ROXANA AGUILAR. The term Named Plaintiffs shall be used
5 synonymously with the term PAGA Representatives.

6 N. **Net Settlement Amount.** The term "Net Settlement Amount," as used herein,
7 means the Settlement Amount minus any award of attorneys' fees and litigation costs,
8 Administrative Costs, enhancement awards to Named Plaintiffs, and the LWDA Payment, and
9 as provided in Sections VI, IX(C), XI, and XII.

10 O. **Notice of Settlement.** The Notice of Settlement is the document attached hereto
11 as Exhibit "A."

12 P. **PAGA Group Members.** The PAGA Group Members are defined as all persons
13 who worked any regular hours for any Defendant as a non-exempt employee in the State of
14 California at any time within the PAGA Period.

15 Q. **PAGA List.** The term "PAGA List," as used herein, means a list of the PAGA
16 Group Members including their: (1) name; (2) last known home address; (3) number of pay
17 periods worked as a PAGA Group Member during the PAGA period; and (4) social security
18 number.

19 R. **PAGA Period.** The term "PAGA Period" or "Settlement Period" shall refer to the
20 time period from August 19, 2019, to the date of the approval hearing and the Court's order
21 therein, or in the alternative, an earlier date at Defendants' election in accordance with section
22 XVI herein.

23 S. **Parties.** The Term "Parties," as used herein, means Named Plaintiffs and
24 Defendants, collectively.

25 T. **Plaintiffs' Counsel.** The term "Plaintiffs' Counsel," as used herein, means
26 MACIAS RODRIGUEZ ADAMS LLP who are counsel for and acting on behalf of Named
27 Plaintiffs.

28 U. **Released Entities.** The term "Released Entities" or "Released Parties" shall refer

1 to Defendants, and any of their past, present, and future direct or indirect parents, subsidiaries,
2 predecessors, successors, affiliates, as well as each of its or their past, present, and future
3 officers, directors, employees, partners, members, shareholders, and agents, insurers, reinsurers,
4 attorneys, and any individual or entity which could be jointly liable with Defendants.

5 **V. Settlement Administrator.** The term "Settlement Administrator," as used
6 herein, means Phoenix Settlement Administrators, which will be responsible for the
7 administration of the Individual PAGA Payments and carry out the administration of this
8 Agreement pursuant to the Court's order.

9 **W. Settlement Amount.** The terms "Settlement Amount" or alternatively the
10 "Gross Settlement Fund," as used herein, mean a fund in the sum of Three Hundred Thousand
11 dollars and zero cents (\$300,000.00) which shall be paid by Defendants, and from which all
12 Individual PAGA Payments, Court approved attorneys' fees and litigation costs pursuant to
13 Section XI, Administrative Costs pursuant to Section VI, enhancement awards to Named
14 Plaintiffs pursuant to Section XII, and distribution to the LWDA pursuant to Section IX(C) shall
15 be paid, except as provided herein.

16 **II. BACKGROUND**

17 **A.** On May 7, 2020, Named Plaintiffs Maritza Evelyn Magana, Wendy Guadarrama,
18 and Gloria Torres submitted a letter to the LWDA alleging violations of wage and hour laws
19 including failure to pay all minimum wages, failure to pay all overtime wages, failure to provide
20 meal periods in accordance with the California Labor Code and/or applicable Wage Orders,
21 including any claims regarding failure to pay premium pay at the correct rate, failure to authorize
22 and permit rest periods in accordance with the applicable California Wage Orders or Labor
23 Code, failure to provide accurate wage statements, failure to timely pay final wages, failure to
24 maintain accurate payroll records, failure to provide payroll records, failure to timely pay wages
25 during employment, failure to reimburse business expenses, failure to correctly calculate the
26 regular rate of pay, and violation of California's Wage Theft Prevention Act.

27 **B.** On October 21, 2020, Named Plaintiffs Maritza Evelyn Magana, Wendy
28 Guadarrama, Gloria Torres, along with, Named Plaintiffs Arnulfo Ruiz and Roxana Aguilar

1 filed the Litigation alleging a single cause of action pursuant to Labor Code § 2699(f) for alleged
2 violations and civil penalties under Labor Code §§2699(f), 201, 202, 203, 204, 223, 225.5,
3 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802 as
4 well as the IWC Wage Order.

5 C. Following the filing of the Litigation, counsel for the Parties engaged in time
6 consuming written discovery and exchange of thousands of records relating to Aggrieved
7 Employees. Over the course of more than two years, the exchange of discovery included
8 timekeeping and payroll records of the PAGA Group; information and documentation
9 concerning the claims set forth in the Litigation, such as Defendants' employee handbooks and
10 policies and procedures regarding the payment of wages, separation pay, meal and rest breaks,
11 and time keeping; Named Plaintiffs' personnel and payroll records; information regarding the
12 number of putative PAGA Group members and the number of current versus former employees;
13 and the total workweeks and pay periods worked by the PAGA Group. Discovery also included
14 the deposition of one of the Named Plaintiffs. After engaging in significant formal discovery,
15 the Parties met and conferred with respect to the potential settlement of the Litigation. Pursuant
16 to these discussions, the Parties agreed to engage in private mediation and informally exchanged
17 additional documents and information.

18 D. Named Plaintiffs and Plaintiffs' Counsel have engaged in good faith, arms-length
19 negotiations. On October 3, 2022, the Parties participated in a full-day mediation before David
20 Lowe, a highly respected mediator who has significant experience in wage and hour collective
21 actions. After an arms-length negotiation facilitated by Mr. Lowe, the Parties were unable to
22 reach a resolution of this matter. However, the Parties continued settlement discussions through
23 the mediator first, and then directly with each other after the October mediation. In January of
24 2023, the Parties finalized a monetary agreement in principle and have now entered into a more
25 detailed, formalized Settlement Agreement for submission to the Court for Approval.

26 E. Plaintiffs' Counsel has conducted an investigation of the law and facts relating
27 to the claims asserted in the Litigation and has concluded, taking into account the sharply
28 contested issues involved, the expense and time necessary to pursue the Litigation through trial

1 and any appeals; the risks and costs of further prosecution of the Litigation; the risk of an adverse
2 outcome; the uncertainties of complex litigation; and the substantial benefits to be received by
3 the Named Plaintiffs and the members of the PAGA Group pursuant to this Agreement, that a
4 settlement with Defendants on the terms and conditions set forth herein is fair, reasonable,
5 adequate, and in the best interests of the PAGA Group. Named Plaintiffs, on their own behalf
6 and as representatives pursuant to PAGA, have agreed to settle the Litigation with Defendants
7 on the terms set forth herein.

8 F. Defendants have concluded that it is in their best interests to accept the terms of
9 this Agreement because of the substantial expense of defending against the Litigation, the length
10 of time necessary to resolve the issues presented herein, the inconvenience involved, and the
11 concomitant disruption to their business operations. Defendants deny each of the allegations and
12 claims asserted against them in the Litigation. However, Defendants nevertheless desire to settle
13 the Litigation for the purpose of avoiding the burden, expense, and uncertainty of continuing
14 litigation and for the purpose of putting to rest the controversies engendered by the Litigation.

15 G. This Agreement is intended to, and does, effectuate the full, final, and complete
16 resolution of all allegations and claims that were asserted, or could have been asserted, in the
17 Litigation by Named Plaintiffs.

18 **III. JURISDICTION**

19 The Court has jurisdiction over the Parties and the subject matter of this Litigation. The
20 Litigation includes claims that, while Defendants deny them in their entirety, would, if proven,
21 authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted
22 Approval of this Agreement, pursuant to California Code of Civil Procedure Section 664.6, the
23 Court shall retain jurisdiction of this action solely for the purpose of interpreting, implementing,
24 and enforcing this Agreement consistent with the terms set forth herein. Further, the Parties and
25 their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing,
26 and enforcing this Agreement and all orders and judgments entered in connection therewith.

27 **IV. STATEMENT OF NO ADMISSION**

28 A. Defendants deny liability to Named Plaintiffs and to the PAGA Group upon any

1 claim or cause of action. This Agreement does not constitute, and is not intended to constitute,
2 an admission by Defendants as to the merits, validity, or accuracy of any of the allegations or
3 claims made against it in the Litigation.

4 **B.** Nothing in this Agreement, nor any action taken in implementation thereof, nor
5 any statements, discussions, or communications, nor any materials prepared, exchanged, issued,
6 or used during the course of the negotiations leading to this Agreement, is intended by the Parties
7 to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible
8 in any way in this case or any other judicial, arbitral, administrative, investigative, or other forum
9 or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance,
10 regulation, rule, or executive order, or any obligation or duty at law or in equity. The Parties
11 themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in this
12 case or any other judicial, arbitral, administrative, investigative, or other forum or proceeding,
13 as purported evidence of any violation of any federal, state, or local law, statute, ordinance,
14 regulation, rule, or executive order, or any obligation or duty at law or in equity, or for any other
15 purpose. Notwithstanding the foregoing, this Agreement may be used in any proceeding before
16 the Court that has as its purpose the interpretation, implementation, or enforcement of this
17 Agreement or any orders or judgments of the Court entered in connection with this Agreement.

18 **C.** None of the documents produced or created in the Litigation or in the process of
19 seeking approval of this Agreement constitute, and they are not intended to constitute, an
20 admission by Defendants of any violation of any federal, state, or local law, statute, ordinance,
21 regulation, rule, or executive order, or any obligation or duty at law or in equity.

22 **D.** Nothing in this Agreement will be construed as an admission or
23 acknowledgement of any kind that any group should or would be given collective treatment in
24 the Litigation or in any other action or proceeding. Further, neither this Agreement nor the
25 Court's actions with regard to this Agreement will be admissible in any court or other tribunal
26 regarding the propriety of collective treatment. In the event that this Agreement is not approved
27 by the Court or any appellate court, is terminated, or otherwise fails to be enforceable, Named
28 Plaintiffs will not be deemed to have waived, limited, or affected in any way any claims, rights,

1 or remedies in the Litigation, and Defendants will not be deemed to have waived, limited, or
2 affected in any way any of their objections or defenses in the Litigation.

3 **V. RELEASE, DISMISSAL, AND CONFIDENTIALITY**

4 **A. Release as to PAGA Claims.**

5 Upon Approval by the Court of this Settlement, Named Plaintiffs, individually, and/or
6 as representatives of the State of California, and the State of California will release any and all
7 claims and causes of action, known or unknown, contingent or accrued, against the Released
8 Entities, arising out of the facts and claims asserted in the Litigation, any PAGA letters and
9 amended PAGA letters sent to the LWDA by Named Plaintiffs during or prior to the Litigation,
10 and all claims which could have been alleged under the same or similar facts, allegations and/or
11 claims pleaded in the Litigation, against the Released Parties, for work performed during the
12 PAGA Period, including the following:

- 13 a. for civil penalties under the Private Attorney General Act of 2004 Cal. Lab.
14 Code § 2698 for claims based upon the facts alleged, for violations of the
15 California Labor Code and California Industrial Welfare Commission Wage
16 Orders, specifically California Labor Code Sections 201, 201.3, 202, 203, 204
17 *et seq.*, 207, 208, 210, 216, 218, 218.5, 218.6, 221, 223, 225.5, 226,
18 subdivision (a) of Section 226, Sections 226.3, 226.7, 510, 512, subdivision
19 (a) of Section 512, Sections 515, 558, subdivision (a)(1) of Section 558,
20 subdivision (a)(2) of Section 558, Section 1174, subdivision (d) of Section
21 1174, Sections 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2698, 2699,
22 2699(f)(2), 2699.3(a)(2), 2699.3(a)(2)(C), 2699.5, 2800, 2802, California's
23 Wage Theft Prevention Act, as well as IWC Wage Orders, including, but not
24 limited to, Wage Order 5;
- 25 b. Any claims predicated on the same or similar facts and/or claims alleged in
26 the Litigation and/or any PAGA letter or amended PAGA letter sent to the
27 LWDA by Named Plaintiffs during the pendency or prior to the Litigation and
28

incorporated therein;

c. and any other penalties which could be asserted based on the allegations alleged against Defendants in Plaintiffs' LWDA letter and the Litigation.

d. The claims set forth in subparagraphs herein and immediately above shall be collectively referred to as the "Released Claims."

In addition to the Released Claims, in consideration for the enhancement awards being paid to Plaintiffs Yerenia Guadarrama, Gloria Torres, and Arnulfo Ruiz, Ms. Guadarrama, Ms. Torres, and Mr. Ruiz, upon the Approval by the Court of this Settlement, hereby fully and finally release and discharge the Released Parties from all known and unknown claims Ms. Guadarrama, Ms. Torres, and Mr. Ruiz have or may have against the Released Parties, of every nature and description whatsoever, up to the date of the Court's final approval of this Settlement, in addition to the Released Claims described in the preceding paragraph. This general release of claims includes any and all known or unknown contract, tort, statutory, common law, constitutional, discrimination, public policy, retaliation, wrongful discharge and other claims of any type whatsoever, to the fullest extent such claims are releasable by law, arising out of Ms. Guadarrama's, Ms. Torres', and Mr. Ruiz' employment with Defendants, the termination of their employment, and their other dealings with the Defendants and the Released Parties. As to Ms. Guadarrama's, Ms. Torres', and Mr. Ruiz' Released Claims, each of them, understanding the significance of this waiver, waive all rights and benefits afforded by Section 1542 of the Civil Code of the State of California, which states:

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

B. Publicity.

The Named Plaintiffs agree that they have not and will not publish this Agreement. By way of this Agreement, Named Plaintiffs direct their counsel not to issue any press releases or press statements regarding the Settlement, identify Defendants or Defense Counsel by name in

1 any media, or have any communications with the press or media about the Lawsuit or the
2 Settlement. However, nothing in the provision shall be construed from as preventing the Parties
3 from taking following actions: (a) Named Plaintiffs' Counsel shall be allowed to refer to the
4 Litigation and this Settlement Agreement in other litigations to support their adequacy as
5 attorneys for a putative class or PAGA group or to justify an award of attorneys' fees; (b) the
6 Parties shall have the right to disclose this Settlement Agreement as may be required under
7 federal or state tax and/or securities laws or under Generally Accepted Accounting Principles;
8 (c) the Parties shall have the right to disclose the Settlement Agreement to third-parties without,
9 directly or indirectly, identifying the case name, case number, or names of any of the Parties or
10 Released Entities; (d) the Parties may refer to the Settlement Agreement, describe its terms, and
11 file the settlement agreement with the Court, the LWDA, and the Settlement Administrator in
12 connection with any proceedings which are reasonably necessary to obtain Approval of the
13 Settlement; and (e) the Parties or their representatives may communicate with accountants or
14 legal advisors regarding the Settlement Agreement. This paragraph also shall not be construed
15 to restrict Plaintiffs' Counsel's communications with Aggrieved Employees in accordance with
16 Plaintiffs' Counsel's ethical obligations owed to Aggrieved Employees.

17 **C. Parties Right to Terminate.**

18 Named Plaintiffs or Defendants may terminate this Settlement if after submitting the
19 Settlement Agreement for approval to the Court, the Court declines to enter an order approving
20 the PAGA settlement or judgment in substantially the form submitted by the Parties or if the
21 Settlement Agreement, as agreed, does not become final because of appellate court action. If
22 the Court requests non-material changes to the Settlement Agreement, the Parties will cooperate
23 in good faith to make such changes and to seek approval of an amended Settlement Agreement,
24 which shall not be grounds for termination of the Settlement. The terminating Party shall give
25 to the other party (through their counsel) written notice of its decision to terminate no later than
26 fourteen (14) calendar days after receiving notice that one of the enumerated events has
27 occurred. Termination shall have the following effects:

28 a. The Settlement Agreement shall be terminated and shall have no force or

effect, and no Party shall be bound by any of its terms.

b. In the event the Settlement Agreement is terminated, Defendants shall have no obligation to make any payments to any party, PAGA Member or attorney, except to the extent that the Settlement Administrator has incurred costs, in which case the Party electing to terminate the Settlement Agreement shall pay all costs incurred by the Settlement Administrator through the date of termination.

c. Any Approval Order and Judgment shall be vacated.

d. The stipulation of settlement and all negotiations, statements and proceedings relating thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be restored to their respective positions prior to the settlement.

e. Except as otherwise discoverable, neither this Settlement Agreement nor any ancillary documents, actions, statements or filings in furtherance of settlement (including all matters associated with the mediation) shall be admissible or offered into evidence in the Litigation, or any other action for any purpose whatsoever.

VI. SETTLEMENT ADMINISTRATOR

Named Plaintiffs and Defendants, through their respective counsel, have selected Phoenix Settlement Administrators as the Settlement Administrator to administer the Settlement Agreement, which includes but is not limited to, distributing and responding to inquiries about the Notice of Settlement and calculating all amounts to be paid from the Net Settlement Fund. Charges and expenses of the Settlement Administrator, estimated to be Seven Thousand Five Hundred Dollars (\$7,500.00), will be paid from the Settlement Amount. Any charges and expenses of the Settlement Administrator greater than the allocated Seven Thousand Five Hundred Dollars (\$7,500.00) will come from the Settlement Amount. If the actual Settlement Administrator fees are less than the Parties' estimation, the difference between the actual and estimated Settlement Administrator fees will be included in the Net Settlement Amount.

VII. NOTICE

A. Named Plaintiffs and Defendants, through their respective attorneys, have jointly prepared a Notice of Settlement, in the form attached hereto as Exhibit "A" which in substance will be provided to the members of the PAGA Group as follows:

(1) No later than twenty (20) calendar days after the Effective Date, Defendants will provide to the Settlement Administrator the PAGA List.

(2) The Settlement Administrator shall run all the addresses provided through the United States Postal Service NCOA database (which provides updated addresses for any individual who has moved in the previous four years who has notified the U.S. Postal Service of a forwarding address) to obtain the most currently available address information.

(3) Within thirty (30) calendar days after the Settlement Administrator's receipt of the PAGA List, the Settlement Administrator will mail the Notice of Settlement together with the corresponding Individual PAGA Payment to all PAGA Group members by first-class United States mail, postage prepaid, with directions to the Postmaster to forward the Notice and return all undeliverable Notices to the Settlement Administrator. For each Notice of Settlement and Individual PAGA Payment that is returned as undeliverable, the Settlement Administrator shall promptly attempt to locate the PAGA Group Member by performing an additional skip trace and shall re-mail the Notice of Settlement and Individual PAGA Payment check no later than ten (10) calendar days following receipt of the undeliverable Notice of Settlement.

(4) The Notice of Settlement will be provided in English and Spanish.

VIII. MOTION FOR PAGA SETTLEMENT APPROVAL AND JUDGMENT

Upon execution of this Settlement Agreement, Plaintiffs shall apply to the Court for an entry of Order and Judgment:

- a. Approving Plaintiffs' Counsel's request for attorneys' fees and costs;
- b. Approving Plaintiffs' Counsel's request for enhancement to the Named Plaintiffs;
- c. Approving Phoenix Settlement Administrators, as the Settlement

Administrator and expenses for settlement administration;
d. Approving this Settlement Agreement and its terms, including but not limited to entering judgment fully and finally releasing and discharging the Released Parties as to all PAGA Members and the LWDA and forever barring and enjoining the assertion of the Released Claims as to all such PAGA Members and the LWDA, as detailed herein, including Section V, above.

IX. COMPUTATION AND DISTRIBUTION OF PAYMENTS

A. Distribution Formula.

(1) Members of the PAGA Group will receive the Individual PAGA payment as a lump sum payment in an amount determined by the Settlement Administrator in accordance with the provisions of this Agreement. There will be no claims process and no reversion.

(2) The Individual PAGA Payment will be determined by dividing the Net Settlement Amount by the total number of pay periods worked by all members of the PAGA Group during the Settlement Period (the "Pay Period Amount") and then multiplying the Pay Period Amount by the number of pay periods worked by the individual PAGA member.

B. Funding of the Settlement.

The funding of the Settlement Amount will be completed at one time with funds provided to and escrowed by the Settlement Administrator. The funds used for the Settlement Amount shall be paid to the Claims Administrator by Defendants within thirty (30) calendar days of the Effective Date. Once Defendants have deposited the Gross Settlement Amount with the Settlement Administrator, Defendants will be deemed to have satisfied all terms and conditions under this Agreement, shall be entitled to all protection afforded to Defendants under this Settlement Agreement, and shall have no further obligations under the terms of this Settlement Agreement regardless of what occurs with respect to those sums. Additionally, no Released Party shall have any further obligation or liability to the Plaintiffs or PAGA Group Members under this Settlement Agreement.

(1) If a check is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by

1 performing a skip trace search and, if another address is identified, shall mail the Individual
2 PAGA Payment check to the newly identified address. If the Settlement Administrator is unable
3 to obtain a valid mailing address through this process, the monies represented by the Individual
4 PAGA Payment check shall be turned over according to the below procedures.

5 (2) Individual PAGA Payment checks will specifically indicate that they are
6 void if not negotiated within one hundred eighty 180 days of their issuance. Any Individual
7 PAGA Payment checks that remain uncashed one hundred eighty (180) or more calendar days
8 after issuance by the Settlement Administrator shall be voided. The Settlement Administrator
9 will pay the entire amount of each PAGA Group member's uncashed Individual PAGA Payment
10 as *cy pres* to Second Harvest of Silicon Valley.

11 **C. Time for Distribution of the Enhancement Awards to Named Plaintiffs,**
12 **Attorneys' Fees, Costs, and LWDA Payment.**

13 The Settlement Administrator shall cause the Court approved enhancement awards to
14 Named Plaintiffs, attorneys' fees, litigation costs, and LWDA Payment to be paid at the same
15 time and manner as the Individual PAGA Payments to the PAGA Group.

16 **X. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN**

17 The amounts paid under this Agreement do not represent a modification of any
18 previously credited hours of service under any employee benefit plan, policy, or bonus program
19 sponsored by Defendants. Such amounts will not form the basis for additional contributions to,
20 benefits under, or any other monetary entitlement under, benefit plans (self-insured or not)
21 sponsored by Defendants, policies, or bonus programs. Any payments made under the terms of
22 this Settlement Agreement shall not be applied retroactively, currently, or on a going forward
23 basis as salary, earnings, wages, or any other form of compensation for the purposes of
24 Defendants' benefit plan, policy, or bonus program. Defendants retain the right to modify the
25 language of its benefit plans, policies, and bonus programs to effect this intent and to make clear
26 that any amounts paid pursuant to this Settlement Agreement are not for "hours worked," "hours
27 paid," "hours of service," or any similar measuring term as defined by applicable plans, policies,
28

1 and bonus programs for purpose of eligibility, vesting, benefit accrual, or any other purpose,
2 and that additional contributions or benefits are not required by this Settlement Agreement.

3 **XI. PLAINTIFFS' COUNSEL ATTORNEYS' FEES AND LITIGATION COSTS**

4 Defendants shall not oppose an application by Plaintiffs' Counsel to receive, and
5 Plaintiffs' Counsel shall not seek or receive, an amount in excess of One Hundred and Five
6 Thousand Dollars and Zero Cents (\$105,000.00) which represents 35% of the Settlement
7 Amount for all past and future attorneys' fees necessary to prosecute, settle, and administer the
8 Litigation and this Settlement Agreement. Additionally, Defendants shall not oppose an
9 application by Plaintiffs' Counsel to receive, and Plaintiffs' Counsel shall not seek or receive,
10 an amount in excess of Twelve Thousand Dollars (\$12,000.00), which represents all past and
11 future litigation costs and expenses necessary to prosecute, settle, and administer the Litigation
12 and this Settlement Agreement. Any attorneys' fees or litigation costs awarded to Plaintiffs'
13 Counsel by the Court shall be deducted from the Settlement Amount for the purpose of
14 determining the Net Settlement Amount. This amount shall include all attorneys' fees and
15 litigation costs and expenses for which Named Plaintiffs and Plaintiffs' Counsel could claim
16 under any legal theory whatsoever. Should the Court approve a lesser percentage or amount of
17 fees and/or litigation costs than the amount that Plaintiffs' Counsel ultimately seeks, then the
18 unapproved portion or portions shall revert to the Net Settlement Amount and will not constitute
19 grounds to terminate or void this Agreement.

20 **XII. ENHANCEMENT AWARDS TO NAMED PLAINTIFFS**

21 Defendants shall not oppose an application by Named Plaintiffs to receive, and Named
22 Plaintiffs shall not seek or receive, an amount in excess of Five Thousand Dollars (\$5,000.00)
23 each for Plaintiffs Yerenia Guadarrama, Gloria Torres, and Arnulfo Ruiz, and an amount in
24 excess of Two Thousand Five Hundred Dollars (\$2,500.00) each for Plaintiffs Maritza Evelyn
25 Magana and Roxana Aguilar (Twenty Thousand Dollars (\$20,000.00) total for all five Named
26 Plaintiffs) for their participation in and assistance with the Litigation. Plaintiffs Maritza Evelyn
27 Magana and Roxana Aguilar are the Plaintiffs in a separate lawsuit against Defendants, see
28 *Roxana Aguilar et al. vs Otoniel Dominguez et al.*, Case No. 21CV388699, which has been

1 litigated and resolved by separate defense counsel. Any enhancement awarded to Named
2 Plaintiffs by the Court shall be deducted from the Settlement Amount for the purpose of
3 determining the Net Settlement Amount and shall be reported on IRS Form 1099. If the Court
4 approves an enhancement award of less than Five Thousand Dollars (\$5,000.00) each for
5 Plaintiffs Yerenia Guadarrama, Gloria Torres, and Arnulfo Ruiz or less than Two Thousand Five
6 Hundred Dollars (\$2,500.00) to Plaintiffs Maritza Evelyn Magana and Roxana Aguilar, then the
7 unapproved portion or portions shall revert into the Net Settlement Amount.

8 **XIII. TAXATION AND ALLOCATION**

9 A. For withholding tax characterization purposes and payment of taxes, the Net
10 Settlement Amount shall be deemed and is allocated by the Parties as follows ("Net Settlement
11 Allocation"): 100% as penalties.

12 B. All PAGA Group members who cash their settlement check may receive an IRS
13 Form 1099 for their portion of the settlement, if deemed required by the Settlement
14 Administrator (in compliance with IRS guidelines).

15 C. Nothing in this Settlement is intended to constitute legal advice regarding
16 federal, state, and/or local tax obligations. The Parties make no representations as to the tax
17 treatment or legal effect of the payments called for hereunder, and Aggrieved Employees are
18 not relying on any statement or representation by the Parties, Plaintiffs' Counsel, or Defense
19 Counsel in this regard. Aggrieved Employees understand and agree that they will be responsible
20 for the payment of any employee taxes and penalties assessed on the payment described herein
21 and will hold the Parties, Plaintiffs' Counsel, and Defense Counsel free and harmless from and
22 against any claims, liabilities, costs, and expenses, including attorney's fees, resulting in any
23 way from personal tax treatment of the payments made pursuant to this Agreement. To the extent
24 that this Settlement or any of its attachments is interpreted to contain or constitute advice
25 regarding any state or federal tax issue, such advice is not intended or written to be used, and
26 cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue
27 Code. Neither the Parties, Plaintiffs' Counsel, nor Defense Counsel are responsible for any
28 Aggrieved Employee's tax obligations regarding the allocation of the settlement payments.

1 **XIV. COURT APPROVAL**

2 This Agreement is contingent upon Approval by the Court. Named Plaintiffs and
3 Defendants agree to take all steps as may be reasonably necessary to secure Approval of the
4 Settlement Agreement and, to the extent not inconsistent with the terms of this Agreement, will
5 not take any action adverse to each other in obtaining Court Approval of the Settlement
6 Agreement in all respects.

7 **XV. APPRAISAL AND CERTIFICATION BY THE SETTLEMENT**
8 **ADMINISTRATOR.**

9 The Settlement Administrator shall provide Plaintiffs' Counsel and Defense Counsel bi-
10 weekly updates on the distributions from the Settlement Amount. Upon completion of
11 administration of the Settlement, within ten (10) days, the Settlement Administrator shall
12 provide written certification of such completion to Plaintiffs' Counsel and Defense Counsel.
13 The Settlement Administrator shall also provide Defense Counsel within ten (10) days of
14 completion of administration of the Settlement a final accounting, including the names of payees
15 and Individual PAGA Payments.

16 **XVI. ESCALATOR CLAUSE**

17 In the event of an increase in pay periods of more than 10% from the original estimate of
18 fifteen thousand (15,000) pay periods worked by Aggrieved Employees during the PAGA Period,
19 (i.e., exceeds 16,500 pay periods), Defendants will either (a) increase the Gross Settlement Fund
20 by a pro-rata percent equal to the number of pay periods in excess of sixteen thousand, five
21 hundred (16,500) workweeks (e.g., if the numbers increase by 11%, the Gross Settlement Fund
22 shall increase by 1%), or (b) elect to set the end date for the PAGA Period on the date when the
23 total pay periods for the PAGA Period would be sixteen thousand, five hundred (16,500).

24 **XVII. MISCELLANEOUS PROVISIONS**

25 **A. Stay of Litigation.**

26 The Parties agree that upon the execution of this Agreement the litigation shall be stayed,
27 except to effectuate the terms of this Agreement. The Parties further agree that upon the signing
28 of this Agreement, pursuant to Code of Civil Procedure § 583.330, the date to bring a case to

trial under Code of Civil Procedure § 583.310 is extended for the entire period of this settlement process.

B. Interpretation of This Agreement.

(1) This Agreement constitutes the entire agreement between Named Plaintiffs and Defendants. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other written or oral representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary or contradict its terms. In entering into this Agreement, the Parties agree that this Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and enforced under the laws of the State of California, both in its procedural and substantive aspects, without regard to its conflict of law provisions. Any claim arising out of or relating to this Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior Court of the State of California for the County of Santa Clara, and Named Plaintiffs and Defendants hereby consent to the personal jurisdiction of the Court over them solely in connection therewith. The foregoing is only limited to disputes concerning this Agreement and in no way limits or negates the enforceability and effect of the underlying arbitration agreements signed by employees of Defendants, specifically including, but not limited to, Named Plaintiffs and/or PAGA Group Members, obligating them to arbitrate any and all claims on an individual (and not on a class, collective, or representative) basis.

(2) Named Plaintiffs, on their own behalf and on behalf of the PAGA Group, and Defendants participated in the negotiation and drafting of this Agreement and had available to them the advice and assistance of independent counsel. As such, neither Named Plaintiffs nor Defendants may claim that any ambiguity in this Agreement should be construed against the other.

(3) The terms and conditions of this Agreement constitute the exclusive and final understanding and expression of all agreements between Named Plaintiffs and Defendants with respect to the Settlement Agreement. This Agreement may be modified only by a writing signed by counsel for all Parties or their successors-in-interest.

1 **C. Res Judicata**

2 Named Plaintiffs agree that the Released Parties can assert this Settlement Agreement
3 and the Order of Approval and Judgment as a defense to any future claims for penalties brought
4 by the LWDA or any claims brought under PAGA on behalf of the LWDA for any Released
5 Claims alleged to have occurred during the PAGA Period. The Parties intend this Settlement
6 Agreement and the resulting judgment to have claim preclusive effect, issue preclusive effect,
7 estoppel effect, and to otherwise bar a representative action to the fullest extent permissible under
8 applicable law if the LWDA or any allegedly aggrieved employee were to bring a subsequent
9 claim on behalf of the LWDA for any act or omission based on the same factual predicates as the
10 Litigation and alleged to have occurred during the PAGA Period.

11 **D. Enforcement Action**

12 In the event that one more of the Parties institutes any legal action or other proceeding
13 against any other Party or Parties to enforce the provisions of this Agreement or to declare rights
14 and/or obligations under this Agreement, the successful Party or Parties will be entitled to recover
15 from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert
16 witness fees incurred in connection with any enforcement actions.

17 **E. Captions**

18 The captions and headings in this Agreement are inserted for the reader's convenience,
19 and in no way define, limit, construe, or describe the scope or intent of the provisions of this
20 Agreement.

21 **F. Singular and Plural**

22 Words used in this Agreement in the singular, where the context so permits, shall be
23 deemed to include the plural and vice versa. The definitions of words in the singular herein shall
24 apply to such words when used in the plural where the context so permits and vice versa.

25 **G. Further Cooperation.**

26 Named Plaintiffs, Defendants, and their respective counsel shall proceed diligently to
27 prepare and execute all documents, to seek Approval from the Court, and to do all things
28 reasonably necessary or convenient to consummate this Agreement as expeditiously as possible.

H. Confidentiality of Documents.

Named Plaintiffs, and the Settlement Administrator, shall maintain the confidentiality of all non-public documents, deposition transcripts, declarations and other information obtained in the lawsuit, unless necessary for appeal or if such documents are ordered to be disclosed by the Judge or by a subpoena.

I. Counterparts.

This Agreement may be executed in one or more actual or non-original counterparts, all of which will be considered one and the same instrument and all of which will be considered duplicate originals. This Agreement may be signed electronically or by facsimile, and an electronic or facsimile signature is deemed valid and binding and triggers all rights and obligations under this Agreement.

J. Authority.

Each individual signing below warrants that they have the authority to execute this Agreement on behalf of the Party for whom or which that individual signs.

K. No Third-Party Beneficiaries.

Named Plaintiffs, members of the PAGA Group, the State of California, Defendants, and Released Entities are direct beneficiaries of this Agreement, but there are no third-party beneficiaries.

L. Force Majeure.

The failure of any Party to perform any of its obligations hereunder shall not subject such Party to any liability or remedy for damages, or otherwise, where such failure is occasioned in whole or in part by acts of God, fires, accidents, earthquakes, other natural disasters, a pandemic or epidemic, explosions, floods, wars, interruptions or delays in transportation, power outages, labor disputes or shortages, shortages of material or supplies, governmental laws, restrictions, rules or regulations, sabotage, terrorist acts, acts or failures to act of any third-parties, or any other similar or different circumstances or causes beyond the reasonable control of such Party.

1 **M. Deadlines Falling on Weekends or Holidays.**

2 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,
3 or legal/court holiday, that deadline shall be continued until the following business day.

4 **N. Severability.**

5 In the event that any one or more of the provisions contained in this Agreement shall for
6 any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
7 unenforceability shall in no way effect any other provision if Defense Counsel and Plaintiffs'
8 Counsel, on behalf of the Parties and the PAGA Group, mutually elect in writing to proceed as
9 if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

10 **O. Defendants' Fees and Costs**

11 All of Defendants' own legal fees, costs and expenses incurred in this Action shall be
12 borne by Defendants.

13 **[SIGNATURE PAGES TO FOLLOW]**

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16
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18 

1 APPROVED AS TO CONTENT

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3 DATE: 4/20/2023

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MARITZA EVELYN MAGANA

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6 DATE: 4/20/2023

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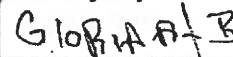


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YERENIA GUADARRAMA

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9 DATE: 4/20/2023

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GLORIA TORRES

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12 DATE: 4-20-2023



ARNULFO RUIZ

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15 DATE: 4/20/2023

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ROXANA AGUILAR

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18 DATE: 5-3-2023



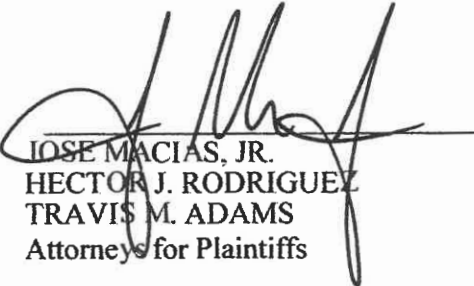
By:

For: OREN'S HUMMUS CATERING
LLC, OREN'S HUMMUS CUPERTINO
LLC, OREN'S HUMMUS MOUNTAIN
VIEW LLC, OREN'S HUMMUS SF1
LLC, OREN'S HUMMUS, LLC, OREN'S
HUMMUS LOS GATOS LLC, OREN'S
HUMMUS EXPRESS LLC

1 APPROVED AS TO FORM

2
3 DATE: 4/20/23,

MACIAS RODRIGUEZ ADAMS LLP

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5 By: 
6 JOSE MACIAS, JR.
7 HECTOR J. RODRIGUEZ
8 TRAVIS M. ADAMS
9 Attorneys for Plaintiffs

10
11 DATE: 5/8/2023,

LITTLER MENDELSON PC

12 By: 
13 ELISA R. NADEAU
14 DON H. NGUYEN
15 MATTHEW D. LERNER
16 Attorneys for Defendants
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