

Edwin Aiwarzian (SBN 232943)
Arby Aiwarzian (SBN 269827)
Joanna Ghosh (SBN 272479)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiff Albert Ebuén and
Proposed Plaintiff Maricel J. Santa Ana

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

ALBERT EBUÉN, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

RED RIBBON BAKESHOP INC., a
California corporation; and DOES 1 through
100,

Defendants.

Case No.: BC715064

Honorable Kenneth R. Freeman
Department SSC14

CLASS ACTION

**DECLARATION OF EDWIN AIWAZIAN
IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

[Plaintiffs' Motion for Preliminary Approval of
Class Action Settlement; Declarations of
Proposed Class Representatives (Albert Ebuén
and Maricel J. Santa Ana); and [Proposed]
Order filed concurrently herewith]

Date: January 26, 2021
Time: 10:00 a.m.
Department: SSC14

Complaint Filed: July 26, 2018
Trial Date: None Set

DECLARATION OF EDWIN AIWAZIAN

I, Edwin Aiwarzian, hereby declare as follows:

1. I am an attorney licensed to practice law in the State of California. I am a member of Lawyers for Justice, PC, attorneys of record for Plaintiff Albert Ebuén and Proposed Plaintiff Maricel J. Santa Ana (together, "Plaintiffs"). The facts set forth in this declaration are within my personal knowledge or based on information and belief, and if called as a witness, I could and would competently testify thereto.

EDUCATION

2. In May of 2004, I graduated from *Pepperdine University School of Law* with a Juris Doctor degree. I have extensive formal training in dispute resolution and negotiation from the Straus Institute for Dispute Resolution as part of its Masters in Dispute Resolution degree program. In addition, I have previously served as a *pro bono* mediator for the Los Angeles Superior Court. In October of 2000, I obtained a Litigation Paralegal Certificate from the *UCLA Extension Program*. During the summer of 2000, I studied Legal Writing at *Harvard University*. In April of 1999, I obtained a Bachelor of Arts degree in Communication with a concentration in Natural Sciences from *Pepperdine University*.

JUDICIAL EXTERNSHIPS

3. From approximately September 2002 to approximately December 2002, I served as a Judicial Extern to the Honorable Kim McLane Wardlaw of the *United States Court of Appeals for the Ninth Circuit*. From approximately June 2002 to approximately August 2002, I served as a Judicial Extern to the Honorable Earl Johnson, Jr. of the *California Court of Appeal for the Second Appellate District*.

LITIGATION AND CLASS ACTION EXPERIENCE

4. In December of 2004, I obtained a license to practice law from the California State Bar. From approximately December 2004 to approximately August 2008, I was employed by the law firm of *Girardi & Keese*.

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1 5. At *Girardi & Keese*, my practice focused on class actions and other complex cases
2 involving toxic torts and products liability. In addition, I gained substantial experience on cases
3 involving insurance bad faith, premises liability, and medical negligence. While employed by
4 *Girardi & Keese*, I argued approximately 100 motions, took or defended approximately 150
5 depositions, and prepared dozens of expert witnesses for deposition or trial.

6 6. Since its inception, in or around October of 2008, *Lawyers for Justice, PC* has almost
7 exclusively focused on the prosecution of consumer and employment class actions, involving
8 wage-and-hour claims, race discrimination, unfair business practices or consumer fraud.
9 Currently, we are the attorneys of record in over a dozen employment-related putative class actions
10 in both state and federal courts in the State of California. Our firm has successfully litigated cases
11 involving the executive, administrative, and other overtime exemptions to the State of California
12 and federal overtime compensation requirements. During this relatively short time, in association
13 with other law firms, we have recovered millions of dollars on behalf of thousands of individuals
14 in California.

15 **EXAMPLES OF CLASS ACTION RESULTS**

16 7. What follows are just a few examples of the type of results we have achieved on
17 behalf of our clients:

18 a) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
19 and-hour class and representative action against a major property management company involving
20 allegations of misclassification of various “manager” positions. On September 20, 2010, the court
21 granted final approval of the class and representative action settlement. The Los Angeles County
22 Superior Court Case Number is BC400414.

23 b) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
24 and-hour class action against a national retailer involving allegations of misclassification of the
25 “Assistant Store Manager” position. On October 28, 2010, the court granted final approval of the
26 class action settlement. The Los Angeles County Superior Court Case Number is BC413498.

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1 c) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
2 and-hour class and representative action against a national property management company
3 involving allegations of misclassification of the “Property Manager” position. On May 23, 2012,
4 the court granted final approval of the class and representative action settlement. The Los Angeles
5 County Superior Court Case Number is BC430918.

6 d) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
7 and-hour class action against a national retailer involving allegations of misclassification of the
8 “Store Manager” position. On June 10, 2011, the court granted plaintiffs’ motion for class
9 certification. On August 26, 2013, the court granted final approval of the class action settlement.
10 The Los Angeles County Superior Court Case Number is BC424012.

11 e) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
12 and-hour class and representative action against a bank, involving allegations of misclassification
13 of the “Assistant Branch Manager” position. On August 27, 2013, the court granted final approval
14 of the class and representative action settlement. The Kern County Superior Court Case Number
15 is S-1500-CV-273194-LHB.

16 f) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
17 and-hour class and representative action against a national wholesale distributor of plumbing and
18 builder supplies, involving allegations of misclassification of multiple salaried “manager”
19 positions. On May 22, 2014, the court granted final approval of the class and representative action
20 settlement. The Sacramento County Superior Court Case Number is 34-2012-00136285.

21 g) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
22 and-hour class action involving allegations of misclassification of the “Operations Manager”
23 position. On September 16, 2014, the court granted plaintiffs’ motion for class certification. The
24 Los Angeles County Superior Court Case Number is BC478769.

25 h) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
26 and-hour class and representative action against a national retailer of household items, on behalf
27 of hourly-paid or non-exempt employees. On May 27, 2015, the court granted final approval of
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1 the class and representative action settlement. The San Francisco County Superior Court Case
2 Number is CGC-13-532344.

3 i) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
4 and-hour class action involving allegations of misclassification of the salaried residential
5 “Property Manager” position. On September 17, 2015, the court granted plaintiffs’ motion for
6 class certification. The Los Angeles County Superior Court Case Number is BC474784.

7 j) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
8 and-hour class and representative action against a national retailer of upscale hardware and home
9 furnishings, on behalf of non-exempt employees. On April 28, 2016, the court granted final
10 approval of the class and representative action settlement. The Los Angeles County Superior
11 Court Case Number is JCCP4794.

12 k) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
13 and-hour class and representative action against a national retailer of apparel and fashion
14 accessories, on behalf of non-exempt employees. On August 5, 2016, the court granted final
15 approval of the class and representative action settlement. The Los Angeles County Superior
16 Court Case Number is BC488069.

17 l) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
18 and-hour class action against a national retailer of apparel, accessories, and home products,
19 involving allegations of misclassification of the “Department Manager” position. On August 12,
20 2016, the court granted plaintiffs’ motion for class certification in part and certified a class. The
21 Alameda County Superior Court Case Number is RG13680477.

22 m) Our firm represented the plaintiff in a representative action under the Private
23 Attorneys General Act, against a real estate and property management company, on behalf of non-
24 exempt employees. On November 4, 2016, the Court granted approval of the settlement. The
25 Orange County Superior Court Case Number is 30-2015-00775439-CU-OE-CXC.

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1 n) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
2 and-hour class action against a full-service bank, on behalf of non-exempt employees. On
3 November 18, 2016, the court granted final approval of the class action settlement. The San
4 Francisco County Superior Court Case Number is CJC-13-004839.

5 o) Our firm represented the plaintiffs in a wage-and-hour class and
6 representative action against a foodservice distributor, on behalf of non-exempt employees. On
7 January 26, 2017, the court granted final approval of the class and representative action settlement.
8 The San Bernardino County Superior Court Case Number is CIVDS1507260.

9 p) Our firm, on behalf of the plaintiff and respondent in a PAGA representative
10 action, successfully opposed in the trial court, and briefed and argued an appeal with respect to the
11 employer's motion to compel arbitration, which resulted in a published opinion by the California
12 Court of Appeal in favor of employees. *Roberto Betancourt v. Prudential Overall Supply*, 9
13 Cal.App.5th 439 (Cal. App. 4th Dist., Mar. 7, 2017), review denied, cert. denied (U.S. Supreme
14 Court Docket No. 17-254).

15 q) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
16 and-hour class and representative action against a consumer packaging company, on behalf of non-
17 exempt employees. On March 10, 2017, the court granted final approval of the class and
18 representative action settlement. The Los Angeles County Superior Court Case Number is
19 BC590429.

20 r) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
21 and-hour class action and representative action against a manufacturer of food service industry
22 supplies on behalf of non-exempt employees. On April 14, 2017, the court granted final approval
23 of the class and representative action settlement. The Orange County Superior Court Case Number
24 is 30-2015-00810013-CU-OE-CXC.

25 s) Our firm represented the plaintiff in a wage-and-hour class and
26 representative action against a property management company, on behalf of non-exempt
27 employees. On June 14, 2017, the court granted final approval of the class and representative
28 action settlement. The Los Angeles County Superior Court Case Number is BC586234.

1 t) Our firm represented the plaintiffs in a wage-and-hour class action and
2 representative action against a food company on behalf of non-exempt employees. On June 30,
3 2017, the court granted final approval of the class and representative action settlement. The
4 Sacramento County Superior Court Case Number is 34-2015-00175871.

5 u) Our firm represented the plaintiffs in a wage-and-hour class action and
6 representative action against a chocolate company on behalf of non-exempt employees. On July
7 19, 2017, the court granted final approval of the class and representative action settlement. The
8 Alameda County Superior Court Case Number is RG15764300.

9 v) Our firm, in association with co-counsel, represented the plaintiff in a wage-
10 and-hour class action against a container manufacturer, on behalf of non-exempt employees. On
11 October 15, 2018, the court granted the plaintiff's motion for class certification. The Tulare County
12 Superior Court Case Number is VCU264528.

13 w) Our firm represented the plaintiff in a wage-and-hour class action against a
14 parking company on behalf of non-exempt employees. On September 3, 2019, the court granted
15 the plaintiff's motion for class certification and certified a class. The Santa Clara County Superior
16 Court Case Number is 16CV292208 and the Judicial Council Coordination Proceeding Number is
17 JCCP 4886.

18 x) Our firm, in association with other counsel, on behalf of the plaintiff and
19 respondent in a PAGA representative action, successfully opposed in the trial court, and briefed
20 and argued an appeal with respect to the employer's motion to compel arbitration, resulting in a
21 notable decision from the California Supreme Court clarifying the law and finding, in part, that
22 employer arbitration agreements are unenforceable where they block a PAGA claim from
23 proceeding, *ZB, N.A. v. Superior Court*, 8 Cal.5th175 (2019).

24 y) Our firm represented the plaintiffs in a wage-and-hour class and
25 representative action against a bank on behalf of non-exempt employees. On September 27, 2019,
26 the court granted the plaintiffs' motion for class certification in part and certified a class. The
27 Alameda County Superior Court Case Number is RG15757606 and the Judicial Council
28 Coordination Proceeding Number is JCCP 4921.

1 z) Our firm represented the plaintiffs in a wage-and-hour class action and
2 representative action against a manufacturer of plastic containers on behalf of non-exempt
3 employees. On October 31, 2017, the court granted final approval of the class and representative
4 action settlement. The Los Angeles County Superior Court Case Number is BC577233.

5 aa) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
6 and-hour class action and representative action against a property management company on behalf
7 of hourly-paid and non-exempt employees. On January 4, 2018, the court entered an order granting
8 final approval of the class and representative action settlement. The Los Angeles County Superior
9 Court Case Number is JCCP 4819.

10 bb) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
11 and-hour class action and representative action against a global provider of flexible office space
12 solutions. On February 15, 2018, the court entered an order granting final approval of the class
13 and representative action settlement. The Los Angeles County Superior Court Case Number is
14 BC498401.

15 cc) Our firm represented the plaintiffs in a wage-and-hour class and
16 representative action against a behavioral health service provider on behalf of non-exempt
17 employees. On November 13, 2018, the court granted final approval of the class and
18 representative action settlement. The Alameda County Superior Court Case Number is
19 RG16811450.

20 dd) Our firm, in association with co-counsel, represented the plaintiff in a
21 representative action under the Private Attorneys General Act, against a global provider of
22 products and services to the energy industry, on behalf of hourly-paid and non-exempt employees.
23 On November 19, 2018, the Court granted approval of the settlement. The Kern County Superior
24 Court Case Number is S-1500-CV-280215-SDC.

25 ee) Our firm represented the plaintiffs in a wage-and-hour class and
26 representative action against a national retailer of apparel and fashion accessories, on behalf of
27 non-exempt employees. On October 9, 2019, the court granted the plaintiffs' motion for class
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1 certification in part and certified a class. The Sacramento County Superior Court Case Number is
2 34-2015-00175330-CU-OE-GDS.

3 ff) Our firm represented the plaintiff in a wage-and-hour class and
4 representative action against a medical equipment supplier on behalf of non-exempt employees.
5 On February 13, 2020, the court granted the plaintiff's motion for class certification and certified
6 a class. The San Bernardino County Superior Court Case Number is CIVDS1505744.

7 gg) Our firm, in association with other counsel, represented the plaintiff in a
8 wage-and-hour class and PAGA representative action against a large national drug testing
9 laboratory on behalf of non-exempt employees. On February 21, 2020, the court granted the
10 plaintiff's motion for class certification and certified a class. The San Diego County Superior
11 Court Case Number is 37-2018-00019611-CU-OE-CTL.

12 hh) Our firm represented the plaintiffs in a wage-and-hour class and
13 representative action against a national retailer of sportswear, footwear, and camping equipment
14 on behalf of non-exempt employees. On March 16, 2020, the court granted in part the plaintiff's
15 motion for class certification and certified a class. The Riverside County Superior Court Case
16 Number is RICJCCP4930.

17 PRELIMINARY APPROVAL

18 8. Marked and attached hereto as "**EXHIBIT 1**" is the Stipulation of Settlement
19 ("Settlement," "Agreement," or "Settlement Agreement") entered into by and between Plaintiff
20 Albert Ebuena and Proposed Plaintiff Maricel J. Santa Ana, individually and on behalf of all others
21 similarly situated and other aggrieved employees, on the one hand, and Defendant Red Ribbon
22 Bake Shop, Inc. ("Defendant"), on the other hand (collectively, the "Parties"). The Parties and
23 their counsel have approved the proposed Notice of Class Action Settlement ("Class Notice"),
24 which is attached to the Settlement Agreement as "Exhibit A" and respectfully request that the
25 Court approve it as well. The Parties have also drafted and agreed to the form and content of the
26 proposed First Amended Class Action Complaint for Damages and Enforcement Under the Private
27 Attorneys General Act, California Labor Code § 2698, Et Seq. ("First Amended Complaint"),
28 which is attached as "Exhibit A" to the [Proposed] Order Granting Approval of Class Action

1 Settlement, filed concurrently herewith. As part of the Settlement, the Parties agreed to amend the
2 complaint to, *inter alia*, add Proposed Plaintiff Santa Ana as a named plaintiff and a single cause
3 of action for recovery under PAGA. Class Counsel respectfully requests that the Court grant leave
4 to file the First Amended Complaint so that the terms of the Settlement Agreement and the intent
5 of the Parties may be effectuated.

6 9. Based on information provided by Defendant, the Class is estimated to consist of
7 approximately one-thousand four-hundred & seventy-seven (1,477) individuals.

8 10. The effectiveness of Lawyers for Justice, PC (“Class Counsel”) in prosecuting this
9 matter has translated into tangible monetary benefits for the Class Members in the following
10 respects: (1) Class Members recover over a reasonably short period of time as opposed to waiting
11 additional years for the same, or possibly worse, result; (2) a guaranteed result that compares
12 favorably with other similar class action settlements of this type given the strengths and
13 weaknesses of the case; and (3) significant savings in Class Counsel’s fees and/or costs that would
14 have only increased significantly had the case progressed through certification, trial, and/or
15 appeals.

16 11. Class Counsel has litigated the case since July 26, 2018, and was actively preparing
17 the matter for class certification and trial. The Parties have engaged in extensive settlement
18 negotiations and participated in a formal, full-day mediation conducted by Hon. Louis M.
19 Meisinger (Ret.), a well-respected mediator experienced in mediating complex labor and
20 employment matters. Prior to and during the mediation and settlement discussions, the Parties
21 exchanged class information and engaged in an extensive discussion regarding their evaluations
22 of the case and various aspects of the case, including but not limited to, the risks and delays of
23 further litigation, the risks to the Parties of proceeding with class certification and/or representative
24 adjudication, the law relating to off-the-clock theory, meal and rest periods, PAGA representative
25 actions, and wage-and-hour enforcement, as well as the evidence produced and analyzed, and the
26 possibility of appeals, among other things. During all settlement discussions, the Parties
27 conducted their negotiations at arm’s length in an adversarial position. Arriving at a settlement
28 that was acceptable to all Parties was not easy. Defendant and its counsel felt strongly about their

1 ability to prevail on the merits and at certification, and Plaintiffs and Class Counsel believed that
2 they would be able to obtain class certification and prevail at trial. After conducting investigations,
3 formal and informal discovery, and exchange of information, extensive settlement negotiations,
4 and with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited
5 for settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs and
6 risks to both sides that would attend further litigation. The Settlement is a fair, reasonable, and
7 adequate resolution of the Released Claims of Plaintiffs and Settlement Class Members, against
8 the Released Parties.

9 12. The Parties used the pre-mediation time to investigate the veracity, strength, and
10 scope of the claims, and Class Counsel was preparing the action for class certification and trial.
11 Prior to engaging in mediation, Plaintiffs conducted significant investigation and formal and
12 informal discovery regarding the facts of the case, including and not limited to, the exchange,
13 review, and analysis of thousands of pages of documents and data obtained from Defendant and
14 other sources. The volume of data and documents that Class Counsel reviewed and analyzed
15 included and was not limited to: employment records of Plaintiffs and other Class Members, a
16 detailed sampling of Class Members' time and pay data, class data, Meal and Rest Period Policies,
17 Meal Period Waiver, Second Meal Period Waiver, Meal & Rest Period Policy (with
18 Acknowledgment), Request for Manual Check, company policy acknowledgements (including
19 Acknowledgment of Receipt of Employee Handbook), and Defendant's operations and
20 employment practices, procedures, and policies, among other information and documents. Class
21 Counsel interviewed Plaintiffs and other Class Members to gather facts and to identify potential
22 witnesses. Class Counsel propounded multiple sets of formal written discovery requests onto
23 Defendant, reviewed Defendant's responses thereto, and noticed the depositions of Defendant's
24 Person Most Knowledgeable designees. Counsel for the Parties also met and conferred on
25 numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and the production
26 of documents and data prior to the mediation. Class Counsel also drafted pleadings and mediation
27 brief and prepared for and attended court proceedings, mediation, and settlement negotiations,
28 among other tasks.

1 13. Counsel for the Parties have also invested time researching and investigating the
2 applicable law, which is constantly evolving as it relates to certification, representative PAGA
3 claims, off-the-clock theory, meal and rest periods, wage-and-hour enforcement, Plaintiffs' claims
4 and damages, and Defendant's defenses thereto, as well as facts discovered. Based on our analysis,
5 I submit that the result achieved in this litigation is fair, adequate, and reasonable.

6 14. The Settlement provides for a Gross Settlement Amount of two million dollars
7 (\$2,000,000.00). The Net Settlement Amount is the Gross Settlement Amount less the following
8 amounts subject to approval by the Court: Attorneys' Fees and Litigation Costs to Class Counsel,
9 Enhancement Payments to Plaintiffs, Settlement Administration Costs to Settlement
10 Administrator, and LWDA Payment to the Labor and Workforce Development Agency
11 ("LWDA"). Assuming that the amounts allocated under the Settlement toward these payments
12 are awarded by the Court, the Net Settlement Amount is currently estimated to be nine hundred
13 seventy two thousand seven hundred fifty dollars (\$972,750.00). The Gross Settlement Amount
14 will be fully distributed in accordance with the terms of the Settlement and there is no reversion
15 to Defendant.

16 15. The Parties have agreed to retain Simpluris Class Action Settlement Administration
17 ("Simpluris" or "Settlement Administrator") to handle the notice and settlement administration.
18 The Parties respectfully request that the Court appoint Simpluris to handle these procedures and
19 serve as the Settlement Administrator. Defendant will provide Simpluris with a data list that
20 Defendant will compile from its records, which will include the names, last known addresses, and
21 Social Security numbers (in electronic format) of each Class Member, as well as the dates of
22 employment for and Workweeks worked by each Class Member ("Class List"), and Simpluris
23 will calculate each Settlement Class Member's estimated share of the Net Settlement Amount
24 ("Individual Settlement Payment"). Simpluris will also receive requests for exclusion from the
25 Settlement ("Requests for Exclusion"), objections to the Settlement ("Objections"), and disputes
26 regarding Workweeks ("Workweek Disputes"); provide necessary reports and declarations;
27 calculate, subtract, and transmit necessary taxes and withholdings; prepare and submit
28 informational and other tax filings and documents; issue and transmit all payments provided for

1 by the Settlement, including and not limited to, mailing Individual Settlement Payment checks to
2 the Settlement Class Members; and perform any other usual and customary duties for
3 administering a class action settlement. Settlement Administration Costs are currently estimated
4 not to exceed sixteen thousand dollars (\$16,000.00) and will be paid out of the Gross Settlement
5 Amount, subject to approval of the Court.

6 16. Based on investigation and information discovered, Class Counsel believes that
7 there is sufficient evidence to support the allegations made in the lawsuit, including the allegations
8 that Defendant, with respect to Plaintiffs and the Class Members, *inter alia*, failed to properly pay
9 overtime and minimum wages and associated premium pay, failed to provide compliant meal and
10 rest periods and to pay associated premium pay, failed to timely pay wages during employment
11 and upon termination of employment, failed to provide compliant wage statements, failed to
12 maintain requisite payroll records, and failed to reimburse necessary business expenses, and
13 thereby engaged in unfair business practices and conduct giving rise to penalties recoverable under
14 the Private Attorneys General Act of 2004 (California Labor Code sections 2698, *et seq.*).
15 Plaintiffs also asserted that Class Members were subject to the same or similar operations and
16 employment policies, practices, and procedures. Additionally, Plaintiffs asserted that Defendant's
17 recordkeeping practices with respect to Plaintiffs and the Class Members were substantially the
18 same during the time period at issue. As a result, Plaintiffs claim that the Class Members, were
19 uniformly not paid all of the compensation that was owed to them by Defendant since July 26,
20 2014. Thus, in Class Counsel's view, it is clear that the outcome of this litigation would be
21 determined by Defendant's uniform operations and employment practices, policies, and
22 procedures that Plaintiffs allege applied across its hourly-paid or non-exempt employees in
23 California during the Class Period.

24 17. Class Counsel is aware of the defenses and position of Defendant, but believes that
25 Plaintiffs could potentially obtain class certification despite many obstacles. Plaintiffs have also
26 taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties
27 and delays inherent in such litigation, including those involved in class certification and/or
28 representative adjudication. Plaintiffs further recognize the burdens of proof necessary to establish

1 liability for the claims asserted in the lawsuit, Defendant's defenses, and the difficulties in
2 establishing entitlement to monetary recovery. Plaintiffs have also considered the Parties'
3 settlement discussions, as well as the evaluations of the mediator, who is experienced and well-
4 regarded in complex labor and employment matters.

5 18. Defendant, on the other hand, denied and continues to deny any liability and
6 wrongdoing of any kind associated with the claims alleged in the lawsuit, and further denies that
7 the lawsuit is appropriate for class treatment or representative adjudication for any purpose other
8 than this Settlement. Defendant believes that it would ultimately succeed in the matter. Both sides
9 have also had the opportunity to interview witnesses and review documents and information
10 relating to Plaintiffs' and Class Members' employment with Defendant, and Defendant's
11 operations and employment policies, practices, and procedures. The Parties also reviewed and
12 analyzed thousands of pages of documents and data, including but not limited to a detailed
13 sampling of Class Members' time and pay data, to determine the potential value and strength of
14 the claims. The available information enabled Class Counsel to estimate the potential claims of
15 the Class and prepare damages/valuation models. Accordingly, the Parties have conducted
16 adequate investigation and discovery to be sufficiently informed of the nature and extent of the
17 Class Members' claims, and to enable both sides to fully evaluate the Settlement for its fairness,
18 adequacy, and reasonableness. The Parties have agreed that the matter is well-suited for settlement
19 given the legal issues relating to Plaintiffs' principal claims, as well as the costs and risks to both
20 sides that would attend further litigation. The Settlement takes into account the strengths and
21 weaknesses of each side's position and the uncertainty of how the case might have concluded at
22 certification, trial, and/or appeals.

23 19. The Settlement Agreement provides for Class Counsel to apply for Attorneys' Fees
24 in an amount of up to forty percent (40%) of the Gross Settlement Amount
25 (i.e., \$800,000.00) and expenses and costs in an amount not to exceed sixty-five thousand dollars
26 (\$65,000.00), which will be paid out of the Gross Settlement Amount, subject to approval by the
27 Court. It should be noted that Class Counsel has borne all of the risks and costs of litigation and
28 will not receive any compensation until recovery is obtained.

20. The Settlement Agreement provides for payments of up to ten thousand dollars (\$10,000.00) to Plaintiff Albert Ebuena and five thousand dollars (\$5,000.00) to Proposed Plaintiff Maricel J. Santa Ana as Enhancement Payments (for a combined total of \$15,000), to be paid out of the Gross Settlement Amount subject to approval by the Court. Plaintiffs spent considerable time and effort to produce relevant documents and past employment records and to provide the facts and evidence necessary to attempt to prove the allegations. Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain information that would benefit the Class. Accordingly, it is appropriate and just for Plaintiffs to each receive an Enhancement Payment, in addition to their Individual Settlement Payments, for their services on behalf of the Class.

ESTIMATE OF THE VALUE OF THE CLAIMS

21. Plaintiffs' action alleges that Defendant has violated the California Labor Code by engaging in a uniform policy and systematic scheme of wage abuse against Plaintiffs and the putative class members, including *inter alia*, failing to properly compensate overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages and associated waiting-time penalties, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses. Plaintiffs further contend that Defendant thereby engaged in unfair business practices (under the California Business and Professions Code) and owe penalties under the PAGA.

22. Based on data provided by Defendant, the total number of putative class members during the period from July 26, 2014 to August 21, 2019 ("relevant time period") was estimated to be one thousand four hundred and three (1,403) individuals who worked a total of 100,263 workweeks with an average hourly rate of pay of \$10.82.

23. Plaintiffs contended that Defendant's uniform policies, practices, and procedures required putative class members to perform work during meal and rest periods and before clocking-in and after clocking-out. Plaintiffs further contended that due to Defendant's strict attendance policy and policy prohibiting employees from clocking-in before their scheduled shift

1 start times and clocking out after their scheduled shift end times, putative class members were
2 required to perform work during meal periods and before clocking-in and after clocking-out (e.g.,
3 to don and doff uniforms and PPE, assisting customers and co-workers, and responding to and
4 receiving instructions from supervisors). Plaintiffs also contended that meal and rest periods were
5 regularly interrupted, short, missed, and/or late due to understaffing and in order to complete time-
6 sensitive work assignments, and that Defendant failed to properly pay premiums for all non-
7 compliant meal and rest periods. Further, Plaintiffs and other putative class members were
8 required to remain on premises during their rest periods. Additionally, Plaintiffs alleged that
9 Defendant intentionally and willfully failed to pay Plaintiffs and putative class members all wages
10 due to them while they were employed by Defendant, within the time period permissible under
11 California law, and upon termination, within the time period permissible under California law,
12 thereby triggering waiting-time penalties under California Labor Code section 203. Plaintiffs
13 contended that, based on the violations described herein, the wage statements provided by
14 Defendant and the payroll records kept by Defendant were inaccurate. Finally, Plaintiffs
15 contended that Defendant failed to reimburse Plaintiffs and the other putative class members for
16 necessary business expenses, including, but not limited to, the costs associated with the use of
17 personal cell phones and the purchase and laundering of clothing to comply with Defendant's dress
18 code policy.

19 24. Defendant contended, *inter alia*, that its practices, policies, and procedures complied
20 with the law, and that it paid putative class members over the California minimum wage for all
21 hours worked and correctly paid overtime for all overtime hours worked. Defendant also
22 produced wage statements reflecting overtime compensation paid to many of the putative class
23 members (including, and not limited to, Plaintiffs). Defendant further contended that all
24 employees were required to record all time worked, were given the opportunity to make any
25 necessary changes to their time punches, and were instructed to inform Defendant of any non-
26 compliant meal or rest periods and that Defendant was not aware that any work had been
27 performed off-the-clock or during meal and rest periods. Defendant was adamant that no waiting-
28 time penalties should be awarded because the waiting-time penalties are derivative of each and

every other underlying cause of action, and contended that it paid the terminated employees all wages due and owing. Moreover, Defendant emphasized that, under California Labor Code section 203, employers are only obligated to pay waiting-time penalties if they “willfully” fail to pay wages due and owing at the time of termination or resignation. Defendant also contended that Plaintiffs and putative class members suffered no actual injury from the alleged wage statement violations and that this cause of action is entirely derivative of the other causes of action or from the alleged recordkeeping violations. Defendant further contended that they have a policy and practice of reimbursing employees for necessary business-related expenses. Defendant vigorously challenged the likelihood of Plaintiffs’ success in establishing that any of provisions of the California Labor Code, on which the UCL claim and civil penalties under PAGA are predicated, were violated and that such violations were injurious. Defendant also emphasized that Courts have wide discretion when assessing penalties under PAGA. Finally, throughout this litigation, Defendant argued that individual liability issues predominate, because putative class members worked in different locations, worked different shifts, and performed different job duties, and Defendant further contended that these circumstances would raise highly individualized questions of fact and would pose challenges to certification and the merits of Plaintiffs’ claims.

25. Class Counsel considered information obtained through investigations and from Plaintiffs and other putative class members, as well as class data and information provided by Defendant, and created damages/valuation models prior to reaching the Settlement. Based thereon, Plaintiffs calculated the potential value of each of the above-discussed claims. However, the potential value of each claim assumed an exposure based on the case having been certified and Plaintiffs having proven all elements of the claims and damages, despite risks associated with obtaining and maintaining certification, risks to establishing liability and any underlying California Labor Code violations and damages, and significant additional costs that would have to be incurred in order to certify the case and establish liability and damages. Plaintiffs also faced the risk of the Court finding that individualized issues predominate, such that the action is not suitable for class treatment and representative adjudication. While Class Counsel disagreed with Defendant’s arguments and factual contentions, Class Counsel recognized the circumstances and

1 realities of the case, applicable case law and regulations, the wage statements produced by
2 Defendant, the costs and expenses of further litigation and certification, and risks to recovery, and
3 applied appropriate discounts for them. Class Counsel calculated the potential and realistic values
4 of each claim as follows:

- 5 a. Failure to Pay Overtime Wages: Assuming that it could be proven that Defendant failed
6 to an hour of overtime wages every other workweek during the relevant time period, the
7 potential value of this claim was estimated to be \$813,634.25 (50,131.50 workweeks x
8 overtime hourly rate of \$16.23, which is based on the average hourly rate of \$10.82).
9 At this juncture, a discount of 30% was applied to account for the risks associated with
10 obtaining certification (bringing the value of this claim closer to \$569,543.70), a
11 discount of 40% was applied to account for the risks associated with succeeding on the
12 merits and establishing liability (bringing the value of this claim closer to \$341,726.39),
13 and a discount of 40% was applied to account for the risks associated with proving the
14 extent of damages and obtaining an award thereof (bringing the value of this claim closer
15 to \$205,035.83).
- 16 b. Failure to Pay Minimum Wages: Assuming that it could be proven that Defendant failed
17 to pay one hour of minimum wages every other workweek, the potential value of this
18 claim was estimated to be \$542,422.83 (50,131.50 workweeks x average hourly rate of
19 \$10.82). At this juncture, a discount of 40% was applied to account for the risks
20 associated with obtaining certification (bringing the value of this claim closer to
21 \$325,453.70), a discount of 50% was applied to account for the risks associated with
22 succeeding on the merits and establishing liability (bringing the value of this claim
23 closer to \$162,726.85), and a discount of 50% was applied to account for the risks
24 associated with proving the extent of damages and obtaining an award thereof (bringing
25 the value of this claim closer to \$81,363.43).
- 26 c. Failure to Provide Compliant Meal Periods and Associated Premiums: Assuming that it
27 could be proven that two (2) meal periods premiums are due for every workweek during
28 the relevant time period, the potential value of this claim was estimated to be

1 \$2,169,691.32 (100,263 workweeks x 2 meal period premium x average hourly rate of
2 \$10.82). At this juncture, a discount of 30% was applied to account for the risks
3 associated with obtaining certification (bringing the value of this claim closer to
4 \$1,518,783.93), a discount of 40% was applied to account for the risks associated with
5 succeeding on the merits and establishing liability (bringing the value of this claim
6 closer to \$911,270.35), and a discount of 30% was applied to account for the risks
7 associated with proving the extent of damages and obtaining an award thereof (bringing
8 the value of this claim closer to \$637,889.25).

9 d. Failure to Provide Compliant Rest Periods and Associated Premiums: Assuming that it
10 could be proven that one (1) rest period premium is due for every workweek during the
11 relevant time period, the potential value of this claim was estimated to be \$1,084,845.66
12 (100,263 workweeks x 1 rest period premium x average hourly rate of \$10.82). At this
13 juncture, a discount of 40% was applied to account for the risks associated with
14 obtaining certification (bringing the value of this claim closer to \$650,907.40), a
15 discount of 40% was applied to account for the risks associated with succeeding on the
16 merits and establishing liability (bringing the value of this claim closer to \$390,544.44),
17 and a discount of 50% was applied to account for the risks associated with proving the
18 extent of damages and obtaining an award thereof (bringing the value of this claim closer
19 to \$195,272.22).

20 e. Failure to Timely Pay Wages after Termination: Based on information and data provided
21 by Defendant, it was estimated that approximately one thousand one hundred and eight
22 (1,108) putative class members had been terminated during the three-year statute of
23 limitations (i.e., from July 26, 2015). Assuming that these individuals were not timely
24 paid all wages due to them upon termination, the potential value of waiting-time
25 penalties claim was estimated to be \$2,877,254.40 collectively (1,108 individuals x [30
26 days x hourly rate of \$10.82 x 8 hours]), or approximately \$2,696 per individual. At
27 this juncture, a discount of 50% was applied to account for the risks associated with
28 obtaining certification (bringing the value of this claim closer to \$1,438,627.20), a

discount of 50% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to \$719,313.60), and a discount of 50% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of this claim closer to \$359,656.80).

- f. Failure to Provide Compliant Wage Statements: Based on data provided by Defendant, it was estimated that approximately five hundred sixty-one (561) putative class members worked during the one-year statutory limitations period (i.e., from July 26, 2017). Applying the \$50 for each initial violation and \$100 for each subsequent violation, the potential value of this claim was calculated to be \$1,739,850 $[(561 \text{ individuals} \times \$50 \text{ for each initial violation}) + ((17,679-561) \times \$100 \text{ for each subsequent violation})]$. At this juncture, a discount of 50% was applied to account for the risks associated with obtaining certification (bringing the value of this claim closer to \$869,925), a discount of 50% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to \$434,962.50), and a discount of 50% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of this claim closer to \$217,481.25).
- g. Failure to Maintain Requisite Payroll Records: Arguably, this civil penalty would only be recoverable by the Labor Commissioner, however, Plaintiffs assert a cause of action under PAGA. Therefore, the value of this claim is considered as a part of the valuation of the PAGA claim contained *infra*.
- h. Failure to Reimburse Necessary Business Expenses: Assuming it could be proven that Defendant willfully failed to reimburse necessary business-related expenses for each of the putative class members in the amount of five dollars (\$5) per workweek during the relevant time period, the potential value of this claim would be \$501,315 $(100,263 \text{ total workweeks} \times \$5 \text{ business expenses})$. At this juncture, a discount of 50% was applied to account for the risks associated with obtaining certification (bringing the value of this

claim closer to \$250,657.50), a discount of 70% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to \$75,197.25), and a discount of 40% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of this claim closer to \$45,118.35).

- i. PAGA Penalties: Assuming that it could be shown that civil penalties in the amount of \$1,850 are owed to each of the five hundred eight-one (561) aggrieved employees who were estimated to have worked during the one-year statutory period, the PAGA penalties at issue, which the Court could determine whether or not to assess and whether or not to reduce, were estimated to be approximately \$1,037,850 (561 individuals x \$1,850 civil penalties). At this juncture, a discount of 40% was applied to account for the risks associated with proving manageability (bringing the value of this claim closer to \$622,710), a discount of 50% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to \$311,355), and a discount of 50% was applied to account for the risks associated with obtaining an award of civil penalties and the Court's discretion to reduce civil penalties (bringing the value of this claim closer to \$155,677.50).

26. The foregoing discussion confirms that the amount of the Settlement is adequate in light of the merits of this case, Plaintiffs' allegations and causes of action, the evidence at issue with respect to those allegations and causes of action, and legal and factual arguments and circumstances which pose challenges to certification and monetary recovery. The conclusion to be drawn from the foregoing analysis is that neither class certification, liability, nor the ability to adjudicate and/or recover monetary relief on a class-wide is clear-cut, which is why the Parties elected to settle this matter. Class Counsel recognized the circumstances and realities of the case, applicable case law and regulations, and risks to recovery and applied appropriate discounts. Class Counsel also recognized that additional discounts could be made to the risk-adjusted value to account for the costs and expenses associated with further litigation and the present value of obtaining a settlement now as opposed to monetary recovery, if any, that may be obtained in the

1 future after further litigation

2 27. This matter involves highly-disputed claims and is the product of compromise.
3 Class Counsel submits that the settlement presented for preliminary approval is within a
4 reasonable range of recoveries for this type of litigation, and is fair, reasonable, adequate, and in
5 the best interest of the Class, given the inherent cost and risks of further litigation.

6 28. Class Counsel submits that the Settlement is fair, reasonable, and adequate, and is
7 in the best interest of the Class. Class Counsel further submits that the Settlement is within an
8 acceptable range of recovery for this type of litigation given the strengths and weaknesses of the
9 case, the inherent costs and risks of further litigation, and the costs and risks associated with class
10 certification, representative adjudication, trial, and/or appeals.

11 I declare under penalty of perjury under the laws of the State of California that the
12 foregoing is true and correct.

13 Executed on this 28th day of October 2020, at Glendale, California.

14 
15 Edwin Aiwanian

EXHIBIT 1

STIPULATION OF SETTLEMENT

This Stipulation of Settlement ("Settlement Agreement") is reached by and between Plaintiff ALBERT EBUEN ("Plaintiff" or "Plaintiff Ebuen") and Proposed Plaintiff MARICEL J. SANTA ANA ("Proposed Plaintiff" or "Proposed Plaintiff Santa Ana") (Plaintiff and Proposed Plaintiff are collectively referred to as "Plaintiffs"), individually and on behalf of all members of the Class, defined below, and Defendant RED RIBBON BAKE SHOP, INC. ("Defendant" or "Red Ribbon"). Plaintiffs and Defendant are referred to herein collectively as the "Parties." Plaintiffs and the Class are represented by Edwin Aiwasian, Arby Aiwasian, Joanna Ghosh of Lawyers for Justice, PC ("Class Counsel"). Defendant is represented by Ann K. Smith, Scott K. Dauscher, and Osaama Saifi of Atkinson, Andelson, Loya, Ruud & Romo.

On July 26, 2018, Plaintiff filed the Class Action Complaint for Damages against Red Ribbon in Los Angeles Superior Court ("the Court"), Case No. BC715064 in the action entitled *Ebuen v. Red Ribbon Bake Shop Inc.* ("the Lawsuit"). Plaintiff will seek leave to file and file the First Amended Class Action Complaint for Damages and Enforcement under the Private Attorneys General Act, Cal. Labor Code § 2698 *et seq.* (the "First Amended Complaint" or "Complaint"), which will add Proposed Plaintiff Santa Ana and a cause of action under the Private Attorneys General Act of 2004 ("PAGA").

The Complaint alleges the following claims against Defendant: (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment); (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements); (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records); (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses); (10) Violation of California Business & Professions Code §§ 17200, *et seq.*; and (11) Violation of California Labor Code §§ 2698, *et seq.* (Private Attorneys General Act of 2004).

Given the risks and uncertainties of litigation, the Parties have agreed to settle this Lawsuit on the terms set forth herein and subject to the approval of the Court. Nothing herein shall be construed as an admission of any wrongdoing or of liability, as the Settlement Agreement is intended solely to allow the Parties to buy their peace and resolve the disputed claims asserted in this Lawsuit.

1. Certification of Class. The Parties request that the Court certify a class as follows strictly for the purposes of effectuating this Settlement:

Class: All current and former hourly-paid or non-exempt employees who worked for Defendant Red Ribbon Bake Shop, Inc. within the State of California at any time during the Class Period ("Class" or "Class Member(s)").

Class Period: the time period of July 26, 2014 to March 1, 2020.

Settlement Class or Settlement Class Members: refers to all Class Members who do not request exclusion from or out opt of the Settlement.

If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this Settlement Agreement will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

2. Final Effective Date. The term "Final" and "Final Effective Date" means: (i) that the Settlement Agreement has received final approval by the Court and there were no timely objections filed, or that any timely objections have been withdrawn prior to the date of the Court's order of Final Approval; or, (ii) in the event that one or more timely objections has/have been filed and not withdrawn, then upon the passage of the applicable date for an objector to seek appellate review of the Court's order of Final Approval, without a timely appeal having been filed; or, (iii) in the event that a timely appeal of the Court's order of Final Approval has been filed, then the Settlement Agreement shall be final when the applicable appellate court has rendered a final decision or opinion affirming the Court's Final Approval without material modification, and the applicable date for seeking further appellate review has passed, or the date that any such appeal has been either dismissed or withdrawn by the appellant.

3. Releases.

A. Releases by Settlement Class Members. As of the Final Effective Date and the date on which the Gross Settlement Amount is fully funded, in exchange for the consideration set forth in this Settlement Agreement, each Settlement Class Member (i.e., Class Member who does not validly opt-out of the Settlement), will forever release, acquit, and discharge Defendant, including its past and present divisions, sister entities, parents, subsidiaries, predecessors, successors, assigns (collectively the "Released Parties" and each a "Released Party" or "Releasee") from liability for all causes of action alleged in in the Lawsuit, or that could have been alleged in the Lawsuit based on the factual allegations alleged therein, that arose during the Class Period including but not limited to all of the following: (a) failure to pay minimum wage; (b) failure to pay overtime; (c) failure to provide off-duty meal periods; (d) failure to authorize and permit rest periods; (e) failure to reimburse business expenses; (f) failure to provide accurate wage statements; (g) waiting time penalties; (h) unlawful business practices; (i) all claims for civil penalties under PAGA, that were or could have been alleged based on the claims, causes of action or legal theories described above or on any of the claims, causes of action or legal theories of relief pleaded in the Lawsuit; and (j) any other claims or penalties under the wage and hour laws that were pleaded or could have been pleaded based on the factual allegations in the Lawsuit (collectively, the "Released Claims"). Class Members who do not validly opt out of the Settlement (i.e., Settlement Class Members) will be deemed to have released any and all claims alleged above as they appear under the California Labor Code.

B. Plaintiffs' General Release. As of the Final Effective Date, in exchange for the consideration set forth in this Settlement Agreement, Plaintiffs will, for

themselves, and for their heirs, forever release the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses (including back wages, penalties, liquidated damages, and attorneys' fees and costs actually incurred) of any nature whatsoever, from the beginning of time through the Final Effective Date, known or unknown, suspected or unsuspected, including but not limited to all claims arising out of, based upon, or relating to their employment with Defendant or the remuneration for such employment. Without limiting the generality of the foregoing, Plaintiffs expressly release all claims which were or could have been raised in the Lawsuit and all claims or rights arising out of alleged violations of any contracts, express or implied (including but not limited to any contract of employment); any contract or covenant of good faith or fair dealing (express or implied); any tort, including negligence, fraud, misrepresentation under California Labor Code 970, negligent infliction of emotional distress, intentional infliction of emotional distress, and defamation; any "retaliation" claims; any claims relating to any breach of public policy; any legal restrictions on Defendant's right to discharge employees or refuse to hire applicants; and any federal, state, or other governmental statute, regulation, or ordinance, including, without limitation: (1) Title VII of the Civil Rights Act of 1964 (race, color, religion, sex, and national origin discrimination or harassment, including retaliation for reporting discrimination or harassment); (2) 42 U.S.C. § 1981 (discrimination); (3) sections 503 and 504 of the Rehabilitation Act of 1973 (disability discrimination); (4) Equal Pay Act, 29 U.S.C. § 209(4)(1) (equal pay); (5) Americans with Disabilities Act, 42 U.S.C. § 12100 *et seq.* (disability discrimination); (6) Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.* (family/medical leave); (7) California Fair Employment and Housing Act, Cal. Gov't Code § 12900 *et seq.* (discrimination or harassment in employment and/or housing, including discrimination or harassment based on race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, sex (including pregnancy), sexual orientation, genetic, or age, including retaliation for reporting discrimination or harassment); (8) California Family Rights Act, Cal. Gov't Code § 12945.1 *et seq.* (family/medical leave); (9) California Labor Code or any Industrial Welfare Commission Wage Order; (10) the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*; (11) Executive Order 11246 (race, color, religion, sex, and national origin discrimination or harassment); (12) Executive Order 11141 (age discrimination); and (13) Employee Retirement Income Security Act, 29 U.S.C. § 1000 *et seq.* (employee benefits).

- C. **Plaintiffs' Release of Unknown Claims.** Plaintiffs agree there is a risk that each and every injury they may have allegedly or actually suffered by reason of the Released Parties' relationship with them might not now be known, and there is further risk that said injuries, whether known or unknown at the date of this Settlement Agreement, might possibly become progressively worse, and that as a result thereof further damages may be sustained by them. Nevertheless, Plaintiffs desire to forever and fully release and discharge the Released Parties, and understands that as of the Final Effective Date, by the execution of this Settlement

Agreement no further claims for any such injuries that existed at the time of the Final Effective Date may ever be asserted by them. As of the Final Effective Date, Plaintiffs expressly waive and relinquish all rights and benefits afforded by section 1542 of the Civil Code of the State of California and do so understanding and acknowledging the significance of such specific waiver of section 1542. Section 1542 of the Civil Code of the State of California states as follows:

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.

Thus, subject to and in accordance with this Settlement Agreement, even if Plaintiffs may hereafter discover facts in addition to or different from those they now know or believe to be true, even those that would materially affect their decision to execute this Settlement Agreement, Plaintiffs shall be deemed to have fully, finally, and forever settled and released any and all claims against the Released Parties that were alleged or could have been alleged in the Lawsuit, as well as any other claims, whether known or unknown, suspected or unsuspected, contingent or non-contingent, that now exist, upon any theory of law or equity, including without limitation, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts.

4. Gross Settlement Amount. In exchange for the releases set forth in this Settlement Agreement, Defendant agrees to pay Two Million Dollars and Zero Cents (\$2,000,000.00) (the "Gross Settlement Amount") in full and complete settlement of this matter, as follows:

- A. Defendant will fund the Gross Settlement Amount no later than thirty (30) calendar days after the Settlement is deemed Final. The Gross Settlement Amount shall be held in the Qualified Settlement Fund ("QSF") established by the Settlement Administrator. In the event that the Settlement Agreement is not granted final approval, or does not become Final, any funds deposited into the QSF by Defendant shall be returned within fifteen (15) days of an order by the Court or other decision denying final approval of the Settlement Agreement.
- B. Defendant's payments will not exceed the Gross Settlement Amount. Any of the fees or expenses noted below are to be extracted from the Gross Settlement Amount. Notwithstanding the foregoing, Defendant will be responsible for employer's share of payroll taxes separately and in addition to the Gross Settlement Amount.
- C. This is not a "claims made" settlement. This is a non-reversionary settlement. Settlement Class Members are not required to submit a claim form or take any affirmative action to receive a payment under the Settlement. All Settlement Class Members (i.e., Class Member who do not opt out of the Settlement) will

automatically be issued a Settlement Check. The Gross Settlement Amount includes:

- (1) All payments to the Settlement Class and employee's share of payroll tax withholdings (the "Net Settlement Fund");
- (2) All fees and expenses of the Settlement Administrator associated with the administration of the settlement ("Settlement Administration Costs"), which are anticipated to be no greater than Sixteen Thousand Dollars and Zero Cents (\$16,000.00);
- (3) Payment to the Plaintiffs in recognition of Plaintiffs' contributions to the Lawsuit, creating the Gross Settlement Amount, and service to the Class ("Enhancement Payments"), not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff Ebuén and \$5,000 to Proposed Plaintiff Santa Ana, for a combined total of \$15,000. In the event that the Court reduces or does not approve the requested Enhancement Payments, the Settlement Agreement remains in full force and effect, Plaintiffs shall not have the right to revoke the settlement for that reason, it shall remain binding, and any unapproved amount shall revert to the Net Settlement Fund;
- (4) Attorneys' fees to Class Counsel ("Attorneys' Fees") of up to forty percent (40%) of the Gross Settlement Amount (i.e., \$800,000.00), plus up reimbursement of verified costs and expenses related to the Lawsuit, including all such fees and costs incurred in documenting the Settlement, securing Court approval of the Settlement, and administering the Settlement, as supported by declaration ("Litigation Costs") of up to Sixty-Five Thousand Dollars and Zero Cents (\$65,000.00). In the event that the Court reduces or does not approve the Attorneys' Fees or Litigation Costs, the Settlement Agreement remains in full force and effect, Plaintiffs shall not have the right to revoke the settlement for that reason (although Plaintiffs shall retain the right to appeal any reduction of Attorneys' Fees and Litigation Costs), it shall remain binding, and any unapproved amount shall revert to the Net Settlement Fund. Class Counsel's application for attorneys' fees and costs is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the settlement of the Lawsuit. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator for the Attorneys' Fees and Litigation Costs as approved by the Court.
- (5) One Hundred Seventy-Five Thousand Dollars (\$175,000.00) of the Gross Settlement Amount has been allocated by the Parties towards civil penalties under PAGA ("PAGA Amount"). Per Labor Code § 2699(i), seventy-five percent (75%) of the PAGA Amount (i.e., \$131,250), will be payable to the Labor and Workforce Development Agency ("LWDA Payment"), and the remaining twenty-five percent (25%) (i.e., \$43,750) will be part of the Net

Settlement Fund for distribution to the Settlement Class Members on a *pro-rata* basis.

- (6) Defendant's required FICA, FUTA, and other payroll tax payments resulting from payments under the Settlement to Settlement Class Members shall be paid separate, apart from, in addition to, and top of the Gross Settlement Amount ("Employer Taxes").

- D. **Confidential.** This settlement shall remain confidential until such time as the Motion for Preliminary Approval is filed with the Court except as required to effectuate the Settlement.

5. **Settlement Payment Procedures.** Settlement Class Members are not required to submit a claim form to receive their payment under the Settlement ("Individual Settlement Payment"). Individual Settlement Payments will be determined and paid as follows:

- A. The Settlement Administrator shall first determine the Net Settlement Fund by deducting from the Gross Settlement Amount the following amounts approved by the Court: Attorneys' Fees to Class Counsel, Litigation Costs to Class Counsel, Enhancement Payments to Plaintiffs, Settlement Administration Costs to the Settlement Administrator, and the LWDA Payment to the Labor and Workforce Development Agency.
- B. From the Net Settlement Fund, the Settlement Administrator will calculate each Settlement Class Member's Individual Settlement Payment based on the following formula:
 - i. The Net Settlement Fund shall be allocated to Settlement Class Members as follows: each Settlement Class Member shall receive a proportionate settlement share based upon the number weeks the Class Member worked for Defendant during the Class Period ("Workweeks"), which shall be determined by multiplying the Net Settlement Fund by a fraction, the numerator of which is the Settlement Class Member's Workweeks, and the denominator of which is the total Workweeks worked by all Settlement Class Members.
 - ii. For purposes of calculations of each Settlement Class Member's number of Workweeks, in order for a week to count as a week worked for a particular Settlement Class Member, Defendant's payroll records must show that that Settlement Class Member worked at least one day during that week.
- C. Within twenty-one (21) calendar days following the funding of the entire Gross Settlement Amount with the Settlement Administrator by Defendant, the Settlement Administrator will calculate Individual Settlement Payment amounts and will prepare and mail Individual Settlement Payments checks ("Settlement Checks") to Settlement Class Members, Court-approved Attorneys' Fees and

Litigation Costs to Class Counsel, Enhancement Payments to Plaintiffs, Settlement Administration Costs to the Settlement Administrator, and LWDA Payment to the LWDA.

- D. For purposes of calculating applicable taxes and withholdings for the Settlement Class Members, twenty percent (20%) of each Individual Settlement Payment shall be designated as wages subject to W-2 reporting and normal payroll withholdings for which the Settlement Administrator will work with Defendant in issuing; the remaining eighty percent (80%) of each Individual Settlement Payment shall be designated as penalties and interest and subject to IRS Form 1099 reporting with no withholdings. Notwithstanding the treatment of the payments to each Settlement Class Member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans. Defendant shall have no responsibility for the tax treatment of the non-wage components of the Individual Settlement Payments.
- E. Each Settlement Class Member who receives an Individual Settlement Payment must negotiate the Settlement Check within one hundred eighty (180) calendar days from the date of issuance. As required under California Code of Civil Procedure § 384, any uncashed settlement funds will be paid to Humanity First USA, a 501(c)(3) charitable organization (EIN# 20-0464012) which advocates for children by building schools for children in rural areas. Should the Court determine that the uncashed funds should not be paid to a charitable organization, but should instead be remitted to the State of California's Unclaimed Wage Fund in the name of the affected Settlement Class Member, the Parties will not object to such a distribution.
- F. The receipt of funds under the Settlement shall not entitle any Class Member to additional compensation or benefits of any kind under any of Defendant's compensation or benefits plans, nor will it entitle any Class Member to any increased retirement or 401k plan benefits of any kind.
- G. Neither Plaintiff nor Defendant shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by his or its own acts of omission or commission, the same is true for the Settlement Administrator.

6. **Class Counsel's Attorneys' Fees and Litigation Costs.** Defendant will not object to a request for an award of Attorneys' Fees to Class Counsel of up to forty percent (40%) of the Gross Settlement Amount (i.e., \$800,000.00) and Litigation Costs of up to Sixty-Five Thousand Dollars and Zero Cents (\$65,000.00). These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel

will be issued an IRS Form 1099 by the Settlement Administrator for payment of the Attorneys' Fees and Litigation Costs as approved by the Court. With respect to the Attorneys' Fees and Litigation Costs to Class Counsel, the Settlement Administrator may purchase an annuity to utilize United States Treasuries and bonds or other attorney fee deferral vehicles, for Class Counsel. Any additional expenses for the purchase of an annuity by the Settlement Administrator shall be paid separately by Class Counsel and shall not be included within the Settlement Administrator Costs. Defendant and Defendant's counsel shall not be liable for any expenses associated with the purchase of an annuity by the Settlement Administrator.

7. **Plaintiffs' Enhancement Payments.** Defendant will not object to a request for Enhancement Payments in the amounts of Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff Ebuena and \$5,000 to Proposed Plaintiff Santa Ana (for a combined total of \$15,000) in exchange for, their time and the risks in prosecuting this case, and their service to the Class. The Enhancement Payment will be in addition to Plaintiffs' Individual Settlement Payments as Settlement Class Members and shall be reported on an IRS Form 1099 by the Settlement Administrator. It is the intent of the Parties that the Enhancement Payments to the Plaintiffs are for their services in connection with this Lawsuit and are not wages, therefore the Settlement Administrator shall not withhold any taxes from the Enhancement Payments and shall report it on an IRS Form 1099, which shall be provided to Plaintiffs and to the pertinent taxing authorities as required by law. Although it is the contemplation of the Parties that the Enhancement does not represent wages, the Internal Revenue Service, the California Franchise Tax Board, or some other taxing authority may take the position that some or all of the Enhancements constitute wages for income tax and withholding purposes. Plaintiffs agree to assume the responsibility of remitting to the Internal Revenue Service, the California Franchise Tax Board, and any other relevant taxing authority the amounts required by law, if any, to be withheld by Defendant from the Enhancement Payments paid under this Settlement Agreement. In addition, Plaintiffs shall hold Defendant, Released Parties and Class Counsel harmless and indemnify Defendant, Released Parties and Class Counsel for all taxes, interest, penalties, other payments and costs, incurred by Defendant by reason of any claims relating to the non-withholding of taxes from the Enhancement Payments.

8. **Settlement Administrator.** Plaintiffs have selected Simpluris, Inc. to act as the Settlement Administrator and will seek Court approval for Settlement Administration Costs of up to Sixteen Thousand Dollars and Zero Cents (\$16,000.00) from the Gross Settlement Amount for its services. The Settlement Administrator shall be responsible for sending all required notices, calculating the Net Settlement Fund, calculating each Class Member's Individual Settlement Payment amounts, preparing all checks and mailings and disbursing all residuals resulting from uncashed Settlement Checks as set forth in Section 5(E). The Settlement Administrator shall be authorized to pay itself from the Gross Settlement Amount by Class Counsel only after Settlement Checks have been mailed to all Settlement Class Members.

9. After execution of the Settlement Agreement, Plaintiffs shall apply to the Court for the entry of an Order:

A. Approving Simpluris, Inc. as Settlement Administrator;

- B. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- D. Approving the form and content of the Class Notice, a true and correct copy of which is attached hereto as "EXHIBIT A," and directing the mailing of same via First Class U.S. mail; and
- E. Scheduling a Final Approval hearing.

10. Notice Procedures. Following preliminary approval, the Class shall be notified as follows:

- A. The Settlement Administrator will receive the Class Notice, which shall be provided in English, Spanish, and Tagalog.
- B. Within thirty (30) calendar days after entry of an order preliminarily approving this Settlement Agreement, Defendant will provide the Settlement Administrator with the following information: the names, last known addresses, and social security numbers (in electronic format) of Class Members, as well as the dates of employment for and Workweeks worked by each Class Member (collectively "Class List").
- C. Within seven (7) calendar days from receipt of the Class List, the Settlement Administrator shall: (i) run the names of all Class Members through the National Change of Address ("NCOA") database to determine any updated addresses for Class Members; (ii) update the addresses of any Class Member for whom an updated address was found through the NCOA search; and (iii) mail the Class Notice to each Class Member at their last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- D. The Settlement Administrator shall use its best professional efforts, including utilizing a "skip trace," to track any Class Member's mailing returned as undeliverable, and will re-send the Class Notice promptly upon identifying updated mailing addresses through such efforts. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Class Member.
- E. Any Class Notices returned to the Settlement Administrator as non-delivered on or before the Response Deadline (defined below) shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within five (5) business days of receiving the returned Class Notice. If an updated mailing address is identified, the Settlement Administrator shall resend the Class Notice to the Class Member immediately, and in any event within three (3) business days of obtaining the updated address.

- F. **Opt-Out/Request for Exclusion Procedures.** All Class Members will automatically participate in the Settlement unless they affirmatively opt-out by submitting a timely written request to be excluded from the Settlement ("Request for Exclusion"). Any Class Member who wishes to opt-out of the Settlement must complete and mail a Request for Exclusion to the Settlement Administrator within sixty (60) calendar days of the date of the initial mailing or, in the case of a re-mailed Class Notice, the latter of the initial 60-day period or fifteen (15) calendar after the date of re-mailing (the "Response Deadline").
- i. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Class Member; (2) be signed by the Class Member; (3) contain the case name and number of the Action; (4) clearly state that the Class Member wished to be excluded from Settlement; and (5) be postmarked by the applicable Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice.
 - ii. The date of the postmark on the Request for Exclusion, shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted.
 - iii. Any Class Member who requests to be excluded from the Settlement will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the settlement or have any right to object, appeal or comment thereon.
- G. **Objections.** Settlement Class Members may object to this Settlement by submitting a written objection to the Settlement ("Objection") to the Settlement Administrator. An Objection must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the objector; (2) be signed by the objector; (3) contain the case name and number of the Action; (4) clearly state that the objector objects to the Settlement and the factual and legal reason for their objection; (5) if the objector is represented by counsel, state the name and contact information for such counsel; and (6) be postmarked by the applicable Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If Class Counsel and/or Defendant receive an Objection, they shall file any responses with the Court no later than five (5) court days prior to the Final Approval Hearing.
- H. **Workweek Disputes.** Class Members will have the opportunity, should they disagree with Defendant's records regarding the number of Workweeks stated in their Class Notice, to challenge the number of Workweeks allocated to each of them by submitting a written dispute to the Settlement Administrator ("Workweek Dispute"). Workweek Disputes must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Class Member; (2) be signed by the Class Member; (3) contain the case name and number of the Action; (4) clearly state the number of Workweeks the Class

Member contends is correct; (5) provide documentation and/or an explanation demonstrating that Defendant's data is incorrect and evidencing the correct number of Workweeks that the Class Member believes he or she should have been credited with; and (6) be postmarked by the applicable Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice.

- I. **Dispute Resolution.** The Settlement Administrator shall have the initial responsibility of resolving all Workweek Disputes that arise during the settlement administration process, including, without limitation, disputes (if any) regarding the calculation of Individual Settlement Payments, the allocation of W-2 wages and 1099 interest and penalties, and the number of Workweeks. Where the information submitted by Defendant from its records differs from the information submitted by the Class Member, the Settlement Administrator shall request a conference call between the Settlement Administrator, Class Counsel, and defense counsel to discuss and resolve the dispute. In advance of the conference call, the Settlement Administrator shall fax or email copies of all available information to all counsel. The Parties will resolve all Workweek Disputes jointly, which shall be final and binding on any Workweek Disputes and shall thereafter instruct the Settlement Administrator how to proceed in processing the Workweek Dispute. If the Parties cannot reach agreement, Workweek Disputes shall be referred to the Court for a final determination at the Final Approval Hearing.

11. **Right to Revoke.**

- A. Defendant shall have the right at its sole discretion to revoke this Settlement Agreement and stipulation to class certification for settlement purposes if ten percent (10%) of Class Members submit timely and valid Requests for Exclusion, by communicating that decision to both the Settlement Administrator and Class Counsel in writing within fourteen (14) calendar days of the Response Deadline, provided however, Defendant will be responsible for any costs and fees incurred by the Settlement Administrator. Defendant agrees that it will not, in any manner, take any actions to encourage Class Members to opt-out.
- B. If it is determined that the number of Workweeks during the period from July 26, 2014 to August 21, 2019 exceeds 100,263 by ten percent (10%) or higher, Plaintiffs may request a *pro rata* increase in the Gross Settlement Amount. If Defendant refuses to a *pro rata* increase in the Gross Settlement Amount, Plaintiffs may void the Settlement before final approval of the Settlement.

12. **Final Approval Process.** Following preliminary approval and the Response Deadline under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;

B. Approving Plaintiffs' application for Attorneys' Fees, Litigation Costs, Enhancement Payments, Settlement Administration Costs, and PAGA Amount; and

C. Entering judgment pursuant to California Rule of Court 3.769.

13. **Non-Admission.** Defendant denies that it has engaged in any unlawful activity, that it has failed to comply with the law in any respect, that it has any liability to anyone under the claims asserted in the Lawsuit, and that but for this settlement a class should not be certified in this Lawsuit. Nothing in this Settlement Agreement is intended or shall be construed as an admission of liability, fault or wrongdoing by Defendant. Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this settlement. The Parties have entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.

14. **Amendments or Modifications.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by counsel for the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto as approved by the Court.

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

if to Defendant: Ann Smith, *Esq.*
Atkinson, Andelson, Loya, Ruud & Romo
12800 Center Court Drive South, Suite 300
Cerritos, California 90703-9364
ASmith@aalrr.com

if to Plaintiff: Edwin Aiwarzian, *Esq.*
Lawyers for Justice, P.C.
410 West Arden Ave., Suite 203
Glendale, California 91203
Edwin@LFJPC.com

16. **Voluntary Agreement.** The Parties acknowledge that they have entered into this Settlement Agreement voluntarily, on the basis of their own judgment and without coercion, duress, or undue influence of any Party, and not in reliance on any promises, representations, or statements made by the other Parties other than those contained in this Settlement Agreement.

Each of the Parties hereto expressly waive any right he/it might ever have to claim that this Settlement Agreement was in any way induced by fraud.

17. **Opportunity to Consult with Counsel.** Prior to execution of this Settlement Agreement, each Party has read this entire Settlement Agreement and has been given the opportunity to consult with independent counsel of their choosing and to have such independent counsel advise as to the meaning of this Settlement Agreement and its legal effect.

18. **Authorization to Act.** The signatories hereby represent that they are fully authorized to enter into this Settlement and to bind the Parties hereto to the terms and conditions hereof.

19. **Mutual and 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 be reasonably necessary to implement the terms of this Settlement Agreement. The Parties shall use reasonable 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.

20. **Fair Settlement and Cooperation in Drafting.** The Parties agree that this Settlement Agreement is 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.

21. **No Reliance on Representations.** The Parties have made such investigation of the facts and the law pertaining to the matters described herein and to this Settlement Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other Parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of making and executing this Settlement Agreement, or with respect to any such matters that would alter or change the terms of this Settlement Agreement. No representations, warranties, or inducements have been made to any party concerning this Settlement Agreement other than those expressly set forth or referred to herein.

22. **Enforcement and Continuing Jurisdiction of the Court.** To the extent consistent with class action procedure, this Settlement Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6. The Court shall retain continuing jurisdiction over this Lawsuit and over all Parties and Settlement Class Members, to the fullest extent to enforce and effectuate the terms and intent of this Settlement Agreement, and to adjudicate any claimed breaches of this Settlement Agreement. The Court may award reasonable attorneys' fees and costs to the prevailing party in any motion or action taken and based on an alleged violation of any material term of the Settlement Agreement.

23. **Settlement Agreement Binding on Successors.** This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors in interest of each of the Parties.

24. **Meet and Confer Regarding Disputes.** Should any dispute arise among the Parties or their respective counsel regarding the implementation or interpretation of this Settlement

Agreement, a representative of Class Counsel and defense counsel shall meet and confer in good faith in an attempt to resolve such disputes prior to submitting such disputes to the Court.

25. **Headings.** The descriptive heading of any section or paragraph of this Settlement Agreement is inserted for convenience of reference only and does not constitute a part of this Settlement Agreement and shall not be considered in interpreting this Settlement Agreement.

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

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

28. **No Collateral Attack.** This Settlement Agreement shall not be subject to collateral attack by any Class Member or any recipient of the Class Notice after the Final Effective Date. Such prohibited collateral attacks shall include but not be limited to claims that the Class Member failed for any reason to receive timely notice of the procedure for disputing the calculation of her or his Individual Settlement Payment.

29. **Governing Law.** This Settlement Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth below.

Dated: September 28, 2020 _____

Plaintiff and Class Representative

By: 
Albert Ebuen

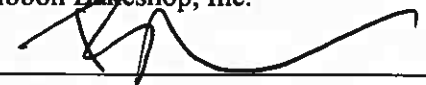
Dated: _____

Proposed Plaintiff and Class Representative

By: _____
Maricel J. Santa Ana

Red Ribbon Bakeshop, Inc.

Dated: 10/6/2020 _____

By: 
Ty Lerman
Name
Head of Legal
Title

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Dated: _____

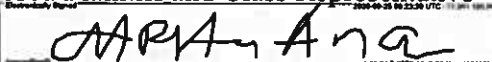
Plaintiff and Class Representative

By: _____
Albert Ebuen

September 24, 202

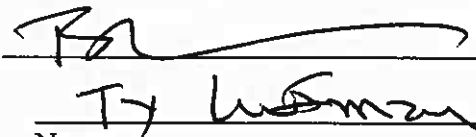
Dated: _____

Proposed Plaintiff and Class Representative

By: 
Maricel J. Santa Ana

Red Ribbon Bakeshop, Inc.

Dated: 10/6/2021

By: 
Name
Head of Legal
Title

APPROVED AS TO FORM AND CONTENT:

Dated: September 29, 2020

Lawyers for Justice, PC

By: 
Edwin Aiwanian
Attorney for Plaintiffs

Dated: October 6, 2020

Atkinson, Andelson, Loya, Ruud & Romo

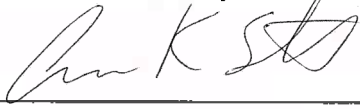
By: 
Ann K. Smith
Attorney for Defendant Red Ribbon Bakeshop, Inc.

EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT

Albert Ebuen, et al. v. Red Ribbon Bake Shop Inc.
Superior Court of California for the County of Los Angeles, Case No. BC715064

PLEASE READ THIS NOTICE CAREFULLY.

You have received this Notice because Defendant's records indicate that you may be eligible to take part in the class action settlement reached in the above-referenced case.

You do not need to take any action to receive a settlement payment.

This Notice is designed to advise you of your rights and options with respect to the settlement, and how you can request to be excluded from the settlement, object to the settlement, and/or dispute the number of Workweeks that you are credited with, if you so choose.

YOU ARE NOTIFIED THAT: A class and representative action settlement has been reached between Plaintiffs Albert Ebuen and Maricel J. Santa Ana (together, "Plaintiffs") and Defendant Red Ribbon Bake Shop, Inc. ("Defendant") (Plaintiffs and Defendant are collectively referred to as the "Parties") in the case entitled *Albert Ebuen, et al. v. Red Ribbon Bake Shop, Inc.*, Los Angeles County Superior Court, Case No. BC715064 ("Lawsuit"), which may affect your legal rights. On [date of Preliminary Approval], the Court granted preliminary approval of the settlement and scheduled a hearing on [hearing date] at [hearing time] ("Final Approval Hearing") to determine whether or not the Court should grant final approval of the settlement.

I. IMPORTANT DEFINITIONS

"Class" means all current and former hourly-paid or non-exempt employees who worked for Defendant Red Ribbon Bake Shop, Inc. within the State of California at any time during the Class Period.

"Class Member" means a member of the Class.

"Class Period" means the time period from July 26, 2014 to March 1, 2020.

II. BACKGROUND OF THE ACTION

On July 26, 2018, Albert Ebuen commenced the Lawsuit by filing the Class Action Complaint for Damages in the Los Angeles County Superior Court. On July 9, 2019, a First Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, Cal. Labor Code § 2698 Et Seq. ("Complaint"), adding Plaintiff Maricel J. Santa Ana and a cause of action under the Private Attorneys General Act, California Labor Code section 2698, *et seq.* ("PAGA"). Plaintiffs allege that Defendant failed to properly pay minimum and overtime wages, provide compliant meal and rest breaks and associated premiums, timely pay wages during employment and upon termination of employment and associated waiting-time penalties, provide accurate wage statements, keep requisite payroll records, and reimburse business expenses, and thereby engaged in unfair business practices and conduct that gives rise to penalties under PAGA. Plaintiffs seek, among other things, recovery of unpaid wages and meal and rest period premiums, restitution, penalties, interest, and attorneys' fees and costs.

Defendant denies all of the allegations in the Lawsuit or that it violated any law.

The Parties participated in a mediation session with a respected class action mediator, and as a result of settlement negotiations thereafter, the Parties reached a settlement. The Parties have since entered into the Stipulation of Settlement ("Settlement" or "Settlement Agreement").

On [date of Preliminary Approval], the Court entered an order preliminarily approving the Settlement. The Court has appointed Simpluris, Inc. as the administrator of the Settlement ("Settlement Administrator"), Plaintiffs Albert Ebuen and Maricel J. Santa Ana as representatives of the Class ("Class Representatives"), and the following Plaintiffs' attorneys as counsel for the Class ("Class Counsel"):

Edwin Aiwazian
Arby Aiwazian
Joanna Ghosh
Lawyers for Justice, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Telephone: (818) 265-1020 / Fax: (818) 265-1021

If you are a Class Member, you do not need to take any action to receive an Individual Settlement Payment, but you have the opportunity to request exclusion from the Settlement (in which case you will not receive an Individual Settlement Payment), object to the Settlement, and/or dispute the Workweeks credited to you, if you so choose, as explained more fully in Section III below.

The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by Defendant that the claims in the Lawsuit have merit or that Defendant has any liability to Plaintiffs or to Class Members. Plaintiffs and Defendant, and their respective counsel, have concluded and agree that, in light of the risks and uncertainties to each side of continued litigation, the Settlement is fair, reasonable, and adequate, and is in the best interests of Class Members. The Court has made no ruling on the merits of the Class Members' claims and has determined only that certification of the Class for settlement purposes is appropriate under California law.

III. SUMMARY OF THE PROPOSED SETTLEMENT

A. Settlement Formula

The total gross settlement amount is Two Million Dollars (\$2,000,000) (the "Gross Settlement Amount"). The portion of the Gross Settlement Amount that is available for payment to Class Members is referred to as the "Net Settlement Fund." The Net Settlement Fund will be the Gross Settlement Amount less the following payments which are subject to approval by the Court: (1) Attorneys' Fees in an amount not to exceed 40% of the Gross Settlement Amount (i.e., \$800,000) and reimbursement of Litigation Costs in an amount not to exceed Sixty-Five Thousand Dollars (\$65,000) to Class Counsel; (2) Enhancement Payments in an amount not to exceed Ten Thousand Dollars (\$10,000) to Plaintiff Albert Ebuen and Five Thousand Dollars (\$5,000) to Plaintiff Maricel J. Santa Ana for their services in the Lawsuit; (3) payment to the California Labor and Workforce Development Agency ("LWDA") in the amount of One Hundred Thirty One Thousand Two Hundred Fifty Dollars (\$131,250) for its 75% portion of the PAGA Amount ("LWDA Payment"); and (4) Settlement Administration Costs in an amount not to exceed Sixteen Thousand Dollars (\$16,000) to the Settlement Administrator. Note: a total of One Hundred Seventy-Five Thousand Dollars (\$175,000) from the Gross Settlement Amount has been allocated toward penalties under the Private Attorneys General Act ("PAGA Amount"), of which the LWDA will be paid 75% and the remaining 25% (i.e., Forty-Three Thousand Seven Hundred Fifty Dollars (\$43,750)) will be a part of the Net Settlement Fund for distribution to Settlement Class Members.

Class Members are eligible to receive payment under the Settlement of their share of the Net Settlement Fund ("Individual Settlement Payment") based on the number weeks the Class Member worked for Defendant during the Class Period ("Workweeks").

The Settlement Administrator has multiplied the Net Settlement Fund by a fraction, the numerator of which is the Class Member's Workweeks, and the denominator of which is the total Workweeks worked by all Class Members to yield each Class Member's estimated Individual Settlement Payment that he or she may be eligible to receive under the Settlement (which is listed in Section III.C below). Class Members who do not submit a valid and timely Request for Exclusion ("Settlement Class Members") will be issued payment of their final Individual Settlement Payment.

Each Individual Settlement Payment will be allocated as 20% wages which will be reported on an IRS Form W2 and 80% penalties and interest which will be reported on an IRS Form 1099 (if applicable). Each Individual Settlement Payment will be subject to reduction for the employee's share of taxes and withholdings with respect to the wages portion of Individual Settlement Payments.

If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to Settlement Class Members at the address that is on file with the Settlement Administrator. **If the address to which this Notice was mailed is not correct, or if you move after you receive this Notice, you must provide your correct mailing address to the**

Settlement Administrator as soon as possible to ensure you receive any payment that you may be entitled to under the Settlement.

B. Your Workweeks Based on Defendant's Records

According to Defendant's records:

From July 26, 2014 to March 1, 2020, you worked for Defendant as an hourly-paid or non-exempt employee in California for [REDACTED] Workweeks.

If you wish to dispute the Workweeks credited to you, you must submit your written dispute to the Settlement Administrator. The written dispute must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Class Member; (2) be signed by the Class Member; (3) contain the case name and number of the Lawsuit (*Albert Ebuén, et al. v. Red Ribbon Bake Shop, Inc.*, Case No. BC715064); (4) clearly state the number of Workweeks the Class Member contends is correct; (5) provide documentation and/or an explanation demonstrating that Defendant's data is incorrect and evidencing the correct number of Workweeks that the Class Member believes he or she should have been credited with; and (6) be returned by mail to the Settlement Administrator at the address specified in Section IV.B below, postmarked **no later than [the Response Deadline]**.

C. Your Estimated Individual Settlement Payment

As explained above, your estimated Individual Settlement Payment is based on the number of Workweeks credited to you.

Under the terms of the Settlement, your Individual Settlement Payment is estimated to be \$[REDACTED]. The Individual Settlement Payment is subject to reduction for the employee's share of taxes and withholding with respect to the wages portion of the Individual Settlement Payment and will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.

The settlement approval process may take multiple months. Your Individual Settlement Payment reflected in this Notice is only an estimate. Your actual Individual Settlement Payment may be higher or lower.

D. Release of Claims

As of the Final Effective Date and the date on which the Gross Settlement Amount is fully funded, Plaintiffs and all Class Members who do not submit a valid and timely Request for Exclusion (i.e., Settlement Class Members) will forever release, acquit, and discharge the Released Parties of all Released Claims.

"Released Claims" means all causes of action alleged in in the Lawsuit, or that could have been alleged in the Lawsuit based on the factual allegations alleged therein, that arose during the Class Period including but not limited to all of the following: (a) failure to pay minimum wage; (b) failure to pay overtime; (c) failure to provide off-duty meal periods; (d) failure to authorize and permit rest periods; (e) failure to reimburse business expenses; (f) failure to provide accurate wage statements; (g) waiting time penalties; (h) unlawful business practices; (i) all claims for civil penalties under PAGA, that were or could have been alleged based on the claims, causes of action or legal theories described above or on any of the claims, causes of action or legal theories of relief pleaded in the Lawsuit; and (j) any other claims or penalties under the wage and hour laws that were pleaded or could have been pleaded based on the factual allegations in the Lawsuit.

"Released Parties" means Defendant, including its past and present divisions, sister entities, parents, subsidiaries, predecessors, successors, assigns.

E. Attorneys' Fees and Litigation Costs to Class Counsel

Class Counsel will seek attorneys' fees in an amount of up to forty percent (40%) of the Gross Settlement Amount (i.e., an amount of up to \$800,000) ("Attorneys' Fees") and reimbursement of litigation costs and expenses in an amount of up to Sixty-Five Thousand Dollars (\$65,000) ("Litigation Costs"), subject to approval by the Court. All Attorneys' Fees and Litigation Costs awarded by the Court will be paid from the Gross Settlement Amount. Class Counsel has been prosecuting the Lawsuit on behalf of Plaintiffs and Class Members on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses.

F. Enhancement Payments to Plaintiff

Plaintiffs will seek the amount of Ten Thousand Dollars (\$10,000) for Plaintiff Albert Ebuén and Five Thousand Dollars (\$5,000) to Plaintiff Maricel J. Santa Ana (“Enhancement Payments”), in recognition of their services in connection with the Lawsuit. The Enhancement Payments will be paid from the Gross Settlement Amount, subject to approval by the Court, and if awarded, will be paid to Plaintiffs in addition to their Individual Settlement Payments that they are entitled to under the Settlement.

G. Settlement Administration Costs to Settlement Administrator

Payment to the Settlement Administrator is estimated not to exceed Sixteen Thousand Dollars (\$16,000) (“Settlement Administration Costs”) for the costs of the notice and settlement administration process, including and not limited to, the expense of notifying the Class Members of the Settlement, processing Requests for Exclusion, Objections, and disputes of Workweeks, calculating Individual Settlement Payments, and distributing payments and tax forms under the Settlement, and shall be paid from the Gross Settlement Amount, subject to approval by the Court.

IV. WHAT ARE YOUR RIGHTS AND OPTIONS AS A CLASS MEMBER?

A. Participate in the Settlement

If you want to participate in the Settlement and receive money from the Settlement, you do not have to do anything. You will automatically be included in the Settlement and issued your Individual Settlement Payment unless you decide to exclude yourself from the Settlement.

Unless you elect to exclude yourself from the Settlement, you will be bound by the terms of the Settlement and any judgment that may be entered by the Court based thereon, and you will release the claims described in Section III.D above. As a Class Member, you will not be separately responsible for the payment of attorney’s fees or litigation costs and expenses, unless you retain your own counsel, in which event you will be responsible for your own attorney’s fees and expenses.

B. Request Exclusion from the Settlement

If you do not wish to participate in the Settlement, you must seek exclusion from the Settlement by submitting a written request (“Request for Exclusion”) to the Settlement Administrator.

A Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Class Member; (2) be signed by the Class Member; (3) contain the case name and number of the Lawsuit (*Albert Ebuén, et al. v. Red Ribbon Bake Shop, Inc.*, Case No. BC715064); (4) clearly state that the Class Member wished to be excluded from Settlement; and (5) be submitted to the Settlement Administrator by mail, postmarked **no later than [Response Deadline]**, at the following mailing address:

[Settlement Administrator]

[Mailing Address]

If the Court grants final approval of the Settlement, any Class Member who submits a valid and timely Request for Exclusion will not be entitled to receive any payment from the Settlement, will not be bound by the Settlement (and the release of claims described in Section III.D above), and will not have any right to object to, appeal, or comment on the Settlement. Any Class Members who do not submit a valid and timely Request for Exclusion will be deemed Settlement Class Members and will be bound by all terms of the Settlement, including those pertaining to the release of claims described in Section III.D above, as well as any judgment that may be entered by the Court based thereon.

C. Object to the Settlement

You can object to the terms of the Settlement as long as you have not submitted a Request for Exclusion, by submitting a written objection (“Objection”) to the Settlement Administrator.

An Objection must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the objector; (2) be signed by the objector; (3) contain the case name and number of the Lawsuit (*Albert Ebuén, et al. v. Red Ribbon Bake Shop, Inc.*, Case No. BC715064); (4) clearly state that the objector objects to the Settlement and the factual and legal reason for the objection; (5) if the objector is represented by counsel, state the name and contact information for

such counsel; and (6) be mailed to the Settlement Administrator at the address listed in Section IV.B above, postmarked **no later than [Response Deadline]**.

V. FINAL APPROVAL HEARING

The Court will hold a Final Approval Hearing in Department SSC14 of the Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, California 90012, on **[date]**, at **[time]**, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court also will be asked to approve and award Attorneys' Fees and Litigation Costs to Class Counsel, Enhancement Payments to Plaintiffs, and Settlement Administration Costs to the Settlement Administrator.

The hearing may be continued without further notice to Class Members. It is not necessary for you to appear at the Final Approval Hearing, although you may appear remotely if you wish to.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement Agreement, you should review the detailed Settlement Agreement and other papers which are on file with the Court.

You may view the Settlement Agreement and other court records in the Action at the Stanley Mosk Courthouse, located at 111 North Hill Street, Los Angeles, California 90012, during business hours.

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT.

IF YOU HAVE ANY QUESTIONS, YOU MAY CALL THE SETTLEMENT ADMINISTRATOR AT THE FOLLOWING TOLL-FREE NUMBER: **[INSERT], OR YOU MAY ALSO CONTACT CLASS COUNSEL.**