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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE

OSVALDO MARTINEZ, individually, and
on behalf of other aggrieved employees
pursuant to the California Private Attorneys
General Act,

Plaintiff,

vs.

THE MOCHI ICE CREAM COMPANY, a
California corporation; THE MOCHI ICE
CREAM COMPANY, LLC, an unknown
business entity; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 20STCV44789

Honorable Douglas W. Stern
Department 68

**DECLARATION OF EDWIN AIWAZIAN
IN SUPPORT OF PLAINTIFF'S MOTION
FOR APPROVAL OF PRIVATE
ATTORNEYS GENERAL ACT (CAL.
LABOR CODE § 2698, ET SEQ.)
SETTLEMENT AGREEMENT AND
AWARD OF ATTORNEYS' FEES,
LITIGATION COSTS, ENHANCEMENT
AWARD, AND ADMINISTRATION COSTS**

[Notice of Motion and Motion for Approval of
Private Attorneys General Act (Cal. Labor
Code § 2698, *Et Seq.*) Settlement Agreement
and Award of Attorneys' Fees, Litigation
Costs, Enhancement Award, and
Administration Costs; Declaration of Plaintiff
(Osvaldo Martinez); and [Proposed] Order and
Judgment filed concurrently herewith]

Reservation ID: 616475512624
Date: May 18, 2023
Time: 8:30 a.m.
Department: 68

Complaint Filed: November 20, 2020
FAC Filed: December 9, 2022
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 Osvaldo Martinez ("Plaintiff"). 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.

ADEQUACY OF LAWYERS for JUSTICE, PC

EDUCATION

2. In May of 2004, I graduated from *Pepperdine University School of Law* with a Juris Doctor degree. I have extensive formal education and 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 County Superior Court*. In October of 2000, I obtained a Litigation Paralegal Certificate from *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 REPRESENTATIVE 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 *Girardi & Keese*.

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

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

17 **EXAMPLES OF RESULTS IN REPRESENTATIVE AND CLASS ACTION CASES**

18 7. What follows are just a few examples of the type of results *Lawyers for Justice,*
19 *PC* (“LJ”) has achieved on behalf of its clients:

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

25 b) LJ, in association with co-counsel therein, represented the plaintiffs in a
26 wage-and-hour class action against a national retailer of household items involving allegations
27 of misclassification of the “Assistant Store Manager” position. On October 28, 2010, the court
28 granted final approval of the class action settlement. The Los Angeles County Superior Court

Case Number is BC413498.

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

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

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

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

g) LFJ, in association with co-counsel therein, represented the plaintiff in a wage-and-hour class action against a multinational corporation that provides global workplace solutions, involving allegations of misclassification of the “Operations Manager” position. On September 16, 2014, the court granted plaintiff’s motion for class certification. The Los Angeles County Superior Court Case Number is BC478769.

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

i) LFJ, in association with co-counsel therein, represented the plaintiff in a wage-and-hour class and PAGA action involving allegations of misclassification of the salaried residential “Property Manager” position. On September 17, 2015, the court granted plaintiff’s motion for class certification. On October 20, 2017, the court granted final approval of the class and PAGA representative action settlement. The Los Angeles County Superior Court Case Number is BC474784.

j) LFJ, in association with co-counsel therein, represented the plaintiffs in a wage-and-hour class and PAGA representative action against a national retailer of upscale hardware and home furnishings, on behalf of non-exempt employees. On April 28, 2016, the court granted final approval of the class and PAGA representative action settlement. The Los Angeles County Superior Court Case Numbers are BC516795 and JCCP4794, and the Judicial Council Coordination Proceeding Number is 4794.

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

l) LFJ, in association with co-counsel therein, represented the plaintiffs in a wage-and-hour class action against a national retailer of apparel, accessories, and home products, involving allegations of misclassification of the “Department Manager” position. On August 12, 2016, the court granted the plaintiffs’ motion for class certification in part and certified a class. On August 6, 2019, the court granted final approval of the class action settlement. The Alameda County Superior Court Case Number is RG13680477.

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1 m) LFJ represented the plaintiff in a PAGA representative action against a
2 real estate and property management company, on behalf of non-exempt employees. On
3 November 4, 2016, the court granted approval of the PAGA representative action settlement.
4 The Orange County Superior Court Case Number is 30-2015-00775439-CU-OE-CXC.

5 n) LFJ, in association with co-counsel therein, represented the plaintiffs in a
6 wage-and-hour class and PAGA representative action against a full-service bank, on behalf of
7 non-exempt employees. On November 18, 2016, the court granted final approval of the class
8 and PAGA representative action settlement. The San Francisco County Superior Court Case
9 Number is CJC-13-004839 and the Judicial Council Coordination Proceeding Number is 4839.

10 o) LFJ represented the plaintiffs in a wage-and-hour class and PAGA
11 representative action against a foodservice distributor, on behalf of non-exempt employees. On
12 January 26, 2017, the court granted final approval of the class and PAGA representative action
13 settlement. The San Bernardino County Superior Court Case Number is CIVDS1507260.

14 p) LFJ, on behalf of the plaintiff and respondent in a PAGA representative
15 action, successfully opposed in the trial court, and briefed and argued an appeal with respect to
16 the employer's motion to compel arbitration, which resulted in a published opinion by the
17 California Court of Appeal in favor of employees. *Roberto Betancourt v. Prudential Overall*
18 *Supply* (Cal. App. 4th Dist., Mar. 7, 2017) 9 Cal.App.5th 439, review denied, cert. denied (U.S.
19 Supreme Court Docket No. 17-254). The Riverside County Superior Court Case Numbers are
20 RIC1503952 and RICJCCP5046, and the Judicial Council Coordination Proceeding Number is
21 5046.

22 q) LFJ, in association with co-counsel therein, represented the plaintiffs in a
23 wage-and-hour class and PAGA representative action against a consumer packaging company,
24 on behalf of non-exempt employees. On March 10, 2017, the court granted final approval of the
25 class and PAGA representative action settlement. The Los Angeles County Superior Court Case
26 Number is BC590429.

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1 r) LFJ, in association with co-counsel therein, represented the plaintiffs in a
2 wage-and-hour class and PAGA representative action against a manufacturer of food service
3 industry supplies on behalf of non-exempt employees. On April 14, 2017, the court granted final
4 approval of the class and PAGA representative action settlement. The Orange County Superior
5 Court Case Number is 30-2015-00810013-CU-OE-CXC.

6 s) LFJ, in association with co-counsel therein, represented the plaintiffs in a
7 wage-and-hour class and PAGA representative action against a lumber and hardware company
8 on behalf of non-exempt employees. On April 26, 2017, the court granted final approval of the
9 class and PAGA representative action settlement. The Orange County Superior Court Case
10 Number is 30-2014-00747750-CU-OE-CXC.

11 t) LFJ represented the plaintiff in a wage-and-hour class and PAGA
12 representative action against a property management company, on behalf of non-exempt
13 employees. On June 14, 2017, the court granted final approval of the class and PAGA
14 representative action settlement. The Los Angeles County Superior Court Case Number is
15 BC586234.

16 u) LFJ represented the plaintiff in a wage-and-hour class and PAGA
17 representative action against a food company on behalf of non-exempt employees. On June 30,
18 2017, the court granted final approval of the class and PAGA representative action settlement.
19 The Sacramento County Superior Court Case Number is 34-2015-00175871.

20 v) LFJ represented the plaintiffs in a wage-and-hour class and PAGA
21 representative action against a chocolate company on behalf of non-exempt employees. On July
22 19, 2017, the court granted final approval of the class and PAGA representative action
23 settlement. The Alameda County Superior Court Case Number is RG15764300.

24 w) LFJ represented the plaintiff in a PAGA representative action, against the
25 parent company of several restaurants, on behalf of hourly-paid, non-exempt employees. On
26 October 18, 2017, the court granted approval of the PAGA representative action settlement. The
27 Los Angeles County Superior Court Case Number is BC569664.

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1 x) LFJ represented the plaintiffs in a wage-and-hour class and PAGA
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 PAGA
4 representative action settlement. The Los Angeles County Superior Court Case Number is
5 BC577233.

6 y) LFJ, in association with co-counsel therein, represented the plaintiffs in a
7 wage-and-hour class and PAGA representative action against a bank on behalf of non-exempt
8 employees. On December 11, 2017, the court granted final approval of the class and PAGA
9 representative action settlement. The Los Angeles County Superior Court Case Number is
10 BC569646.

11 z) LFJ, in association with co-counsel therein, represented the plaintiffs in a
12 wage-and-hour class and PAGA representative action against a property management company
13 on behalf of hourly-paid and non-exempt employees. On January 4, 2018, the court granted final
14 approval of the class and PAGA representative action settlement. The Los Angeles County
15 Superior Court Case Number is JCCP4819 and the Judicial Council Coordination Proceeding
16 Number is 4819.

17 aa) LFJ, in association with co-counsel therein, represented the plaintiffs in a
18 wage-and-hour class and PAGA representative action against a global provider of flexible office
19 space solutions. On February 15, 2018, the court granted final approval of the class and PAGA
20 representative action settlement. The Los Angeles County Superior Court Case Number is
21 BC498401.

22 bb) LFJ, in association with co-counsel therein, represents the plaintiff in a
23 wage-and-hour class action against a container manufacturer, on behalf of non-exempt
24 employees. On October 15, 2018, the court granted the plaintiff's motion for class certification.
25 The Tulare County Superior Court Case Number is VCU264528.

26 cc) LFJ represented the plaintiffs in a wage-and-hour class and PAGA
27 representative action against a behavioral health service provider on behalf of non-exempt
28 employees. On November 13, 2018, the court granted final approval of the class and PAGA

1 representative action settlement. The Alameda County Superior Court Case Number is
2 RG16811450.

3 dd) LFJ, in association with co-counsel therein, represented the plaintiff in a
4 PAGA representative action against a global provider of products and services to the energy
5 industry, on behalf of hourly-paid and non-exempt employees. On November 19, 2018, the
6 court granted approval of the PAGA representative action settlement. The Kern County
7 Superior Court Case Number is S-1500-CV-280215-SDC.

8 ee) LFJ, in association with co-counsel therein, represents the plaintiff in a
9 wage-and-hour class action against a parking company on behalf of non-exempt employees. On
10 September 3, 2019, the court granted the plaintiff's motion for class certification and certified a
11 class. The Santa Clara County Superior Court Case Number is 16CV292208 and the Judicial
12 Council Coordination Proceeding Number is 4886.

13 ff) LFJ, in association with co-counsel therein, represents the plaintiffs in a
14 wage-and-hour class and PAGA representative action against a bank on behalf of non-exempt
15 employees. On September 27, 2019, the court granted the plaintiffs' motion for class
16 certification in part and certified a class. The Alameda County Superior Court Case Number is
17 RG15757606 and the Judicial Council Coordination Proceeding Number is 4921.

18 gg) LFJ, in association with co-counsel therein, represented the plaintiffs in a
19 wage-and-hour class and PAGA representative action against a national retailer of apparel and
20 fashion accessories, on behalf of non-exempt employees. On October 9, 2019, the court granted
21 the plaintiffs' motion for class certification in part and certified a class. On May 14, 2021, the
22 court granted final approval of the class and PAGA representative action settlement. The
23 Sacramento County Superior Court Case Number is 34-2015-00175330-CU-OE-GDS.

24 hh) LFJ, in association with co-counsel therein, represents the plaintiff in a
25 wage-and-hour class and PAGA representative action against a medical equipment supplier on
26 behalf of non-exempt employees. On February 13, 2020, the court granted the plaintiff's motion
27 for class certification and certified a class. The San Bernardino County Superior Court Case
28 Number is CIVDS1505744.

1 ii) LFJ, in association with co-counsel therein, on behalf of the plaintiff and
2 respondent in a PAGA representative action, successfully opposed in the trial court, and briefed
3 and argued an appeal with respect to the employer's motion to compel arbitration, resulting in a
4 notable decision from the California Supreme Court clarifying the law regarding PAGA claims,
5 *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175. On February 21, 2020, the court granted
6 approval of the PAGA representative action settlement. The San Diego County Superior Court
7 Case Number is 34-2015-00175330.

8 jj) LFJ, in association with co-counsel therein, represented the plaintiff in a
9 wage-and-hour class and PAGA representative action against a large national drug testing
10 laboratory on behalf of non-exempt employees. On February 21, 2020, the court granted the
11 plaintiff's motion for class certification and certified a class. On October 28, 2022, the court
12 granted final approval of the class and PAGA representative action settlement. The San Diego
13 County Superior Court Case Number is 37-2018-00019611-CU-OE-CTL.

14 kk) LFJ, in association with co-counsel therein, represents the plaintiffs in a
15 wage-and-hour class and PAGA representative action against a national retailer of sportswear,
16 footwear, and camping equipment on behalf of non-exempt employees. On March 16, 2020,
17 the court granted in part the plaintiff's motion for class certification and certified a class. The
18 Riverside County Superior Court Case Numbers are RIC1507504 and RICJCCP4930, and the
19 Judicial Council Coordination Proceeding Number is 4930.

20 ll) LFJ, in association with co-counsel therein, represented the plaintiffs in a
21 wage-and-hour class action against manufacturer and supplier of power products and services
22 on behalf of non-exempt employees. On July 31, 2020, the court granted in part the plaintiffs'
23 motion for class certification and certified a class. On August 27, 2021, the court granted final
24 approval of the class action settlement. The San Diego County Superior Court Case Number is
25 37-2015-00025968-CU-OE-CTL.

26 mm) LFJ represents the plaintiff in a wage-and-hour class action against a
27 nutritional products manufacturer on behalf of non-exempt production line employees. On
28 December 13, 2021, the court granted the plaintiff's motion for class certification in part and

certified a class. The Solano County Superior Court Case Number is FCS051001.

THE SETTLEMENT REACHED IN THE ACTION

8. Marked and attached hereto as “**EXHIBIT 1**” is the Private Attorneys General Act Settlement Agreement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”), entered into between Plaintiff Osvaldo Martinez, for himself and on behalf of the State of California and other aggrieved employees pursuant to the Private Attorneys General Act, and Defendant The Mochi Ice Cream Company, LLC and The Mochi Ice Cream Company (together, “Defendant”). The parties have also drafted and agreed to the form and content of the proposed informational cover letter (“Cover Letter”) for mailing to Settlement Group Members when Individual Settlement Payments are distributed to them, in substantially the form attached as “EXHIBIT 1” to the [Proposed] Order and Judgment Granting Approval of Private Attorneys General Act (Cal. Labor Code § 2698, *Et Seq.*) Settlement Agreement and Award of Attorneys’ Fees, Litigation Costs, Enhancement Award, and Administration Costs. The Court is respectfully requested to approve the proposed Cover Letter.

9. The Aggrieved Employees covered by the Settlement consist of the following individuals: all current and former Warehouse Managers and all current and former non-exempt employees of The Mochi Ice Cream Company, LLC (or its predecessor entity The Mochi Ice Cream Company) who worked at My/Mochi in California at any time during the Settlement Period (“Settlement Group Members”). The “Settlement Period” means the period between September 16, 2019 to December 15, 2021. Defendant has represented that, as of April 21, 2023, there are approximately one hundred and fifty (150) Settlement Group Members.

10. Plaintiff has satisfied the prerequisites under California Labor Code section 2699.3(a), including, and not limited to, providing the California Labor and Workforce Development Agency (“LWDA”) and the employer with written notice of the specific provisions of the California Labor Code that are alleged to have been violated, including the facts and theories to support the alleged violations, by way of written correspondence on September 16, 2020. The notice was sent by U.S. Certified Mail to the employer and the notice was submitted to the LWDA by way of online submission on the LWDA’s website. A true and

correct copy of the September 16, 2020 notice letter is attached hereto as “**EXHIBIT 2.**” The LWDA did not respond to the letter that was sent on behalf of Plaintiff.

11. The Settlement is for the gross amount of two hundred thousand dollars (\$200,000.00) (“Gross Settlement Amount”). The Settlement provides that the “PAGA Penalties Fund” will be the Gross Settlement Amount less the Superior Court-approved following amounts: (1) Attorneys’ Fees Award in the amount of 38% of the Gross Settlement Amount (e.g., \$76,000.00); (2) Litigation Costs Award in an amount up to \$25,000.00 for reimbursement of litigation costs to Plaintiff’s Counsel; (3) Enhancement Award of \$7,500.00 to Plaintiff; and (4) Administration Costs of up to \$2,000.00 to the Settlement Administrator. Plaintiff’s Counsel only seeks reimbursement of litigation costs and expenses in the amount of \$5,304.91, and assuming that the requested Attorneys’ Fees Award, Litigations Costs Award, Enhancement Award, and Administration Costs, are approved by the Court, the PAGA Penalties Fund is estimated to be approximately \$109,195.09. The PAGA Penalties Fund will be distributed to the LWDA and the Settlement Group Members pursuant to California Labor Code section 2699(i). Seventy-five percent (75%) of the PAGA Penalties Fund will be distributed to the LWDA, which is estimated to be \$81,896.32 (“LWDA Payment”), and twenty-five percent (25%) of the PAGA Penalties Fund, which is estimated to be \$27,298.77 (“Settlement Group Fund”), will be distributed to the Settlement Group Members, with each Settlement Group Member receiving a payment proportionate to the number of pay periods he or she worked for Defendant in California during the Settlement Period (“Covered Pay Periods”) relative to the entire Settlement Group. The parties have agreed to retain Simpluris, Inc. (“Simpluris” or “Settlement Administrator”) to handle the administration of the Settlement, and the Court is respectfully requested to appoint Simpluris to serve as the Settlement Administrator. The Administration Costs are estimated not to exceed \$2,000.00 and will be paid out of the Gross Settlement Amount, subject to approval by the Court.

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THE LITIGATION AND WORK PERFORMED BY PLAINTIFF’S COUNSEL

12. The effectiveness of Lawyers *for* Justice PC (“Plaintiff’s Counsel”), in prosecuting this matter has translated into tangible monetary benefits for Plaintiff, Settlement Group Members, and the State of California in the following respects: (1) their recoveries over a reasonably short period of time as opposed to waiting additional years for the same, or possibly, a worse, result; (2) a guaranteed result that compares favorably with other similar representative action settlements; and (3) significant savings in fees and costs which would have only increased significantly had the case progressed through trial and/or appeals.

13. After engaging in extensive formal and informal discovery, the parties participated in settlement negotiations to try to resolve the lawsuit. These efforts included participating in a full-day mediation on August 16, 2021, conducted by Judge Stephen Sundvold (Ret.), a well-respected mediator experienced in mediating complex labor and employment matters. With the aid of the mediator, the parties ultimately reached the Settlement described herein. In the course of mediation and settlement negotiations, the parties discussed all aspects of the case, including the risks and delays of further litigation, the risks to the parties of proceeding with trial, arbitration agreements and possible arbitration proceedings, the law relating to representative PAGA actions, off-the-clock theory, and wage-and-hour law and enforcement, the evidence produced and analyzed, and the possibility of bifurcation of discovery and/or trial and appeals, among other things. During all settlement discussions, the parties conducted their negotiations at arm’s length in an adversarial position.

14. Prior to reaching the Settlement, the parties investigated the veracity, strength, and scope of the PAGA claim and allegations and were preparing for trial. Plaintiff conducted significant investigation and formal and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of a large volume of information, documents, and data obtained from Plaintiff, Defendant, and other sources. Plaintiff’s Counsel propounded multiple sets of formal written discovery requests onto Defendant (specifically, Requests for Production of Documents (Set One), Special Interrogatories (Sets One and Two), and Form Interrogatories (Set One)), reviewed Defendant’s

1 responses to discovery requests and production of documents in response to discovery requests,
2 and served notices of depositions of Defendant's Person Most Knowledgeable designees
3 regarding organizational structure and job duties. Defendant's Counsel also propounded formal
4 written discovery requests on Plaintiff, and Plaintiff responded to Defendant's discovery
5 requests. The information, documents, and data that were reviewed and analyzed by Plaintiff's
6 Counsel included, and were not limited to, the employment records of Plaintiff, a detailed
7 sampling of aggrieved employees' time and payroll records, exemplar wage statements and meal
8 premium examples, employment and operations policies, practices, and procedures (e.g., Notice
9 of Termination of Employment, Employee Termination Checklist, Mutual Binding Arbitration
10 Agreement, New Employee Checklist, Employee Handbook Acknowledgment, Harassment
11 Policy Acknowledgment, General Safety Training, Vacation/Sick Pay Request Form, Company
12 Memoranda, Training and Meeting Attendance Record, Training Test, Recommended Actions
13 to Protect Against the Coronavirus, Employee Confidentiality and Intellectual Property
14 Agreement, Job Descriptions, and Supervisor To Do list), among other documents. Counsel for
15 the parties undertook significant investigation, and also invested time reviewing and analyzing
16 relevant information, documents, and data to evaluate Plaintiff's claims, including, and not
17 limited to, calculating the potential monetary recovery under PAGA. Other work performed by
18 Plaintiff's Counsel included but was not limited to: meeting and conferring with Defendant's
19 counsel regarding the production of information, documents, and data in the course of litigation
20 and in connection with mediation and settlement, among other issues; case strategy and analysis;
21 drafting, reviewing, and revising the pleadings, court filings, mediation brief, settlement
22 agreement, and settlement approval motion papers; preparing and attending court proceedings;
23 and preparing and participating in the mediation and settlement negotiations. Counsel for the
24 parties have further invested time to research the applicable law, which is evolving as it relates
25 to representative PAGA actions, off-the-clock theory, meal and rest breaks, overtime exempt
26 status and misclassification as exempt, wage-and-hour law and enforcement, and arbitration
27 agreements, Plaintiff's claim and allegations, and Defendant's defenses, as well as facts
28 discovered.

1 15. Based on investigation and information discovered, Plaintiff's Counsel believes
2 that there is sufficient evidence to support the allegations that Defendant violated the California
3 Labor Code. While Plaintiff's Counsel believes that the PAGA claim has merit and that Plaintiff
4 will ultimately succeed in this litigation and prevail at trial, Plaintiff and Plaintiff's Counsel also
5 recognize Defendant's defenses, the costs of further litigation, and multiple risks to recovery.
6 For example, although wage-and-hour actions are amenable to resolution as to a group of
7 employees, some courts have also found that, for various reasons, the issues raised by Plaintiff,
8 including, and not limited to, the issues of non-compliant meal periods, non-compliant rest
9 periods, and unreimbursed business expenses, raise individualized issues and/or are
10 unmanageable and thus not suitable for adjudication as to a group of employees. Thus, Plaintiff
11 faced the risk that the Court may determine that the PAGA claim requires individualized
12 inquiries that would render adjudication of the PAGA claim unmanageable or at odds with
13 Defendant's right to due process. *See, e.g., Wesson v. Staples the Office Superstore, LLC* (2021)
14 68 Cal.App.5th 746, 756 ("[C]ourts have inherent authority to ensure that PAGA claims can be
15 fairly and efficiently tried and, if necessary, may strike claims that cannot be rendered
16 manageable"); *but cf. Estrada v. Royalty Carpet Mills, Inc.* (2022) 76 Cal.App.5th 685,
17 712, *review granted* (June 22, 2022) ("Imposing a manageability requirement would create an
18 extra hurdle in PAGA cases that does not apply to LWDA enforcement actions.")

19 16. Plaintiff and his counsel have also considered the uncertainty and risk of the
20 outcome of further litigation, including the difficulties and delays inherent in such litigation. In
21 order to prevail on the PAGA claim, Plaintiff would have to prove that Defendant engaged in
22 the alleged California Labor Code violations and demonstrate that Defendant's conduct warrants
23 the imposition of penalties. Plaintiff's core allegation is that Defendant has violated the
24 California Labor Code by failing to: classify the Warehouse Manager position correctly; use
25 non-discretionary shift differential/bonus/performance/incentive pay to calculate the correct
26 regular rate of pay used to calculate overtime pay; provide compliant meal periods and/or a meal
27 period penalty in lieu of a compliant meal period; provide compliant rest breaks and/or a rest
28 period penalty in lieu of a compliant rest period; pay minimum wages; pay overtime wages; pay

wages timely upon termination of employment and associated waiting time penalties; pay wages timely during employment; maintain required payroll records; provide wage statements and/or accurate wage statements; provide reporting time pay; provide one day's rest in seven, and reimburse employees for necessary and reasonable business expenses.

17. From the inception of this litigation, Defendant indicated that it would aggressively litigate this case and contended that it would ultimately succeed in the action. Defendant maintained several defenses to Plaintiff's allegations, which, if successfully argued and proven, had the potential to eliminate or substantially reduce recovery. Throughout this litigation, Defendant maintained, and continues to maintain, that it did not engage in a uniform policy and systematic scheme of wage abuse against its Warehouse Managers or non-exempt employees, and that it had, and continues to have, legally compliant employment policies and practices throughout the time period at issue. Defendant denies that it ever violated any provision of the California Labor Code. Defendant further denied, and continues to deny, that the lawsuit is appropriate for representative adjudication for any purpose other than the Settlement.

18. Importantly, Defendant also contended that the claims of other aggrieved employees whom Plaintiff seeks to represent are subject to enforceable arbitration agreements that included, *inter alia*, waiver of class, collective, and representative action claims and requirement to engage in binding individual arbitration. Defendant contended that, taken together, these agreements could effectively be used to require aggrieved employees to engage in individual arbitration of their individual claims on which the PAGA claim is predicated, and that the California Supreme Court's decision in *Iskanian v. CLS Transportation* and the U.S. Supreme court's decision in *Epic Systems Corp. v. Lewis* could be read to thwart the ability to obtain victim-specific relief on behalf of a group of employees by way of court action. Although the parties disagree on whether or not Defendant's various agreements are enforceable and their impact, there is more uncertainty now regarding the viability of PAGA claims in the judicial forum, arising from the U.S. Supreme Court's decision in *Viking River Cruises, Inc. v. Moriana* (2022) 142 S. Ct. 1906, 2022 U.S. LEXIS 2940.

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1 19. Even if Defendant failed on its defenses, Plaintiff would inevitably face other
2 challenges in court. For example, Defendant challenged Plaintiff's standing as an aggrieved
3 employee and denied that any of Defendant's other employees with respect to whom Plaintiff
4 seeks civil penalties are aggrieved. Aside from challenges relating to standing, Defendant would
5 have likely sought bifurcation of discovery and/or trial of the PAGA claim — multiple courts
6 have taken such an approach, for example, limiting discovery or trial of the issues to Plaintiff.
7 Defendant also contended that an important feature of the PAGA statute is that a court has
8 discretion to reduce the penalties to be assessed against the employer pursuant to California
9 Labor Code section 2699(e)(1)-(2). Defendant denied and continues to deny that it ever violated
10 any provision of the California Labor Code. Assuming, *arguendo*, that any violations occurred,
11 Defendant argued the violations would not be viewed as subsequent violations giving rise to
12 heightened penalties. Defendant also argued that the Court was unlikely to assess cumulative
13 penalties for the maximum number of possible, separate California Labor Code violations,
14 because it would be unjust, arbitrary, oppressive, and/or confiscatory—especially where certain
15 conduct may be regulated by multiple provisions of the California Labor Code that are
16 interrelated and work in tandem.

17 20. The parties had the opportunity to review documents and data regarding Plaintiff's
18 and Settlement Group Members' employment with Defendant, including, and not limited to,
19 Plaintiff's employment records and wage statements, a sampling of aggrieved employees' time
20 data and pay data, as well as information regarding Defendant's operations and employment
21 policies, practices, and procedures, in an effort to determine the potential value and strength of
22 the PAGA claim. Counsel for the parties invested time reviewing and analyzing the relevant
23 information, documents, and data, and this information made it possible to calculate the potential
24 value of the PAGA claim. Accordingly, the parties have conducted sufficient investigation and
25 review of information to be sufficiently apprised of the nature and extent of the PAGA cause of
26 action asserted in this lawsuit, and to enable both sides to fully evaluate the Settlement for its
27 fairness, adequacy, and reasonableness. The parties have also considered the settlement
28 negotiations and the recommendations of the mediator, Honorable Steven Sunvold (Ret.), who

1 is highly experienced in mediating complex labor and employment matters. The parties have
2 agreed that this case is well-suited for settlement given the legal issues relating to the PAGA
3 claim, as well as the costs and risks to both sides that would attend further litigation. The
4 Settlement takes into account the strengths and weaknesses of each side's position and the
5 uncertainty of how the case might have concluded as litigation continued, at trial, in arbitration
6 proceedings, and/or appeals.

7 21. As set forth more fully in the accompanying Motion, Plaintiff's Counsel seeks
8 attorneys' fees in the amount of \$76,000.00, which represents approximately thirty-eight percent
9 (38%) of the Gross Settlement Amount, as provided by the Settlement Agreement. Pursuant to
10 the contingency-fee agreement entered into by and between Plaintiff and Plaintiff's Counsel,
11 Plaintiff has agreed to a contingency fee of at least thirty-eight percent (38%) of the recovery.
12 The attorneys' fees sought are commensurate with: (1) the risk that Plaintiff's Counsel took in
13 commencing the case; (2) the time, effort, and expense that Plaintiff's Counsel dedicated to the
14 case; (3) the skill and determination that Plaintiff's Counsel has shown; (4) the results that
15 Plaintiff's Counsel has achieved throughout the litigation; (5) value of the settlement that
16 Plaintiff's Counsel has achieved in the case; and (6) the other cases that Plaintiff's Counsel has
17 turned down in order to devote its time and efforts to this case.

18 22. I am aware that common and acceptable rates for contingency representation in
19 wage and hour class and representative action litigation are normally in the range from 33.3%
20 to 50%.

21 23. While not necessarily required to be demonstrated because a percentage of the
22 fund is proper for this settlement, it should be noted that Plaintiff's Counsel has performed many
23 hours of work in connection with prosecuting this matter such that the requested attorneys' fees
24 award is also justified under a simple lodestar analysis. Attorneys at Lawyers for Justice, PC
25 have spent a total of **278.20 hours** performing tasks to obtain a recovery on behalf of Plaintiff,
26 the State of California, and the Settlement Group Members. Attached hereto as "**EXHIBIT 3**"
27 is an Attorney Task and Time Chart that sets forth in detail the nature of the legal services
28 provided by attorneys at Lawyers for Justice, PC and the time incurred in performing those

1 services. These hours include work done by myself and several other attorneys at the firm.
2 Also, separate from the hours referenced herein, Lawyers for Justice, PC had litigation support
3 personnel actively engaged in assisting with the prosecution of the matter.

4 24. The work performed in this particular matter, the background of our firm, as well
5 as the individual backgrounds, training, and experience of the attorneys who worked on this
6 matter, in litigating complex wage-and-hour class and PAGA representative actions, support a
7 reasonable blended hourly rate of compensation at the rate of at least \$625 for work performed
8 by Plaintiff's Counsel. Lawyers for Justice, PC has been awarded attorneys' fees, compensating
9 the firm at the rate of at least \$625 per hour for legal services performed, by courts granting
10 approval of wage and hour class action and/or representative action settlements in other cases:
11 final approval of the class and representative action settlement in *David Dugan v. TEC*
12 *Equipment, Inc., et al.* (Los Angeles Superior Court Case No. 19STCV01591) was granted on
13 July 8, 2021, and the award of attorneys' fees involved an hourly rate of \$936.47; final approval
14 of the class and representative action settlement in *Larry Greenwood, et al. v. Scan Health Plan*
15 (Los Angeles Superior Court Case No. BC715157) was granted on April 20, 2021, and the award
16 of attorneys' fees involved an hourly rate of \$919.57; final approval of the class action
17 settlement in *Thereasa Carrozzella v. Basalite Concrete Products, LLC* (Sacramento County
18 Superior Court Case No. 34-2017-00220214-CU-OE-GDS) was granted on February 21, 2020,
19 and the award of attorneys' fees involved an hourly rate of \$766.05; final approval of the class
20 and representative action settlement in *Alice Rutledge, et al. v. Healthport Technologies, LLC*
21 (Alameda County Superior Court Case No. RG16835813) was granted on June 11, 2019, and
22 the award of attorneys' fees involved an hourly rate of \$764.82; final approval of the class and
23 representative action settlement in *Seth Swan v. Pace Supply Corp.* (Sonoma County Superior
24 Court Case No. SCV258764) was granted on February 6, 2019, and the award of attorneys' fees
25 involved an hourly rate of \$855.96; final approval of the class and representative action settlement
26 in *Stanley Bland, et al. v. Telecare Corporation* (Alameda County Superior Court Case No.
27 RG16811450) was granted on November 21, 2018, and the award of attorneys' fees involved
28 an hourly rate of \$831.38; final approval of the class and representative action settlement in

1 *Maryjo Ungerbuhler Anderson v. Boyett Petroleum* (Stanislaus County Superior Court Case No.
2 2020582) was granted on May 15, 2018, and the award of attorney’s fees involved an hourly
3 rate of \$780.77; and final approval of the class and representative action settlement in *Demetrius*
4 *Camarillo v. Blue Diamond Growers* (Sacramento County Superior Court Case No. 34-2015-
5 00175871) was granted on June 30, 2017, and the award of attorneys’ fees involved an hourly
6 rate of \$845.64.

7 **LITIGATION COSTS AND EXPENSES INCURRED BY PLAINTIFF’S COUNSEL**

8 25. Plaintiff’s Counsel has borne all of the risks and costs of litigation to date and will
9 not receive any compensation until a recovery is obtained in this matter. Plaintiff’s Counsel
10 seeks reimbursement of \$5,304.91 in litigation costs and expenses as reflected in the Case Cost
11 Detail attached hereto as “**EXHIBIT 4.**” These costs and expenses were reasonable and
12 necessary in the prosecution of this matter and to obtain the Settlement, and the amount sought
13 for reimbursement is less than the maximum amount (\$25,000.00) allocated under the
14 Settlement Agreement for reimbursement of litigation costs and expenses.

15 **ENHANCEMENT AWARD TO PLAINTIFF**

16 26. In recognition of his efforts and work in spearheading the litigation of this matter,
17 as well as for his broader, general release of claims with a California Civil Code section 1542
18 waiver, the Settlement provides an Enhancement Award to Plaintiff in the amount of \$7,500.00
19 to be paid out of the Gross Settlement Amount. The requested Enhancement Award is fair and
20 appropriate. By initiating and pursuing this matter, Plaintiff stepped into the shoes of the State
21 of California and undertook the responsibilities of serving in a representative capacity. Plaintiff
22 has spent a substantial amount of time and effort discussing his employment with his counsel,
23 gathering and producing relevant documents and information, and providing the facts and
24 evidence necessary to attempt to prove the allegations. For example, Defendant propounded
25 discovery requests on Plaintiff, and he spent time reviewing said discovery requests and
26 providing response thereto. Plaintiff was available whenever his counsel needed him and
27 actively tried to obtain and provide information that would facilitate the pursuit of the PAGA
28 claim. Accordingly, it is appropriate and just for Plaintiff to receive an Enhancement Award for

1 his services on behalf of the State of California and other Settlement Group Members, in
2 addition to the individual settlement payment that he will receive as a Settlement Group
3 Member.

4 27. Plaintiff's Counsel submits that the Settlement fulfills the purpose of the PAGA
5 statute, is within the accepted range of recoveries for this type of litigation, is fair, reasonable,
6 and adequate, and in the best interests of Plaintiff, the State of California and other Settlement
7 Group Members given the substantial monetary benefits provided for by the Settlement, the
8 strengths and weaknesses of this case, and the inherent delay, costs, risks, and uncertainty
9 associated with continued litigation.

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

12 Executed this 26th day of April 2023, at Glendale, California.

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14 Edwin Aiwanian
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EXHIBIT 1

**PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT AND
RELEASE**

Subject to approval by the Superior Court of the State of California for the County of Los Angeles (the “Superior Court”), this Private Attorneys General Act Settlement Agreement and Release (“Agreement” or “Settlement”) is made and entered into by and between Plaintiff Osvaldo Martinez (“Plaintiff”), on behalf of himself and as a representative of the State of California with respect to Defendant’s employment of Plaintiff and the Settlement Group (as defined herein) pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code Section 2698 *et seq.*), and Defendants The Mochi Ice Cream Company, LLC and The Mochi Ice Cream Company (together, “Defendant” and also known as “My/Mochi”), to settle the civil action in the Superior Court entitled *Osvaldo Martinez v. The Mochi Ice Cream Company, et al.* and designated case number 20STCV44789 (the “Lawsuit”). Plaintiff and Defendant are collectively referred to herein as the “Parties,” and each may be individually referred to herein as a “Party.”

RECITALS

This Agreement is made in consideration of the following facts:

A. Plaintiff is a former employee of The Mochi Ice Cream Company, LLC, and its predecessor The Mochi Ice Cream Company, from approximately May 5, 2019 to June 23, 2020. On or about January 29, 2020, The Mochi Ice Cream Company was converted to a California limited liability company, i.e., The Mochi Ice Cream Company, LLC.

B. Plaintiff contends that he was misclassified as an exempt employee and suffered one or more violations of the California Labor Code and applicable Industrial Welfare Commission Wage Order(s) during his employment for Defendant and that he is therefore an “aggrieved employee” under the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code § 2698 *et seq.*, under which an “aggrieved employee” may, after exhausting administrative remedies with the California Labor and Workforce Development Agency (the “LWDA”), act as an agent of the State of California to bring an action to recover civil penalties from his former employer on behalf of the State of California with respect to the former employer’s employment of himself and other current or former employees, for violations of the California Labor Code and Industrial Welfare Commission Wage Orders.

C. On September 16, 2020, pursuant to PAGA, Plaintiff, through his attorneys at Lawyers for Justice, PC, (“Plaintiff’s Counsel”), submitted a letter to the LWDA (the “PAGA Notice”), alleging that Defendant subjected Plaintiff, other current and former salaried Warehouse Managers (or those holding similar job titles or positions) who were misclassified as exempt and other current and former hourly-paid or non-exempt employees working in California to violations of the sections of the California Labor Code and Industrial Welfare Commission Wage Orders, including sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and related Industrial Welfare Commission Wage Orders including *inter alia* Wage Orders 1-2001, 4-2001, and 7-2001, premised upon various theories of liability, including Defendant’s alleged failure to: classify the Warehouse Manager position correctly (as well as any same or similar job title or job position); use shift differentials, non-discretionary bonuses, and non-discretionary performance pay to calculate the correct regular rate of pay used to

calculate overtime pay; provide compliant meal periods and/or a meal period penalty in lieu of a compliant meal period; provide compliant rest breaks and/or a rest period penalty in lieu of a compliant rest period; pay minimum wages; pay overtime wages; pay wages timely upon termination of employment and associated waiting time penalties; pay wages timely during employment; maintain required payroll records; provide wage statements and/or accurate wage statements; provide reporting time pay; indemnify employees with necessary and reasonable business expenses; and provide one day's rest in seven, all of which are collectively referred to herein as the "PAGA Representative Claims."

D. On November 20, 2020, Plaintiff filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq., (the "Complaint") in the Superior Court, seeking to recover civil penalties and, *inter alia*, attorneys' fees, based on a single cause of action under PAGA.

E. On or about January 4, 2021, The Mochi Ice Cream Company, LLC, also formerly known as The Mochi Ice Cream Company, filed its Answer to the Complaint.

F. Defendant denies, and continues to deny, all of the allegations in the Lawsuit and/or PAGA Notice and any contention that Defendant or its predecessor committed any misconduct, wrongdoing, or any other actionable conduct of any kind, including any violation of the California Labor Code.

G. Concurrent with filing the motion for approval of the settlement, Plaintiff will attach a First Amended Complaint adding a cause of action for failure to provide one day's rest in seven days and fleshing out the other alleged violations of the California Labor Code and Industrial Welfare Commission Wage Order(s) that were alleged in the PAGA Notice ("First Amended Complaint") and request it be deemed filed as of the date the Superior Court enters an order approving the settlement. Alternatively, Plaintiff may file the First Amended Complaint before filing the motion for approval of the settlement, by way of stipulation of the Parties. All material allegations in the First Amended Complaint will be deemed denied by Defendant without the necessity of Defendant filing a responsive pleading to the First Amended Complaint.

H. The Parties have each independently analyzed and investigated the facts and law relevant to the Lawsuit through informal and formal discovery, including, but not limited to, Defendant's employment policies, procedures, and practices implicated by the PAGA Representative Claims; a sampling of timekeeping records, payroll records, and wage statements of Defendant relating to Plaintiff and the other aggrieved employees on whose behalf the PAGA Representative Claims are asserted in the Lawsuit; and summary and composite data pertaining to the aggrieved employees allegedly affected by the PAGA Representative Claims.

I. After evaluating the strengths and weaknesses of their respective positions, after considering the time, expense, and risk associated with litigating the Lawsuit to judgment, and after engaging in arm's-length settlement negotiations on August 16, 2021, at a mediation with mediator Judge Stephen Sundvold (ret.), an experienced and well-respected mediator, the Parties desire, and have agreed, to fully and finally settle any and all claims in the Lawsuit during the Settlement Period (as defined herein).

NOW, THEREFORE, in consideration of the promises and agreements contained herein, the Parties agree to, and, pursuant to Labor Code section 2699(1)(2), seek approval of, the following settlement terms.

SETTLEMENT TERMS

1. **Superior Court Approval of the Agreement.** In accordance with California Labor Code section 2699(1)(2), the Parties will present this Agreement to the Superior Court for its review and approval. Plaintiff's Counsel shall prepare the motion for approval of this Agreement. Parties are aware that some courts have approved a PAGA settlement and entered an order approving the settlement and judgment and thereafter closed the case, while others have approved a PAGA settlement and entered only an order approving the settlement with later instructions to file a request for dismissal of the action. Parties agree to cooperate and take any and all steps required by the Superior Court in the Lawsuit to implement the settlement and terminate the Lawsuit and fully discharge the Released Claims with prejudice pursuant to settlement (i.e., to terminate the Lawsuit by way of judgment or dismissal).

2. **Filing of First Amended Complaint.** As set forth in Recital G above, concurrent with Plaintiff filing his motion for approval of the Settlement, Plaintiff will prepare and attach a First Amended Complaint for approval by the Superior Court, which First Amended Complaint will add a cause of action for failure to provide one day's rest in seven and flesh out Plaintiff's other alleged Labor Code violations. Plaintiff will request that the First Amended Complaint be deemed filed as the same date as the Superior Court approves the Settlement. Alternatively, Plaintiff may file the First Amended Complaint before filing the motion for approval of the settlement, by way of stipulation of the Parties. All material allegations in the First Amended Complaint will be deemed denied by Defendant without the necessity of Defendant filing a responsive pleading to the First Amended Complaint.

3. **Delivery of Agreement to the LWDA.** As required by California Labor Code section 2699(1)(2), Plaintiff's Counsel will cause this Agreement to be submitted to the LWDA prior to or at the same time that this Agreement is submitted to the Superior Court for approval.

4. **Effective Date.** This Agreement shall become fully effective upon the date when all of the following have occurred: (a) the Superior Court enters an order approving this Agreement thereby resolving the Lawsuit and Released Claims in full in accordance with this Agreement and, if applicable, disposing of the Action by way of judgment (or, otherwise providing for later disposition of the action by way of dismissal) (the "Approval Order") and (b) the Approval Order becomes final, meaning the later of the time when: (i) if no appeal is filed, the sixty-first (61st) calendar day after the Superior Court enters the Approval Order, (ii) if an appeal is filed, the date of final affirmance of the Approval Order on an appeal, the expiration of the time for, or the denial of, a petition to review the Approval Order, or if review is granted, the date of final affirmance of the Approval Order following review pursuant to that grant, (iii) if an appeal is filed, the date of final dismissal of any appeal from the Approval Order or the final dismissal of any proceeding to review the Approval Order, provided that the Approval Order is affirmed and/or not reversed in any part, or (iv) if an appeal is filed, the final resolution (or withdrawal) of any filed appeal in a way that affirms the Approval Order in a form substantially identical to the form of the Approval Order entered by the Superior Court, and the time to petition for review with respect to any

appellate decision affirming the Approval Order has expired. In this regard, it is the intention of the Parties that the Agreement shall not become effective until the Approval Order is completely final, and there is no further recourse by any person who seeks to contest the Agreement.

5. **No Admission of Liability.** The Parties acknowledge and agree that this Agreement is a compromise and settlement of disputed claims in the Lawsuit and that this Agreement is made and entered into without any admission of liability or wrongdoing of any kind whatsoever by Defendant, who expressly denies and disclaims any liability or wrongdoing whatsoever. Accordingly, neither the execution of this Agreement, its creation, the payment of any sum or consideration hereunder, nor the performance of any obligation required by this Agreement is, or shall be construed as, an admission of wrongdoing or liability on the part of Defendant. Additionally, neither the execution of this Agreement, its creation, the payment of any sum or consideration hereunder, nor the performance of any obligation required by this Agreement is, or shall be construed as, an admission of the truth or accuracy of any allegation made by Plaintiff or Plaintiff's Counsel in the Lawsuit.

6. **Persons and Entities Covered by this Agreement**

(a) **The Settlement Period.** This Agreement shall cover the period from September 16, 2019, to the date the Superior Court or another court of competent jurisdiction enters an order approving this Settlement pursuant to California Labor Code section 2699(1)(2), or December 15, 2021, whichever is earlier (the "Settlement Period").

(b) **The Settlement Group.** This Agreement shall cover all current and former Warehouse Managers and all current and former non-exempt employees of The Mochi Ice Cream Company, LLC (or its predecessor entity The Mochi Ice Cream Company) who worked at My/Mochi in California at any time during the Settlement Period. Such employees shall be collectively referred to herein as the "Settlement Group." Each employee within the Settlement Group may be individually referred to herein as a "Settlement Group Member."

7. **Settlement Administration**

(a) The Parties will retain Simpluris, Inc. or another third-party settlement administrator mutually selected by the Parties and with whom no Party has a financial interest or other relationship that could create a conflict of interest, to act as the "Settlement Administrator" with respect to this Agreement.

(b) The Settlement Administrator shall be responsible for establishing a qualified settlement fund pursuant to 26 U.S.C. § 486B, making all payments required by this Agreement, handling all required state and federal tax withholding and reporting related thereto, and issuing all appropriate tax forms to Plaintiff, Plaintiff's Counsel, the Settlement Group, and the LWDA resulting from the settlement payments under this agreement.

8. **Settlement Payments**

(a) **Gross Settlement Amount.** In consideration of, and subject to, the promises, terms, and conditions set forth in this Agreement—including the releases set forth in Section 10 of this Agreement—Defendant shall pay the maximum gross sum of Two Hundred

Thousand Dollars (\$200,000.00) (the “Gross Settlement Amount”), in the manner and method set forth in this Agreement, to fully, finally, and completely settle the Lawsuit and the Released Claims on behalf of the State of California with respect to Defendant’s employment of Plaintiff and the Settlement Group, including any and all associated claims for civil penalties, attorneys’ fees, and litigation costs and expenses.

(b) **Allocation of Gross Settlement Amount.** The Gross Settlement Amount shall consist of the following categories of payments: an award of attorneys’ fees to Plaintiff’s Counsel in the Lawsuit, an award of litigation costs and expenses to Plaintiff’s Counsel, the payment of settlement administration costs to the Settlement Administrator, an Enhancement Award to Plaintiff, and the payment of civil penalties to the LWDA and the Settlement Group. Subject to approval by the Superior Court, these amounts shall be paid and allocated as set forth below in Sections 8(b)(i) through 8(b)(v) of this Agreement. In no event will any money revert to Defendant.

(i) **Attorneys’ Fees Award**

(A) Plaintiff’s Counsel may submit an application to the Superior Court, which may be combined with the motion for approval of the Settlement, for an award of attorneys’ fees in an amount not to exceed the combined gross sum of Seventy-Six Thousand Dollars (\$76,000.00) (i.e., 38% of the Gross Settlement Amount) (the “Attorneys’ Fees Award”). Defendant will not oppose or object to this application.

(B) Any attorneys’ fees approved by the Superior Court will be paid out of the Gross Settlement Amount and shall constitute a full and complete satisfaction of all claims Plaintiff may have for attorneys’ fees arising out of the Lawsuit through the Effective Date of this Agreement, including work not yet performed. Notwithstanding the foregoing, the prevailing Party in any action to enforce the terms of this Settlement will be entitled to recover from the other Party any attorneys’ fees and costs incurred in such action.

(C) This Agreement is not contingent upon the Superior Court approving Attorneys’ Fees Award in an amount equal to the maximum amount authorized by Section 8(b)(i)(A) of this Agreement. This Agreement shall remain fully effective and enforceable notwithstanding any decision by the Superior Court to approve an Attorneys’ Fees Award that is less than the amount authorized by Section 8(b)(i)(A) of this Agreement or the amount requested by Plaintiff’s Counsel.

(D) In the event that any portion of the Attorneys’ Fees Award authorized by Section 8(b)(i)(A) of this Agreement is not approved by the Superior Court, only the approved amount shall be paid, and the payment of that amount shall constitute satisfaction of Defendant’s obligations with respect to the Attorneys’ Fees Award. Additionally, the difference between the Attorneys’ Fees Award authorized by Section 8(b)(i)(A) and the attorneys’ fees approved by the Superior Court shall become part of the PAGA Penalties Fund and distributed accordingly.

(ii) **Litigation Costs Award**

(A) Plaintiff's Counsel may submit an application to the Superior Court, which may be combined with the motion for approval of the Settlement, for an award for reimbursement of litigation costs and expenses incurred by Plaintiff's Counsel in connection with of Lawsuit in an amount not to exceed the combined gross sum of Twenty-Five Thousand Dollars (\$25,000.00) (the "Litigation Costs Award"). Defendant will not oppose or object to this application.

(B) Any Litigation Costs Award approved by the Superior Court will be paid out of the Gross Settlement Amount and shall constitute a full and complete satisfaction of all claims Plaintiff may have for litigation costs and expenses arising out of the Lawsuit through the Effective Date of this Agreement, including litigation costs and expenses not yet incurred.

(C) This Agreement is not contingent upon the Superior Court approving a Litigation Costs Award in an amount equal to the maximum amount authorized by Section 8(b)(ii)(A) of this Agreement. This Agreement shall remain fully effective and enforceable notwithstanding any decision by the Superior Court to approve a Litigation Costs Award that is less than the amount authorized by Section 8(b)(ii)(A) of this Agreement or the amount requested by Plaintiff's Counsel.

(D) In the event that any portion of the Litigation Costs Award authorized by Section 8(b)(ii)(A) of this Agreement is not approved by the Superior Court, only the approved amount shall be paid, and the payment of that amount shall constitute satisfaction of Defendants' obligations with respect to the Litigation Costs Award. Additionally, the difference between the Litigation Costs Award authorized by Section 8(b)(ii)(A) and Litigation Costs Award approved by the Superior Court shall become part of the PAGA Penalties Fund and distributed accordingly.

(iii) **Administration Costs**

(A) Subject to approval by the Superior Court, an amount not to exceed the gross sum of Two Thousand Dollars (\$2,000.00) will be paid to the Settlement Administrator out of the Gross Settlement Amount to cover the costs of the settlement administration process ("Administration Costs"). If the actual cost of the settlement administration process is less than the amount approved by the Superior Court, the balance will become part of the PAGA Penalties Fund.

(B) This Agreement is not contingent upon the Superior Court approving Administration Costs in an amount equal to the maximum amount authorized by Section 8(b)(iii)(A) of this Agreement. This Agreement shall remain fully effective and enforceable notwithstanding any decision by the Superior Court to approve Administration Costs in an amount that is less than the amount authorized by Section 8(b)(iii)(A) of this Agreement.

(C) In the event that any portion of the Administration Costs authorized by Section 8(b)(iii)(A) of this Agreement is not approved by the Superior Court, no more than the approved amount shall be paid to the Settlement Administrator out of the Gross

Settlement Amount. Additionally, the difference between the Administration Costs authorized by Section 8(b)(iii)(A) and the Administration Costs approved by the Superior Court will become part of the PAGA Penalties Fund.

(iv) **Enhancement Award to Plaintiff**

(A) Subject to approval by the Superior Court, the portion of the Gross Settlement Amount equal to the gross sum of Seven Thousand Five-Hundred Dollars (\$7,500.00) will be paid to Plaintiff Osvaldo Martinez for his participation in this lawsuit (“Enhancement Award”) and in exchange for a general release, including a Civil Code section 1542 waiver.

(B) This Agreement is not contingent upon the Superior Court approving an Enhancement Award to Plaintiff in an amount equal to the maximum amount authorized by Section 8(b)(iv)(A) of this Agreement. This Agreement shall remain fully effective and enforceable notwithstanding any decision by the Superior Court to approve an Enhancement Award in an amount that is less than the amount authorized by Section 8(b)(iii)(A) of this Agreement.

(C) In the event that any portion of the Enhancement Award authorized by Section 8(b)(iv)(A) of this Agreement is not approved by the Superior Court, no more than the approved amount shall be paid to the Plaintiff out of the Gross Settlement Amount. Additionally, the difference between the Enhancement Award authorized by Section 8(b)(iii)(A) and the Enhancement Award approved by the Superior Court will become part of the PAGA Penalties Fund.

(v) **PAGA Penalties Fund.** The amount designated as civil penalties under PAGA, which shall be distributed to the LWDA and the Settlement Group Members in accordance with the PAGA statute, is the Gross Settlement Amount less the Superior Court-approved Attorneys’ Fees Award, Litigation Costs Award, Administration Costs, and Enhancement Award. Subject to approval by the Superior Court, the PAGA Penalties Fund shall be allocated and paid as follows:

(A) **LWDA Payment.** Seventy-five percent (75%) of the PAGA Penalties Fund (“LWDA Payment”), will be paid to the LWDA pursuant to Labor Code section 2699(i).

(B) **Settlement Group Fund.** Twenty-five percent (25%) of the PAGA Penalties Fund (“Settlement Group Fund”), will be paid to the Settlement Group pursuant to Labor Code section 2699(i), with each Settlement Group Member receiving a payment proportionate to the number of pay periods he or she worked for Defendant, in California during the Settlement Period relative to the entire Settlement Group. Specifically, each Settlement Group Member’s share of the Settlement Group Fund (an “Individual Settlement Payment”) will be calculated as follows:

(1) Each pay period during the Settlement Period that a Settlement Group Member worked for Defendant in California will be counted as a “Covered Pay Period.”

(2) The Settlement Group Fund will be divided by the total number of Covered Pay Periods attributable to the entire Settlement Group to yield a “Per Pay Period Rate.”

(3) For each Settlement Group Member, the Per Pay Period Rate will be multiplied by the number of Covered Pay Periods attributable to the Settlement Group Member to yield the Individual Settlement Payment owed to that Settlement Group Member.

(c) **Escalator Clause.** Defendants represent that there are 3,420 pay periods for the period of September 16, 2019 to June 20, 2021. If the number of pay periods as of June 20, 2021, exceeds 3,420 by more than 10% (i.e., exceed 3,762 pay periods), the Gross Settlement Amount will increase pro rata per additional pay period above 3,762.

(d) **No Effect on Employee Benefits.** The payments made to Settlement Group Members pursuant to this Agreement shall not be utilized to calculate any additional benefits under any benefit plans to which any Settlement Group Members may be eligible, including, but not limited to, any profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, or other benefit plans available to the Settlement Group. It is the Parties’ intention that this Agreement will not affect any rights, contributions, or amounts to which any Settlement Group Members may be entitled under any benefit plans.

(e) **Taxability of Settlement Payments**

(i) **Payments to Plaintiff’s Counsel.** The Attorneys’ Fees Award and Litigation Costs Award shall be reported on an IRS Form 1099 issued to Plaintiff’s Counsel.

(ii) **Payments to the LWDA.** The LWDA Payment under Section 8(b)(v)(A) of this Agreement shall be deemed to consist entirely of civil penalties recovered under PAGA. Accordingly, an IRS Form 1099 will be issued to the LWDA in connection with the payment to the LWDA of the amount in Section 8(b)(v)(A) of this Agreement.

(iii) **Payments to the Settlement Group.** Individual Settlement Payments shall be deemed to consist entirely of civil penalties recovered under PAGA. Accordingly, an IRS Form 1099 will be issued to each Settlement Group Member in connection with his or her Individual Settlement Payment.

(f) **Tax Indemnification.** Plaintiff, Plaintiff’s Counsel, the Settlement Group, and applicable governmental authorities (including the LWDA) are solely responsible for their tax obligations, including all reporting and payment obligations, that may arise as a consequence of this Agreement and the payment of the amounts to them under the Settlement, as set forth above in Section 8(b). Neither Defendant, Defendant’s attorneys, Plaintiff, nor Plaintiff’s Counsel make any express or implied promise, representation, or warranty to the Settlement Group regarding the tax consequences or tax treatment under federal or state tax laws for any sum paid pursuant to this Agreement. Nor do Defendant, Defendant’s attorneys, Plaintiff, or Plaintiff’s Counsel intend anything in this Agreement to be interpreted or relied upon as such. The tax issues for each Settlement Group Member are unique, and each Settlement Group Member will be advised to obtain tax advice from his or her own tax advisor with respect to any payments resulting from this

Settlement. Defendant and the Released Parties (as defined in Section 10) shall be held harmless from and against any claims relating to the non-withholding of the Settlement Group's share of taxes and shall have no obligation to indemnify or defend Plaintiff, Plaintiff's Counsel, or any Settlement Group Member, or any governmental authority in any tax proceedings or from any tax consequences that could result from any payments made in accordance with this Agreement.

9. **Distribution of Settlement Payments**

(a) **Funding of Settlement by Defendant.**

(i) Defendant will provide the Settlement Administrator within fifteen (15) court days of the Effective Date a list of the last-known full names of the Settlement Group Members, addresses, telephone numbers, social security numbers, and number of Covered Pay Periods (collectively, the "Settlement Group List").

(ii) Within fifteen (15) court days of the Effective Date, Defendant will fund and transmit the Gross Settlement Amount to the account established by the Settlement Administrator for administration of the Settlement.

(b) **Timing of Payment by Settlement Administrator.** Within fourteen (14) calendar days of receipt of the Gross Settlement Amount, the Settlement Administrator will issue the Superior Court-approved payments required by Section 8 of this Agreement to the appropriate entities or persons.

(c) **Payment of Individual Settlement Payments.**

(i) Individual Settlement Payments will be paid in the form of a check delivered to each Settlement Group Member. Each Individual Settlement Payment will be accompanied by an explanatory cover letter substantially in the form attached hereto as **Exhibit A** ("Cover Letter"). The Individual Settlement Payment check and Cover Letter are together referred to as the "PAGA Settlement Package."

(ii) Prior to mailing the PAGA Settlement Package, the Settlement Administrator will perform a search based on the National Change of Address Database (NCOA) for information to locate updated address information and correct for any known or identifiable address changes. PAGA Settlement Packages will be mailed to the last-known address on file for the Settlement Group Members, subject to NCOA update.

(iii) Individual Settlement Payment checks will remain negotiable for 120 days after the date of their issuance (the "Check Deadline"). Any Individual Settlement Payment checks that are not cashed, deposited, or negotiated on or before the Check Deadline shall be cancelled the day after the Check Deadline, and the funds remaining as a result of the cancellation of the checks will be forwarded to the State Controller's Office Unclaimed Property Division in the names of such Settlement Group Members who did not cash, deposit, or negotiate their checks.

(iv) Any PAGA Settlement Packages to the Settlement Group that are returned as undeliverable within thirty (30) calendar days of the initial mailing will be re-sent

promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine an alternate address using a skip trace or other reasonable method and will then perform a single remailing. Any Settlement Group Member who cannot be located after the above procedures are followed will, nevertheless, continue to be bound by this Agreement.

10. **Release by State of California with Respect to Plaintiff and the Settlement Group Members.** Upon the Effective Date, the State of California with respect to Defendant's employment of Plaintiff and Settlement Group Members, shall, for the Settlement Period, fully and forever releases Defendant; each and all of Defendant's past, present, and future parents, affiliates, subsidiaries, divisions, predecessors, successors, managing members, divisions, affiliates, affiliated entities, related entities, and assigns; the past, present, and future shareholders, owners, officers, directors, board members, employees, agents, trustees, attorneys or legal representatives, insurers, representatives, administrators, fiduciaries, beneficiaries, subrogees, partners, and members of the foregoing; and/or any other entity or individual which could be liable for the acts or omissions of Defendant (collectively, the "Released Parties") from the PAGA Representative Claims and any claims for civil penalties provided by the California Labor Code that could have been asserted by the State of California, Plaintiff on behalf of the State of California, and/or any Settlement Group Member on behalf of the State of California based on the factual allegations set forth in the First Amended Complaint (the "Released Claims"). It is understood and agreed that the Released Claims are limited to claims for civil penalties under PAGA during the Settlement Period. The Parties agree that it is their intent that the terms set forth in this Agreement will release any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by the State of California, Plaintiff, and each and every Settlement Group Member to obtain any recovery based on the Released Claims.

11. **Acknowledgement of Fair and Reasonable Settlement.** The Parties have arrived at this Agreement after arm's-length negotiations by experienced counsel facilitated by a full-day mediation with Judge Stephen Sundvold (ret.), an experienced and well-respected mediator. Each of the Parties acknowledges, agrees, and believes that this Agreement is a fair, adequate, and reasonable settlement of the Lawsuit. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Agreement. Each Party to this Agreement agrees and represents that it has investigated the facts relevant to this Agreement, and all matters pertaining thereto, to the full extent that each Party deems necessary.

12. **Authority to Enter into Agreement.** Each Party represents and warrants that it has the right and authority to execute this Agreement.

13. **Ownership of Claims.** The Parties represent that they have not transferred or assigned, or purported to transfer or assign, to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged.

14. **Authorization of Counsel.** Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement

to effectuate its terms and to execute any other documents required to effectuate the terms of this Agreement.

15. **Confidentiality.** The Parties and their counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry or have any communication with the press about the fact, amount, or terms of the Agreement. In addition, Plaintiff's Counsel agrees not to engage in any advertising or marketing (including, but not limited to, any postings on any websites maintained by Plaintiff's Counsel) specifying any material terms relating to the Lawsuit or this Agreement. Any communication about the Agreement to the Settlement Group prior to the distribution of Individual Settlement Payments will be limited to a statement that a settlement has been reached and the details will be communicated in a forthcoming explanatory letter. Notwithstanding the foregoing, Plaintiff and Plaintiff's Counsel are required to submit this Agreement to the Superior Court for approval of the Agreement and to the LWDA, as described by paragraph 1 of this Agreement. Additionally, Plaintiff and Plaintiff's Counsel may disclose this Agreement to their immediate family members, to their legal, tax, and financial advisors as needed for legitimate business purposes, and as required by law. However, before disclosing information about this Agreement to any such person, Plaintiff or Plaintiff's Counsel (as the case may be) shall advise such person(s) that the information is confidential. Nothing herein will restrict Plaintiff's Counsel from referencing the Lawsuit or Settlement (to the extent this information is publicly available) in future judicial submissions to demonstrate Plaintiff's Counsel's experience and qualifications.

16. **Duty to Cooperate.** Each Party agrees that it will abide by this Agreement and use its best efforts to do all such acts and to prepare, execute, and deliver all such documents as may be reasonably required to carry out the stated objectives of this Agreement. The Parties and their counsel will cooperate with each other and to effect the implementation of the Agreement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties may seek the assistance of Judge Stephen Sundvold (ret.), the mediator who facilitated the negotiation of this Agreement. If the Parties cannot resolve their dispute with the assistance of the mediator, the Parties may seek the assistance of the Superior Court to resolve their disagreement.

17. **Nullification of Agreement.** In the event that the Superior Court does not approve the Agreement or the Agreement does not become final for any other reason, this Agreement and any documents generated to bring it into effect will be null and void and the Parties will be returned to their original respective positions as though this Agreement had never been entered into at all.

18. **Severability.** Should any clause or provision of this Agreement be declared illegal or unenforceable, it shall be modified as minimally necessary to be enforceable. If the provision cannot be modified to be enforceable, such provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect, except that if the Court were to find that the monetary terms are unenforceable, then, this Agreement is void (i.e. the release provisions will not continue to be enforceable if the monetary payment terms are not enforceable).

19. **Governing Law and Interpretation.** This Agreement shall be governed in accordance with the laws of the State of California. The Agreement shall be interpreted in

accordance with the plain meaning of its terms and shall not be strictly interpreted for or against any of the Parties to this Agreement. Given that all Parties hereto had the opportunity to draft, review, and edit the language of this Agreement, the Parties expressly waive the benefit of any legal principle or rule providing that in cases of uncertainty the language of a contract should be interpreted against the Party who caused the uncertainty to exist.

20. **Continuing Jurisdiction of the Superior Court.** Pursuant to California Code of Civil Procedure section 664.6, the Superior Court shall retain continuing jurisdiction over the Lawsuit and the Parties to the fullest extent necessary to enforce and effectuate the terms and intent of this Agreement.

21. **Interim Stay of Proceedings.** The Parties agree to stay all proceedings in the Lawsuit, except such proceedings necessary to implement and complete the Settlement, pending approval of the Settlement.

22. **Admissibility of Agreement.** The Parties agree that this Agreement is admissible for the purposes of proving up and or enforcing the terms of the Agreement, as set forth herein, pursuant to California Evidence Code section 1123.

23. **Amendment and Modification.** Prior to submission of this Agreement to the Court to obtain approval thereof, this Agreement may not be modified, altered or changed, except by a written instrument signed by either the Parties or their successors-in-interest or counsel for all Parties. After submission of this Agreement to the Court to obtain approval thereof, this Agreement may not be modified, altered or changed, except by a written instrument signed by either the Parties or their successors-in-interest or counsel for all Parties, subject to approval of the Superior Court.

24. **Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the Parties hereto and their respective agents, employees, representatives, officers, directors, parents, subsidiaries, assigns, heirs, executors, administrators, insurers, and successors in interest.

25. **No Representations.** The Parties acknowledge that, except as expressly set forth herein, no representation of any kind or character has been made to induce the execution of this Agreement.

26. **Counterparts and Signatures.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. In addition to original signatures, signatures may be affixed and/or transmitted by facsimile transmission, image/scan, or e-mail transmission, and will have the same force, validity, and effect as original signatures.

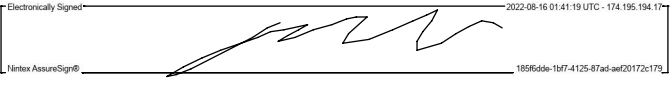
27. **Entire Agreement.** Upon full execution, this Agreement sets forth the entire agreement between the Parties, and supersedes the Memorandum of Understanding executed by the Parties on August 17, 2021, and any other prior agreements, contracts, or understandings between the Parties as to the subject matter hereof.

* *

IN WITNESS WHEREOF, the Parties—Plaintiff Osvaldo Martinez and Defendant The Mochi Ice Cream Company, LLC formerly known as The Mochi Ice Cream Company, —and their counsel, on their behalf, knowingly and voluntarily accept the terms of the this Private Attorneys General Act Settlement Agreement and Release by affixing their signatures below.

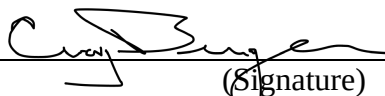
IT IS SO AGREED:

Dated: 08/15/2022

By: 
Osvaldo Martinez, Plaintiff

Dated: 08/16/2022

THE MOCHI ICE CREAM COMPANY, LLC

By: 
(Signature)
Craig Berger, President of Defendant

APPROVED AS TO FORM:

Dated: 08/16/2022

LAWYERS FOR JUSTICE, P.C.

By: 
Edwin Aiwazian
Attorneys for Plaintiff OSVALDO MARTINEZ

Dated: August 16, 2022

CDF LABOR LAW LLP

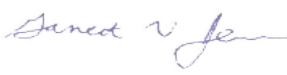
By: 
Garrett V. Jensen
Marianne Koepf
Attorneys for Defendant THE MOCHI ICE CREAM
COMPANY, LLC

EXHIBIT A

PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT AND RELEASE

TRANSMITTAL OF INDIVIDUAL SETTLEMENT PAYMENT (“COVER LETTER”)

Osvaldo Martinez v. The Mochi Ice Cream Company, et. al.
Superior Court of the State of California for the County of Los Angeles
Case No. 20STCV44789

Dear [Settlement Group Member’s Full Name]:

Enclosed with this letter is a settlement check being paid to you pursuant to the settlement of the lawsuit filed in the Los Angeles Superior Court as *Osvaldo Martinez v. The Mochi Ice Cream Company, et. al.*, which has been designated Case No. 20STCV44789 (the “Lawsuit”). The purpose of this letter is to provide you with basic information about the Lawsuit, the reasons why you are receiving the enclosed settlement check, and the effect of the settlement on your legal rights.

I. The Lawsuit

The Lawsuit was filed on November 20, 2020, by Osvaldo Martinez (“Plaintiff”), a former employee of The Mochi Ice Cream Company, LLC and The Mochi Ice Cream Company (together, “My/Mochi”). On [Insert Date], Mr. Martinez filed the First Amended Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“First Amended Complaint”).

In the Lawsuit, Mr. Martinez alleged that he and other current and former Warehouse Managers were misclassified as exempt, and that the Warehouse Managers and non-exempt employees who worked for My/Mochi in California in or after September 16, 2019, experienced violations of the California Labor Code and applicable Industrial Welfare Commission Wage Orders by Defendant. Specifically, Mr. Martinez alleged that Defendant violated sections of the California Labor Code, including sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and related IWC Wage Orders, premised upon various theories of liability, including Defendant’s alleged failure to: classify the Warehouse Manager position correctly (as well as any same or similar job title or job position); use shift differentials, non-discretionary bonuses, and non-discretionary bonus pay to calculate overtime pay; provide compliant meal periods and/or a meal period penalty in lieu of a compliant meal period; provide compliant rest breaks and/or a real period penalty in lieu of a compliant rest period; pay minimum wages; pay overtime wages; pay waiting time penalties upon termination; maintain required records; provide wage statements and/or accurate wage statements; indemnify employees with necessary and reasonable business expenses, and provide one day’s rest in seven. Based on these alleged violations, the Lawsuit sought civil penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”) on behalf of the State of California and all current and former Warehouse Managers and non-exempt employees who worked for Defendant in California on or after September 16, 2019.

My/Mochi denies all of the allegations in the Lawsuit. In particular, My/Mochi contends that it followed lawful policies and practices and that Mr. Martinez and other Warehouse Managers were properly classified as exempt employees. My/Mochi also contends that it followed all California Labor Code and Industrial Welfare Commission Wage Order provisions, non-exempt employees were paid all wages owed to them, non-exempt employees were provided with compliant meal and rest breaks in accordance with the California Labor Code, My/Mochi properly kept records of time worked and meal periods, and My/Mochi regularly issued accurate, itemized wage statements to its employees.

The merits of the Lawsuit have not been determined. On [Approval Date], however, the Los Angeles County Superior Court approved a settlement of the Lawsuit.

II. Why The Settlement Check is Being Sent to You

The settlement approved by the Los Angeles Superior Court on [Approval Date] involves a payment of civil penalties, the reimbursement of the attorneys' fees and litigation costs incurred by Mr. Martinez in furtherance of the Lawsuit, an Enhancement Award to Mr. Martinez, and administration costs. In accordance with PAGA, seventy-five percent (75%) of the civil penalties paid under the settlement are being paid to the California Labor and Workforce Development Agency. The remaining twenty-five percent (25%) of the civil penalties under the settlement are being distributed to all current and former Warehouse Managers and all current and former non-exempt employees of The Mochi Ice Cream Company, LLC (or its predecessor entity The Mochi Ice Cream Company) who worked for My/Mochi in California at any time between September 16, 2019 and December 15, 2021, (the "Settlement Group"). The enclosed settlement check is being sent to you because you have been identified as a Settlement Group Member.

III. How the Amount of Your Settlement Check Was Determined

The enclosed settlement check was calculated based on the number of pay periods you worked for My/Mochi between September 16, 2019 and December 15, 2021 ("Settlement Period") relative to the entire Settlement Group.

Your settlement check will remain negotiable for 120 days. If you do not cash, deposit or negotiate your settlement check within 120 days, the check will be cancelled and the funds will be sent to the State Controller's Office Unclaimed Property Division in your name.

IV. Consequences of the Settlement

The Lawsuit was filed exclusively as a representative action under PAGA, which functions as a substitute for an enforcement action by the State of California.

Although you are not a "party" to the Lawsuit, the Superior Court's orders and judgment approving the settlement of the Lawsuit binds all persons, including nonparty employees, who would be bound by a judgment in an action brought by the State of California itself. As a result, the judgment entered upon settlement of the Lawsuit is binding on you with respect to any claims for civil penalties under PAGA encompassed by the settlement. This is true regardless of whether you choose to cash, deposit, or negotiate the enclosed settlement check.

Upon the Effective Date, the State of California with respect to My/Mochi's employment of Plaintiff and Settlement Group Members, shall, for the Settlement Period, fully and forever releases My/Mochi; each and all of My/Mochi's past, present, and future parents, affiliates, subsidiaries, divisions, predecessors, successors, managing members, divisions, affiliates, affiliated entities, related entities, and assigns; the past, present, and future shareholders, owners, officers, directors, board members, employees, agents, trustees, attorneys or legal representatives, insurers, representatives, administrators, fiduciaries, beneficiaries, subrogees, partners, and members of the foregoing; and/or any other entity or individual which could be liable for the acts or omissions of Defendant (collectively, the "Released Parties") from the PAGA Representative Claims and any claims for civil penalties provided by the California Labor Code that could have been asserted by the State of California, Plaintiff on behalf of the State of California, and/or any Settlement Group Member on behalf of the State of California based on the factual allegations set forth in the First Amended Complaint (the "Released Claims").

The Released Claims are limited to claims for civil penalties under PAGA during the Settlement Period. The Settlement will release any further attempt, by lawsuit, administrative claim or action, arbitration, demand,

or other action of any kind, by the State of California, Plaintiff, and each and every Settlement Group Member to obtain any recovery based on the Released Claims.

“PAGA Representative Claims” means claims for alleged violations of the sections of the California Labor Code and Industrial Welfare Commission Wage Orders, including sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and related Industrial Welfare Commission Wage Orders including *inter alia* Wage Orders 1-2001, 4-2001, and 7-2001, premised upon various theories of liability, including Defendant’s alleged failure to: classify the Warehouse Manager position correctly (as well as any same or similar job title or job position); use shift differentials, non-discretionary bonuses, and non-discretionary performance pay to calculate the correct regular rate of pay used to calculate overtime pay; provide compliant meal periods and/or a meal period penalty in lieu of a compliant meal period; provide compliant rest breaks and/or a rest period penalty in lieu of a compliant rest period; pay minimum wages; pay overtime wages; pay wages timely upon termination of employment and associated waiting time penalties; pay wages timely during employment; maintain required payroll records; provide wage statements and/or accurate wage statements; provide reporting time pay; indemnify employees with necessary and reasonable business expenses; and provide one day’s rest in seven.

V. Taxation of Your Individual Settlement Payment

You will be issued an IRS Form 1099 in connection with the funds paid to you via the enclosed check. You are solely responsible for all tax obligations attributable to you that may arise as a result of receiving the settlement check. Should you seek tax advice or have tax questions relating to your receipt of the enclosed check, you should direct them to your own personal tax advisor.

VI. Where to Get More Information

Do not call the Los Angeles Superior Court about this letter, the settlement, the settlement check sent to you, or the Lawsuit in general. If you have questions about this letter, the settlement, the settlement check sent to you, or the Lawsuit in general, you may contact the Settlement Administrator at [insert contact information].

Dated: [insert date]

EXHIBIT A

PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT AND RELEASE

TRANSMITTAL OF INDIVIDUAL SETTLEMENT PAYMENT (“COVER LETTER”)

Osvaldo Martinez v. The Mochi Ice Cream Company, et. al.
Superior Court of the State of California for the County of Los Angeles
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Although you are not a "party" to the Lawsuit, the Superior Court's orders and judgment approving the settlement of the Lawsuit binds all persons, including nonparty employees, who would be bound by a judgment in an action brought by the State of California itself. As a result, the judgment entered upon settlement of the Lawsuit is binding on you with respect to any claims for civil penalties under PAGA encompassed by the settlement. This is true regardless of whether you choose to cash, deposit, or negotiate the enclosed settlement check.

Upon the Effective Date, the State of California with respect to My/Mochi's employment of Plaintiff and Settlement Group Members, shall, for the Settlement Period, fully and forever releases My/Mochi; each and all of My/Mochi's past, present, and future parents, affiliates, subsidiaries, divisions, predecessors, successors, managing members, divisions, affiliates, affiliated entities, related entities, and assigns; the past, present, and future shareholders, owners, officers, directors, board members, employees, agents, trustees, attorneys or legal representatives, insurers, representatives, administrators, fiduciaries, beneficiaries, subrogees, partners, and members of the foregoing; and/or any other entity or individual which could be liable for the acts or omissions of Defendant (collectively, the "Released Parties") from the PAGA Representative Claims and any claims for civil penalties provided by the California Labor Code that could have been asserted by the State of California, Plaintiff on behalf of the State of California, and/or any Settlement Group Member on behalf of the State of California based on the factual allegations set forth in the First Amended Complaint (the "Released Claims").

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VI. Where to Get More Information

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Dated: [insert date]

EXHIBIT 2

September 16, 2020

BY ONLINE SUBMISSION

California Labor & Workforce Development Agency
PAGAfilings@dir.ca.gov

**Re: THE MOCHI ICE CREAM COMPANY; THE MOCHI ICE CREAM
COMPANY, LLC**

Dear Representative:

We have been retained to represent Osvaldo Martinez against The Mochi Ice Cream Company, and The Mochi Ice Cream Company, LLC (including any and all affiliates, subsidiaries, parents, directors, officers, and employees) (collectively referred to as "Mochi") for violations of California wage-and-hour laws. Mr. Martinez seeks penalties for violations of the California Labor Code, which are recoverable under California Labor Code section 2698, et seq., the Labor Code Private Attorneys General Act of 2004 ("PAGA") and all other remedies available under PAGA, including an amount sufficient to recover underpaid wages pursuant to Labor Code section 558.

Mr. Martinez seeks these remedies on behalf of the State of California and "aggrieved employees," as defined herein. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Mochi employed Mr. Martinez as an hourly-paid/non-exempt employee, and as a salaried/commission employee misclassified as "exempt" in the State of California, from approximately May 2019 to approximately June 2020.

The "aggrieved employees" that Mr. Martinez may seek penalties on behalf of are: (a) all current and former hourly-paid or non-exempt individuals who were employed by any of the above-referenced entities within the State of California, including, but not limited to all current and former hourly-paid or non-exempt employees who worked for any of the above-referenced entities within the State of California who earned shift differentials/non-discretionary bonuses/non-discretionary performance pay which was not used to calculate the correct regular rate of pay used to calculate the overtime rate ("aggrieved employees in subgroup A"), and (b) all current and former salaried warehouse managers, or persons who held similar job titles and/or performed similar job duties, misclassified as "exempt" who were employed by any of the above-referenced entities within the State of California ("aggrieved employees in subgroup B").

With regard to aggrieved employees in subgroup A, based on the following facts and theories, Mochi has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 226(a), 226.7,

510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and IWC Wage Orders including *inter alia*, Wage Order 4-2001. With regard to aggrieved employees in subgroup B, based on the following facts and theories, Mochi has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and IWC Wage Orders including *inter alia*, Wage Order 1-2001, 4-2001, and 7-2001.

Mr. Martinez and the other aggrieved employees in subgroup B did not and/or do not earn in excess of one and one-half times the minimum wage, and/or less than half of their compensation is earned through commissions.

Mr. Martinez and the other aggrieved employees in subgroup B did not and/or do not customarily and regularly exercise discretion and independent judgment in matters of consequence to Mochi's business and were not and/or are not "primarily engaged" (more than one-half of the employee's work time) in performing managerial/exempt tasks. Furthermore, Mr. Martinez and the other aggrieved employees in subgroup B did not and/or do not spend at least half of their work time doing office or non-manual work directly related to managerial policies or the general business operations of Mochi. Therefore, Mr. Martinez and other aggrieved employees in subgroup B were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked because Mochi misclassified them as "exempt."

Mochi required aggrieved employees to perform work before their scheduled shifts, after their scheduled shifts, during off-the-clock meal breaks, and/or during rest breaks and failed to compensate aggrieved employees for this time. Such work included, but was not limited to, responding to work related inquiries, answering phone calls, packaging products, moving products, operating machinery, and making deliveries.

California Labor Code sections 510 and 1198 require employers to pay time-and-a-half or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates at one-and-one-half times or double the regular rate of pay, including additional remuneration. During the relevant time period, Mr. Martinez and other aggrieved employees in subgroup A worked in excess of 8 hours in a day and 40 hours in a week without overtime compensation. Additionally, during the relevant time period, Mr. Martinez and other aggrieved employees in subgroup B worked in excess of 8 hours in a day and 40 hours in a week without overtime compensation because Mochi misclassified them as "exempt." Therefore, Mr. Martinez and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each meal or rest period that is not provided. During the relevant time period, Mochi required Mr. Martinez and other aggrieved employees in subgroup A to work during meal and rest periods and failed to compensate them properly for non-compliant meal and rest periods including, *inter alia*, short, late, interrupted, and missed meal and rest periods. Additionally, during the relevant time period, Mochi required Mr. Martinez and other aggrieved employees in subgroup B to work during meal and rest periods and

failed to compensate them properly for non-compliant meal and rest periods including, *inter alia*, short, late, interrupted, and missed meal and rest periods because Mochi misclassified them as “exempt.”

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours’ notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. During the relevant time period, Mochi failed to pay Mr. Martinez and other aggrieved employees all wages due to them within any time period specified by California Labor Code sections 201 and 202, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, Mochi failed to pay Mr. Martinez and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, Mochi did not provide Mr. Martinez and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from Mochi were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include the total hours worked by Mr. Martinez and other aggrieved employees, including time spent working off-the-clock and during meal and rest periods as discussed above.

California Labor Code sections 551 and 552 require that every person employed in any occupation of labor is entitled to one day’s rest in a seven-day workweek, that no employer of labor shall cause his employees to work more than six days in a workweek, and that an employer shall pay a civil penalty in the amounts of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation. During the relevant time period, Mr. Martinez and the aggrieved employees were required to regularly and/or consistently work in excess of six (6) days in a workweek. During the relevant time period, Mr. Martinez and the aggrieved employees were required to work in excess of thirty (30) hours in a week and/or six (6) hours in any one (1) day thereof, during workweeks in which they were required to work in excess of six (6) days. During the relevant time period, Mr. Martinez and the aggrieved employees were required to work in excess of six (6) days in a workweek without accumulating or being provided the opportunity to

take at least one (1) day of rest, and when Mr. Martinez and the aggrieved employees accumulated days of rest, they were not actually provided the opportunity to take the equivalent of one (1) day's rest in seven (7) during each calendar month.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years. During the relevant time period, Mochi failed to keep accurate and complete payroll records showing the actual hours worked daily and the wages earned by Mr. Martinez and other aggrieved employees, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code sections 1194, 1197, and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, Mochi did not provide Mr. Martinez and other aggrieved employees in subgroup A with the minimum wages to which they were entitled for work performed "off-the-clock." Additionally, during the relevant time period, Mochi did not pay Mr. Martinez or other aggrieved employees in subgroup B with the minimum wages to which they were entitled for work performed "off-the-clock" because Mochi misclassified them as "exempt."

California Labor Code section 1198 provides that "The employment of any employee ... under conditions of labor prohibited by the [Industrial Wage Orders] is unlawful." The applicable Industrial Wage Orders, including *inter alia*, Wage Orders 1-2001, 4-2001, and 7-2001, require that for each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay. Further, if an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay. During the relevant time period, Mochi failed to pay Mr. Martinez and other aggrieved employees half the usual or scheduled day's work in an amount no less than two (2) hours nor more than four (4) hours at the employee's regular rate of pay for workdays in which Mr. Martinez and the other aggrieved employees reported to work and were furnished less than half the usual or scheduled day's work. During the relevant time period, Mochi failed to pay Mr. Martinez and other aggrieved employees for two (2) hours at the employee's regular rate of pay on days in which Mr. Martinez and the other aggrieved employees were required to report for work a second time in one workday and were furnished less than two (2) hours of work upon the second reporting.

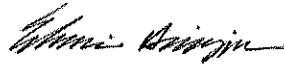
California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During the relevant time period, Mr. Martinez and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by Mochi. These costs include, but are not limited to, the use of a personal vehicle for business related tasks, the use of a personal

cell phone for business related tasks, and the purchasing of special shoes in compliance with the company's policies.

Therefore, on behalf of all aggrieved employees, Mr. Martinez seeks all applicable penalties arising out of the above-referenced wage, hour, and payroll practices, or which could be assessed and collected by the Labor and Workforce Development Agency, for violation of the California Labor Code pursuant to PAGA.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

With kind regards,



Edwin Aiwazian, Esq.

Cc: (By U.S. Certified Mail / Return Receipt Requested)

The Mochi Ice Cream Company
The Mochi Ice Cream Company, LLC
c/o Craig Berger
Agent for Service of Process
5563 Alcoa Ave
Vernon, CA 90058

(By U.S. Mail – Under Separate Cover with Filing Fee Enclosed)

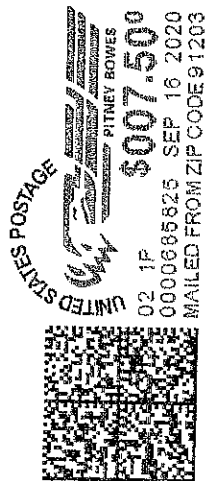
Department of Industrial Relations Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, California 94102

LAWYERS FOR
JUSTICE
A PROFESSIONAL CORPORATION

410 WEST ARDEN AVENUE, SUITE 203
GLENDALE, CALIFORNIA 91203



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The Mochi Ice Cream Company
The Mochi Ice Cream Company, LLC
c/o Craig Berger
Agent for Service of Process
5563 Alcoa Ave
Vernon, CA 90058

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

The Mochi Ice Cream Company
The Mochi Ice Cream Company, LLC
c/o Craig Berger
Agent for Service of Process
5563 Alcoa Ave
Vernon, CA 90058



9590 9402 5372 9189 9945 10

2. Article Number (Transfer from service label)

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Agent

☐ Addressee

B. Received by (<i>Printed Name</i>)	C. Date of Delivery
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C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature	☐ Priority Mail Express®
☐ Adult Signature Restricted Delivery	☐ Registered Mail™
☐ Certified Mail®	☐ Registered Mail Restricted Delivery
☐ Certified Mail Restricted Delivery	☐ Return Receipt for Merchandise
☐ Collect on Delivery	☐ Signature Confirmation™
☐ Collect on Delivery Restricted Delivery	☐ Signature Confirmation Restricted Delivery
☐ Insured Mail	
☐ Insured Mail Restricted Delivery	

Domestic Return Receipt

- A receipt this point
- A unique delivery verification
- A record of delivery signature for a specified period

Important Reminders

- First-Class Mail®
- Priority Mail®
- Certified Mail®
- International mail
- Insurance coverage with Certified Mail
- Insurance coverage with Priority Mail
- For an additional understanding on the following service, return receipt or delivery (which you can request), complete PS Form 3800, Appendix A.

EXHIBIT 3

OSVALDO MARTINEZ V. THE MOCHI ICE CREAM COMPANY, ET AL.
(LOS ANGELES SUPERIOR COURT CASE NO. 20STCV44789)

ATTORNEY TASK AND TIME CHART

TASK	LAWYERS <i>for</i> JUSTICE, PC
Investigation and Research / Due Diligence	
Pre-Lawsuit Investigation of the Key Facts with a Focus on the Merits of Plaintiff Osvaldo Martinez’s (“Plaintiff”) Claims and the Merits of the Claims of the State of California with Respect to the Aggrieved Employees	8.10
Pre-Lawsuit Investigation of Potential Civil Penalties Exposure of Defendants The Mochi Ice Cream Company, LLC, the Mochi Ice Cream Company, and My/Mochi (together, the “Defendant”) with Respect to Plaintiff and the Aggrieved Employees	6.30
Legal Research and Analysis of Latest Decisions Regarding Off-the-Clock, Meal and Rest Breaks, Overtime Exempt Status and Misclassification as Exempt, Arbitration Agreements, and Representative PAGA Actions in California, Including all New and Relevant DLSE Materials	6.80
Investigation of Defendant, Defendant’s Business Relationships, and the Industry in which Defendant Operates	2.50
Investigation of Defendant’s Organizational and Corporate Structure, and Executive Reporting Structure, as They Relate to the Employment and Management of the Aggrieved Employees	2.90
Investigation of Defendant’s Executives, Officers, and Leadership with a Focus on Involvement in Wage-and-Hour Issues and Establishing Willfulness and Uniformity; and	2.80

Research and Analysis of Defendant's Litigation History Involving Wage-and-Hour Issues and Other Related Employment Issues	
Analysis of Competitors in Various Relevant Geographic Areas within which Defendant Operates, and Comparing and Contrasting Defendant's Policies, Practices, and Procedures with the Policies, Practices, and Procedures of Defendant's Competitors	3.40
Research and Investigation Re: Location(s), Division(s), and/or Department(s) Owned, Managed, Serviced, and/or Operated by Defendant in California, Including Differences Between them to Determine Whether Those Differences Will Cause Individual Issues to Predominate Over Common Issues	3.90
Research and Investigation Re: Workforce, Staffing Models, and Staffing Levels at Locations Throughout California where Aggrieved Employees Worked	3.50
Research and Investigation Re: Defendant's Written and Non-Written Policies, Practices, and Procedures Relating to Timekeeping, Scheduling and Attendance, Customer Service, Shipping and Deliveries, Training, Meal/Rest Breaks, On-Duty and On-Premises Breaks, Meal Waivers, Meal/Rest Premiums, Non-Discretionary Bonus/Incentive/Performance/Shift Differential Pay, On-Call/Reporting Time Pay, Overtime Compensation, "To Do" List and Checklists, Daily Logs, Daily Instructions, Exempt Versus Non-Exempt Tasks, Managerial Versus Non-Managerial Tasks, Employee Classification, Cleaning and Maintenance, Health and Safety and COVID-19 Protocols, Uniform/Dress Code Requirements, Footwear Requirements, PPE/Tools/Equipment/Supplies, Radios/Walkie-Talkies, Use of Personal Cell Phone, Text Message System, Use of Personal Vehicle (and Gas and Mileage), and Reimbursement of Business-Related Expenses	12.50
Research and Investigation Re: Various Software Programs, Systems, and Other Technology Defendant Uses to Conduct Everyday Business, Including Timekeeping and Payroll Systems, Production, Manufacturing, and Resource Management, Document and Information Management, Sales, Inventory, Shipping and Logistics, and Security Systems, with a Focus on What Documents (Both Paper and Electronic) Are Created in the Normal Course of	3.80

Business Relating to Overtime Worked, Off-the-Clock Time Worked Pre- and Post-Shift, and Timed Worked During Meal Breaks	
Research and Analysis of Potential Defenses Defendant May Raise, Including <i>De Minimis</i> Work, Non-Compensable Off-the-Clock Work, Waiver, and Compliant Policies	7.40
Research and Investigation Regarding Trial Manageability Issues, including Research Regarding Which Experts to Retain and For What Purpose	5.10
Comparative Analysis and Cross-Checking of All Available Job Postings/Descriptions and Job Reviews Regarding Defendant in Order to Determine Any Variation and Identify Job Duties and Responsibilities That Would be Susceptible to Being Performed Off-the-Clock, During Meal, and/or Rest Breaks, and Job Duties that Are Non-Managerial versus Managerial and/or Support Classification as Non-Exempt versus Exempt	6.50
Research and Investigation of Impact of COVID-19 Pandemic on Defendant, Its Operations, and Aggrieved Employees' Work	5.40
Meet and Communicate with Plaintiff Osvaldo Martinez Throughout the Pendency of the Case	35.50
Investigate, Meet and Communicate with, and/or Conduct Interviews of Aggrieved Employees and Percipient Witnesses	10.50
Pleadings and Court Filings	
Research and Draft Plaintiff's Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. and Legal Research and Analysis of All Allegations Involved (filed on November 20, 2020)	7.30
Review Court's Notice of Case Assignment – Unlimited Civil Case (filed November 20, 2020)	0.10

Review Court's Notice of Case Management Conference (filed on December 1, 2020)	0.10
Review and Analyze Defendant The Mochi Ice Cream Company, LLC's Answer to Plaintiff Osvaldo Martinez's Complaint (served on January 4, 2021), and Research Affirmative Defenses in Answer	1.10
Draft Plaintiff's Case Management Conference (filed on March 15, 2021)	0.90
Review Defendant's Case Management Statement (served on March 19, 2021)	0.20
Review Court's Minute Order re: Case Management Conference (filed on April 5, 2021)	0.10
Review Court's Minute Order Re: Court Order (filed on July 20, 2021)	0.10
Review Defendant's Notice of Settlement and Request to Vacate All Remaining Dates (served on August 25, 2021)	0.10
Review Court's Minute Order Re: Court Order (filed on August 26, 2021)	0.10
Meet and Confer with Defendant's Counsel, and Draft Joint Response to Order to Show Cause Regarding Dismissal (Settlement) (submitted on December 15, 2021)	0.80
Review Court's Minute Order Re: Order to Show Cause Re: Dismissal (Settlement) (filed on December 22, 2021)	0.10
Meet and Confer with Defendant's Counsel, and Draft Joint Response to Order to Show Cause Regarding Dismissal (Settlement) (submitted on March 15, 2022)	0.60
Review Court's Minute Order Re: Court Order (filed on March 21, 2022)	0.10
Meet and Confer with Defendant's Counsel, and Draft Joint Response to Order to Show Cause Regarding Dismissal (Settlement) (submitted on May 16, 2022)	0.70
Review Court's Minute Order Re: Court Order (filed on May 19, 2022)	0.10

Meet and Confer with Defendant's Counsel, and Draft Joint Response to and Stipulation to Vacate or, in the Alternative, Continue Order to Show Cause Regarding Dismissal (Settlement); [Proposed] Order Thereon (submitted on May 19, 2022)	0.90
Review Court's Order Re: Joint Response to and Stipulation to Vacate or, in the Alternative, Continue Order to Show Cause Regarding Dismissal (Settlement); [Proposed] Order Thereon (submitted on June 29, 2022)	0.10
Draft Plaintiff's Response to Order to Show Cause Regarding Dismissal (Settlement) (filed on August 15, 2022)	0.50
Review Court's Minute Order Re: Order to Show Cause Re: Dismissal (Settlement) (filed on August 18, 2022)	0.10
Review Court's Notice of Case Reassignment and Order for Plaintiff to Give Notice (Dates Remain) (filed on October 4, 2022)	0.10
Draft Plaintiff's Response to Order to Show Cause Regarding Dismissal (Settlement) (filed on October 11, 2022)	0.50
Review Court's Tentative Ruling Regarding Order to Show Cause Regarding: Dismissal (Settlement) (filed October 17, 2022)	0.10
Review Court's Minute Order Regarding Order to Show Cause Regarding: Dismissal (Settlement) (filed on October 18, 2022)	0.10
Research and Draft Plaintiff's [Proposed] First Amended Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code Section 2698, Et Seq. (filed on December 9, 2022); and Meet and Confer with Defendant's Counsel and Draft Joint Stipulation Granting Plaintiff Leave to File First Amended Complaint; [Proposed] Order Thereon (submitted on October 18, 2022)	3.20
Draft Plaintiff's Notice of Entry of Judgment or Order (filed on October 20, 2022)	0.10

Draft Plaintiff's Response to Order to Show Cause Regarding Dismissal (Settlement) (filed on January 9, 2023)	0.60
Appearances	
Prepare for and Telephonically Attend Case Management Conference (April 5, 2021)	0.70
Prepare for and Telephonically Attend Order to Show Cause Re: Dismissal (Settlement) (December 22, 2021)	0.20
Prepare for and Telephonically Attend Order to Show Cause Re: Dismissal (Settlement) (August 18, 2022)	0.70
Prepare for and Telephonically Attend Order to Show Cause Re: Dismissal Settlement (January 17, 2023)	0.90
Prepare for and Telephonically Attend Hearing on Plaintiff's Motion for Approval of Private Attorneys General Act (Labor Code § 2698, Et Seq.) Settlement and Award of Attorneys' Fees, Litigation Costs, Enhancement Award, and Administration Costs (May 18, 2023) (Anticipated)	1.50
Discovery and Deposition	
Draft Letter to Defendant Re: Request for Personnel File, Pay Stubs, and Time Records for Plaintiff Osvaldo Martinez (served on July 10, 2020)	1.80
Draft Follow-Up Letter to Defendant Re: Request for Personnel File, Pay Stubs, and Time Records for Plaintiff Osvaldo Martinez (served on August 24, 2020)	1.90
Review and Analyze Documents Produced by Defendant in Response to Request for Personnel Files, Pay Stubs, and Time Records for Plaintiff Osvaldo Martinez (served on August 28, 2020)	3.10

Draft Letter to Defendant Re: Request for Personnel File, Pay Stubs, and Time Records for Potential Aggrieved Employee (served on April 22, 2021)	1.80
Review Defendant The Mochi Ice Cream Company, LLC's Request for Production of Documents (Set One) and Special Interrogatories (Set One) to Plaintiff Osvaldo Martinez (served on January 7, 2021)	0.30
Draft Plaintiff's Form Interrogatories – General (Set One), Special Interrogatories (Sets One and Two), and Request for Production of Documents (Set One) to Defendant The Mochi Ice Cream Company, LLC (served on January 19, 2021)	4.20
Draft Plaintiff's Notice of Deposition of Person Most Knowledgeable at Defendant The Mochi Ice Cream Company, LLC and Requests for Production of Documents (Organizational Structure; noticed for February 24, 2021) (served on January 19, 2021)	2.30
Draft Plaintiff's Notice of Deposition of Person Most Knowledgeable at Defendant The Mochi Ice Cream Company, LLC and Requests for Production of Documents (Job Duties; noticed for February 25, 2021) (served on January 19, 2021)	2.50
Review Defendant The Mochi Ice Cream, Company, LLC's Objections and Responses to Plaintiff's Notice of Deposition of Person Most Knowledgeable of the Mochi Ice Cream Company, LLC and Requests for Production of Documents (Organizational Structure) (February 24, 2021) (filed February 16, 2021)	1.70
Review Defendant The Mochi Ice Cream, Company, LLC's Objections and Responses to Plaintiff's Notice of Deposition of Person Most Knowledgeable of the Mochi Ice Cream Company, LLC and Requests for Production of Documents (Job Duties) (February 25, 2021) (filed February 16, 2021)	0.90
Draft Plaintiff's Responses to Defendant The Mochi Ice Cream Company, LLC's Requests for Production of Documents (Set One) and Special Interrogatories (Set One) (served on March 3, 2021)	6.30

Review Defendant The Mochi Ice Cream Company, LLC's Responses to Plaintiff Osvaldo Martinez's Form Interrogatories – General (Set One), Requests for Production of Documents (Set One), and Special Interrogatories (Set One and Two) (served on March 15, 2021)	3.10
Review Defendant The Mochi Ice Cream Company, LLC's Documents Produced in Response to Plaintiff's Requests for Production of Documents (Set One) (served on March 15, 2021) [MOCHI 000001-MOCHI 000103]	2.70
Letters and Correspondence	
Draft Notice to California Labor and Workforce Development Agency re: Claims of Plaintiff Osvaldo Martinez for Penalties Under California Labor Code section 2698, <i>et seq.</i> ("PAGA") (served on September 16, 2020)	4.10
Meet with, Draft Correspondence to, and Respond to Correspondence from, Defendant's Counsel	15.50
Mediation/Settlement	
Review and Analyze Documents, Data, and Information Obtained from Plaintiff, Defendant, and Other Sources Prior to Mediation, and Prepare Valuation Models, Including, <i>Inter Alia</i>, Calculating PAGA Penalties for Violation Rates for Non-Compliant Meal and Rest Breaks, Unpaid Wages, Failure to Pay Premium Pay, and Incomplete or Inaccurate Wage Statements • Employment and Operations Policies, Practices, and Procedures Documents • Sampling of Employee Time Records • Sampling of Employee Payroll Records • Exemplar Wage Statements and Meal Premium Examples	18.50
Prepare for Mediation Session, Including Researching Merits of PAGA Claim and Allegations, Drafting the Mediation Brief, Compiling the Mediation Exhibits in Support of Plaintiff's Mediation Brief, and Preparing PowerPoint Presentation (submitted on August 16, 2021)	17.10

Attend Mediation Session (August 16, 2021; Zoom Video Conference)	11.80
Review, Revise, Negotiate, and Finalize Memorandum of Understanding (fully executed on August 17, 2021)	2.30
Review, Revise, Negotiate, and Finalize Private Attorneys General Act Settlement Agreement and Release (fully executed on August 16, 2022) and Cover Letter	12.10
Law and Motion	
Research and Draft Plaintiff's Motion for Approval of Private Attorneys General Act (Labor Code § 2698, Et Seq.) Settlement Agreement and Release and Award of Attorneys' Fees, Litigation Costs, Enhancement Award, and Administration Costs, Declaration of Edwin Aiwazian in Support Thereof, Declaration of Osvaldo Martinez in Support Thereof, and [Proposed] Order and Judgment	14.50
Total Hours:	278.20

EXHIBIT 4

LAWYERS for JUSTICE PC CASE COST DETAIL

Martinez v. The Mochi Ice Cream Company

<u>Date</u>	<u>Payee</u>	<u>Expense Description</u>	<u>Amount</u>
7/10/2020	U.S. Postmaster	Postage	6.80
9/16/2020	Labor & Workforce Development	Filing Fee	75.00
9/16/2020	U.S. Postmaster	Postage	8.20
11/23/2020	Legal Document Server, Inc.	Attorney Service	30.43
11/23/2020	Los Angeles Superior Court	Court Filing Fee	435.00
12/4/2020	Legal Document Server, Inc.	Attorney Service	220.00
1/7/2021	General Logistics Systems US, Inc.	Courier Service	19.96
1/12/2021	Legal Document Server, Inc.	Attorney Service	15.20
1/19/2021	General Logistics Systems US, Inc.	Courier Service	19.39
1/19/2021	FedEx Express	Courier Service	22.82
1/26/2021	Legal Document Server, Inc.	Attorney Service	15.20
1/27/2021	FedEx Express	Courier Service	25.68
3/3/2021	General Logistics Systems US, Inc.	Courier Service	22.38
3/15/2021	Legal Document Server, Inc.	Attorney Service	15.20
3/15/2021	General Logistics Systems US, Inc.	Courier Service	15.45
6/30/2021	Jams, Inc.	Mediation Fee	4,237.50
12/15/2021	Legal Document Server, Inc.	Attorney Service	15.20
3/15/2022	Legal Document Server, Inc.	Attorney Service	15.20
5/17/2022	Legal Document Server, Inc.	Attorney Service	15.20
5/18/2022	Legal Document Server, Inc.	Attorney Service	16.55
5/18/2022	Los Angeles Superior Court	Filing Fee	20.00
6/27/2022	Legal Document Server, Inc.	Attorney Service	16.55
6/27/2022	Los Angeles Superior Court	Filing Fee	20.00
10/18/2022	Los Angeles Superior Court	Document Download Fee	2.00
Total:			5,304.91