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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA

HILDA ORELLANA, individually, on behalf of
all others similarly situated, and on behalf of the
State of California, as a private attorney general,

PLAINTIFF,

v.

TORTILLERIA EL TORO II, INC., a
California Corporation, and DOES 1 to 50,
inclusive,

DEFENDANTS.

Santa Barbara Superior Court
Case No. 20CV04199

**JOINT STIPULATION OF CLASS ACTION
SETTLEMENT AND RELEASE**

JOINT STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE

This Joint Stipulation of Class Action Settlement and Release (“Settlement” or “Settlement Agreement”) is made and entered into by and between Plaintiff Hilda Orellana (“Plaintiff” or “Class Representative”), as an individual and on behalf of the Settlement Class, and Tortilleria El Toro II, Inc., a California Corporation (“El Toro” or “Defendant”) (collectively with Plaintiff, the “Parties”). Plaintiff, on behalf of herself and the Settlement Class, and El Toro, agree as follows:

DEFINITIONS

The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

1. “Action” means the wage and hour class action lawsuit, *Hilda Orellana v. Tortilleria El Toro II, Inc.*, Santa Barbara Superior Court Case No. 20CV04199, and encompasses the claims and allegations set forth in the Complaint filed by Plaintiff on December 9, 2020 and Plaintiff’s forthcoming First Amended Complaint.

2. “Attorneys’ Fees and Costs” means attorneys’ fees agreed upon by the Parties and approved by the Court for Class Counsel’s litigation and resolution of the Action, and all out-of-pocket costs incurred and to be incurred by Class Counsel in the Action, including but not limited to fees and expenses of experts, investigation expenses, postage, telephone, and photocopying charges, costs associated with documenting the Settlement, providing any notices required as part of the Settlement or Court order, securing the Court’s approval of the Settlement, administering the Settlement, and obtaining entry of a Judgment terminating the Action. The Attorneys’ Fees and Costs will also mean and include the additional reimbursement of any costs and expenses associated with Class Counsel’s litigation and settlement of the Action.

3. “Class Counsel” means Ackermann & Tilajef, P.C. and Law Office of Tatiana Hernandez, P.C.

4. “Class List” means a complete list of all Class Members that El Toro will diligently and in good faith compile from its records and formatted in Microsoft Office Excel, and will include: each Class Member’s full name; most recent mailing address and telephone number (if available); Social Security number; dates of employment; the pay frequency calendar during the Class Period from which

the respective number of Workweeks that each Class Member worked during the Class Period and any other relevant information needed to calculate settlement payments can be made.

5. “Class Member(s)” or “Settlement Class” means all individuals who worked for Defendant Tortilleria El Toro II, Inc, in California as hourly, non-exempt employees at Defendant’s restaurants/tortillerias and who worked at least one shift of 3.51 hours or more from December 9, 2016 through preliminary approval of the settlement. El Toro represents that the Settlement Class consists of approximately 212 Class Members.

6. “Class Period” means the period from December 9, 2016 through the date that the Court grants preliminary approval of the class and PAGA action settlement.

7. “Class Representative Enhancement Payment” means the amount agreed by the Parties and approved by the Court to be paid to Plaintiff in recognition of her effort and work in prosecuting the Action on behalf of Class Members. The Class Representative Enhancement Payment shall be paid in addition to Plaintiff’s pro rata portion of the Net Settlement Amount and shall not exceed \$12,000.

8. “Class Settlement Amount” means the Class Settlement Amount of Two Hundred Eighty Thousand Dollars (\$280,000). This is the gross amount to be paid by El Toro under this Settlement Agreement in full satisfaction of all Released Claims arising from the Action, which includes all Individual Settlement Payments to Participating Class Members, Attorneys’ Fees and Costs to Class Counsel, the Class Representative Enhancement Payment to Plaintiff, the Labor and Workforce Development Agency Payment, and Settlement Administration Costs to the Settlement Administrator.

9. “Court” means the Santa Barbara County Superior Court.

10. “Defendant” or “El Toro” means Tortilleria El Toro II, Inc., a California Corporation.

11. “Effective Date” means the later of: (i) the sixty-first (61st) calendar day after Final Approval, provided no appeal has been initiated, whether by an absent Class Member who has timely intervened or moved to vacate the judgment or by a Party or Class Counsel, as set forth below; or (iii) if such an appeal is timely initiated, the date of final resolution of that appeal (including any requests for rehearing and/or petitions for certiorari), resulting in final judicial approval of the Settlement.

12. “Final Approval” means the date on which the Court enters an order granting final approval of the Settlement Agreement.

13. “Individual Settlement Payment” means each Participating Class Member’s respective share of the Net Settlement Amount.

14. “LWDA Payment” means seventy-five percent (75%) of the \$12,000 portion of the Class Settlement Amount allocated to resolution of Class Members’ claims arising under the Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698, *et seq.* (“PAGA”), which amounts to \$9,000 and which shall be paid to the Labor and Workforce Development Agency (“LWDA”).

15. “Net Settlement Amount” means the portion of the Class Settlement Amount remaining after deducting the Attorneys’ Fees and Costs, the Class Representative Enhancement Payment, the Labor and Workforce Development Agency Payment, and Settlement Administration Costs, which shall be fully distributed to Participating Class Members without any reversion to El Toro.

16. “Notice of Objection” means a Class Member’s valid and timely written objection to the Settlement Agreement. For the Notice of Objection to be valid, it must include the Class Member’s name and provide each specific reason in support of the objection.

17. “Notice Packet” means the Notice of Class Action Settlement, substantially in the form attached as Exhibit A.

18. “PAGA Covered Employees” means All individuals who worked for Defendant Tortilleria El Toro II, Inc, in California as hourly, non-exempt employees at Defendant’s restaurants/tortillerias and who worked at least one shift of 3.51 hours or more from September 1, 2019 through the date that the Court grants preliminary approval of the class and PAGA action settlement. Defendant represents that the PAGA Covered Employees include approximately 108 individuals who worked approximately 2,300 pay periods during the PAGA Covered Period.

19. “PAGA Covered Period” means the period from September 1, 2019 through the date that the Court grants preliminary approval of the class and PAGA action settlement.

20. “Parties” means Plaintiff and El Toro collectively.

21. “Participating Class Members” means all Class Members who do not submit timely and valid Requests for Exclusion.

22. “Plaintiff” means Plaintiff Hilda Orellana.

23. “Preliminary Approval” means the date on which the Court enters an order granting

1 preliminary approval of the Settlement Agreement

2 24. “Qualified Settlement Fund or QSF” means a fund within the meaning of Treasury
3 Regulation § 1.46B-1, 26 C.F.R. § 1.468B-1 et seq., that is established by the Settlement Administrator
4 for the benefit of Participating Class Members, Plaintiffs and Class Counsel.

5 25. “Released Claims” means all claims, rights, demands, liabilities, and causes of action,
6 that were pled or could have been pled in the operative First Amended Complaint and/or Plaintiff’s
7 LWDA letters based on the facts alleged or ascertained during the pendency of the action arising during
8 the Class Period, including claims for Defendant’s alleged violation of California Labor Code
9 sections 201, 202, 203, 226, 226.3, 226.7, 432, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5,
10 1199, 2802 as well as Sections 3, 4, 7, 9, 11 and 12 of IWC Wage Order No. 5, and section 17200 et. Seq
11 of. the California Business and Professions Code, based on the foregoing, as well as any civil penalty
12 claims under PAGA, Labor Code 2699 et seq. The period of the Release shall extend to the limits of the
13 Class Period. The *res judicata* effect of the Judgement will be the same as that of the Release.

14 26. “Released Parties” means El Toro and all of its subsidiaries, affiliates, predecessors,
15 successors, and related entities, and its respective officers, directors, employees, fiduciaries, trustees,
16 agents, and benefit plans.

17 27. “Request for Exclusion” means a timely letter submitted by a Class Member indicating a
18 request to be excluded from the Settlement. The Request for Exclusion must: (i) set forth the name,
19 address, telephone number and last four digits of the Social Security Number of the Class Member
20 requesting exclusion; (ii) be signed by the Class Member; (iii) be returned to the Settlement
21 Administrator; (iv) clearly state that the Class Member does not wish to be included in the Settlement;
22 and (v) be faxed or postmarked on or before the Response Deadline.

23 28. “Response Deadline” means the deadline by which Class Members must postmark or
24 fax to the Settlement Administrator Requests for Exclusion, or postmark Notices of Objection to the
25 Settlement Administrator. The Response Deadline will be forty-five (45) calendar days from the initial
26 mailing of the Notice Packet by the Settlement Administrator, unless the forty-fifth (45th) calendar day
27 falls on a Sunday or State holiday, in which case the Response Deadline will be extended to the next day
28 on which the U.S. Postal Service is open.

29. “Settlement Administration Costs” means the costs payable from the Class Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, distributing the Class Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The Settlement Administration Costs will be paid from the Class Settlement Amount, including, if necessary, any such costs in excess of the amount represented by the Settlement Administrator as being the maximum costs necessary to administer the Settlement. Based on an estimated Settlement Class of approximately 212 Class Members, the Settlement Administration Costs are currently estimated to be Eight Thousand Dollars (\$8,000.00).

30. “Settlement Administrator” means CPT Group, Inc. (or any other third-party class action settlement administrator agreed to by the Parties), if approved by the Court, for the purposes of administering this Settlement. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

31. “Workweeks” means the number of weeks of employment for each Class Member during the Class Period, wherein each Class member was on Defendant’s payroll. All Class Members will be credited with at least one Workweek.

32. “Workweeks for PAGA” means the Workweeks worked during the PAGA Covered Period by each Class member who worked during the PAGA Covered Period.

RECITALS

33. Prior to the mediation, the Parties conducted significant investigation and informal discovery of the facts and law both before and after the Action was filed. The Parties agree that the investigation and evaluation, as well as the information exchanged during the settlement negotiations, are more than sufficient to assess the merits of the respective Parties’ positions and to compromise the issues on a fair and equitable basis.

34. Benefits of Settlement to Class Members. Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against El Toro through class certification, trial and through any possible appeals. Plaintiff and Class Counsel also have taken

1 into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and
2 delays inherent in such litigation. Plaintiff and Class Counsel have conducted extensive settlement
3 negotiations, including a formal mediation on January 10, 2022. Based on the foregoing, Plaintiff and
4 Class Counsel believe the Settlement set forth in this Agreement is a fair, adequate, and reasonable
5 settlement, and is in the best interests of the Class Members.

6 35. Defendant's Reasons for Settlement. El Toro recognizes that the defense of this
7 litigation will be protracted and expensive. Substantial amounts of time, energy, and resources of El
8 Toro have been and, unless this Settlement is made, will continue to be devoted to the defense of the
9 claims asserted by Plaintiff. El Toro, therefore, has agreed to settle in the manner and upon the terms set
10 forth in this Agreement to put to rest the Released Claims.

11 **GENERAL SETTLEMENT TERMS**

12 36. Class Certification for Settlement Purposes. The Parties hereby stipulate to certification
13 of the Class defined in paragraph 5 above for purposes of the Settlement only, *i.e.*, the "Settlement
14 Class". If, for any reason, the Settlement is not approved, the stipulation to certification will be void.
15 The Parties further agree that certification for purposes of the Settlement is not an admission that class
16 action certification is proper under the standards applied to contested certification motions and that this
17 Settlement Agreement will not be admissible in this or any other proceeding as evidence that either (i) a
18 class action should be certified or (ii) El Toro is liable to Plaintiff or any Class Member, other than
19 according to the Settlement's terms.

20 37. Class Settlement Amount. El Toro shall pay the maximum settlement amount of Two
21 Hundred and Eighty Thousand Dollars (\$280,000) in full settlement of the claims released herein. There
22 will be no reversion of the Class Settlement Amount to El Toro. The Class Settlement Amount has been
23 agreed to by Plaintiff and El Toro based on the aggregation of the agreed-upon settlement value of
24 individual claims. In no event will El Toro be liable for more than the Class Settlement Amount, except
25 that El Toro will be separately responsible for any employer side payroll taxes required by law. Payment
26 of the Class Settlement Amount shall be through a one-time deposit into a Qualified Settlement Account
27 to be established by the Settlement Administrator. El Toro will pay the employer's share of payroll taxes
28 on the wage portion of Individual Settlement Payments separately. After the Effective Date, the Class

1 Settlement Amount will be used for: (i) Individual Settlement Payments; (ii) the LWDA Payment; (iii)
2 the Class Representative Enhancement Payment; (iv) payment of Attorneys' Fees and Costs; and (v)
3 Settlement Administration Costs. El Toro will deposit the Class Settlement Amount and the employer's
4 share of payroll taxes, the amount of which shall be provided to El Toro by the Administrator, within
5 five (5) business days after the Effective Date.

6 38. Attorneys' Fees and Costs. El Toro agrees to take no position as to any application or
7 motion by Class Counsel for Attorneys' Fees and Costs of not more than one-third of the Class
8 Settlement Amount, or Ninety Three Thousand Three Hundred Thirty Three Dollars and Thirty Three
9 Cents (\$93,333.33), plus the reimbursement of all out-of-pocket costs and expenses associated with
10 Class Counsel's litigation and settlement of the Action (including filing fees, expert fees, investigations
11 expenses, photocopying, etc.), not to exceed Ten Thousand Dollars (\$10,000). The amount of
12 Attorneys' Fees and Costs shall be subject to Court approval and shall be paid from the Class Settlement
13 Amount.

14 39. Class Representative Enhancement Payment. El Toro also agrees to take no position as
15 to any application or motion for a Class Representative Enhancement Payment of up to Twelve
16 Thousand Dollars (\$12,000), to Plaintiff. The amount of the Class Representative Enhancement
17 Payment shall be subject to Court approval, will be paid from the Class Settlement Amount and will be
18 in addition to Plaintiff's Individual Settlement Payment paid pursuant to the Settlement. Plaintiff will be
19 solely and legally responsible to pay any and all applicable taxes on the Class Representative
20 Enhancement Payment.

21 40. Settlement Administration Costs. The Settlement Administrator will be paid for the
22 reasonable costs of administration of the Settlement and distribution of payments from the Class
23 Settlement Amount, which is currently estimated to be Eight Thousand Dollars (\$8,000.00). These
24 costs, which will be paid from the Class Settlement Amount, will include, *inter alia*, the required tax
25 reporting on the Individual Settlement Payments, the issuing of 1099 and W-2 IRS Forms, distributing
26 Notice Packets, calculating and distributing the Class Settlement Amount, and providing necessary
27 reports and declarations.

28 41. PAGA Allocation and LWDA Payment. Subject to Court approval, the Parties agree to

1 allocate the amount of Twelve Thousand Dollars (\$12,000) from the Class Settlement Amount to
2 satisfaction of Plaintiff's and Class Members' PAGA claims. Pursuant to PAGA, Seventy-Five Percent
3 (75%), or Nine Thousand Dollars (\$9,000), of this PAGA allocation shall be the LWDA Payment paid
4 to the LWDA, and Twenty-Five Percent (25%), or Three Thousand Dollars (\$3,000) (the "PAGA
5 Payment"), will become part of the Net Settlement Amount to be distributed to Class Members who
6 worked during the PAGA Covered Period (the "PAGA Members") on a pro rata basis based on the
7 Workweeks worked by each one during the PAGA Covered Period. PAGA Members shall not be able
8 to opt-out from or object to the PAGA Payment or PAGA component of the settlement.

9 42. Net Settlement Amount. The entire Net Settlement Amount will be distributed to
10 Participating Class Members. No portion of the Net Settlement Amount will revert to or be retained by
11 El Toro.

12 43. Individual Settlement Payment Calculations. Individual Settlement Payments will be
13 calculated and apportioned from the Net Settlement Amount based pro rata on the number of
14 Workweeks a Class Member worked during the Class Period as a percentage of all Class Members'
15 Workweeks during the Class Period. Specific calculations of Individual Settlement Payments will be
16 made as follows:

17 43(a) The Settlement Administrator will calculate the total number of Workweeks
18 worked by each Class Member during the Class Period and the aggregate
19 total number of Workweeks worked by all Class Members during the Class
20 Period. Each Workweek by Class Members after January 31, 2021 shall be
21 treated as 0.25 Workweeks for purposes of Settlement Payment
22 Calculations.

23 43(b) To determine each Class Member's estimated "Individual Settlement
24 Payment," the Settlement Administrator will use the following formula:
25 The Net Settlement Amount will be divided by the aggregate total number
26 of Workweeks, resulting in the "Workweek Value." Each Class Member's
27 "Individual Settlement Payment" will be calculated by multiplying each
28 individual Class Member's total number of Workweeks during the Class

Period by the Workweek Value.

43(c) The Individual Settlement Payment will be reduced by any required deductions for each Participating Class Member as specifically set forth herein, including employee-side tax withholdings or deductions.

43(d) The entire Net Settlement Amount will be disbursed to all Class Members who do not submit timely and valid Requests for Exclusion. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement Payment for each Participating Class Member according to the number of Workweeks worked, so that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Amount.

44. No Credit Toward Benefit Plans. The Individual Settlement Payments made to Participating Class Members under this Settlement, as well as any other payments made pursuant to this Settlement, will not be utilized to calculate any additional benefits under any benefit plans to which any Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, master retirement plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans.

45. Non-Admission of Liability. The Parties enter into this Settlement to resolve the dispute that has arisen between them and to avoid the burden, expense and risk of continued litigation. In entering into this Settlement, El Toro does not admit, and specifically denies, that it has violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to its employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, will be construed as an admission or concession by El Toro of any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to

1 enforce the terms of this Settlement, this Settlement Agreement and its terms and provisions will not be
2 offered or received as evidence in any action or proceeding to establish any liability or admission on the
3 part of El Toro or to establish the existence of any condition constituting a violation of, or a non-
4 compliance with, federal, state, local or other applicable law. El Toro reserves the right to contest any
5 issues relating to class certification and liability if the Settlement is not approved.

6 **TAX MATTERS**

7 46. Tax Treatment of Individual Settlement Payments. All Individual Settlement Payments
8 will be allocated as follows: (i) Ten Percent (10%) of each Individual Settlement Payment will be
9 allocated as wages and subject to legally required employee tax withholdings, for which IRS Forms W-2
10 will be issued; and (ii) Ninety Percent (90%) will be allocated as penalties and interest and not subject to
11 deductions or withholdings, for which IRS Forms 1099-MISC will be issued. PAGA Payments to
12 PAGA Members will be allocated 100 Percent (100%) as penalties, for which IRS Forms 1099-MISC
13 will be issued. The employees' share of payroll tax withholdings shall be withheld from each person's
14 Individual Settlement Payment.

15 47. Administration of Taxes by the Settlement Administrator. The Settlement
16 Administrator will be responsible for issuing to Plaintiff, Class Members, and Class Counsel any W-2,
17 1099, or other tax forms as may be required by law for all amounts paid pursuant to this Settlement. The
18 Settlement Administrator will also be responsible for forwarding all payroll taxes and penalties to the
19 appropriate government authorities.

20 48. No Tax Advice. El Toro makes no representation as to the tax treatment or legal effect
21 of any payments called for by this Settlement, and Class Counsel, Plaintiff and Class Members are not
22 relying on any statement, representation, or calculation by El Toro or by the Settlement Administrator in
23 this regard.

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

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

18 50. Tax Liability. Any tax obligation arising from any payment provided under this
19 Settlement will be the sole responsibility of each person or entity receiving such payment(s).
20 Specifically, taxes on the Class Representative Enhancement Payment shall be solely the responsibility
21 of the Plaintiff; taxes on awards to Class Counsel for fees and costs shall be solely Class Counsel's
22 responsibility; and each Class Member is responsible to pay his or her portion of the taxes due upon any
23 Individual Settlement Payment he or she receives under this Settlement Agreement.

24 51. Indemnification. Should any taxing authority or agency determine that any Class
25 Member owes additional personal income taxes and/or employee contributions on any portion of his or
26 her Individual Settlement Payment based on a challenge to the allocation of wage and non-wage portions
27 set forth above, such Class Member shall be solely responsible for the payment of his or her personal
28 income taxes and/or employee contributions. Accordingly, if any taxing authority or agency seeks such

1 amounts from El Toro based on a challenge to such allocation of wage and non-wage portions, the Class
2 Member shall reimburse El Toro for any of his or her personal income taxes and/or employee
3 contributions, as well as any associated interest and/or penalties, that El Toro was required to make to
4 any such taxing authority or agency.

5 **CLASS NOTICE AND RESPONSE PROCEDURES**

6 52. Administration Process. The Parties agree to cooperate in the administration of the
7 settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in
8 administration of the Settlement.

9 53. Delivery of the Class List. Within twenty (20) calendar days of Preliminary Approval,
10 El Toro will provide the Class List to the Settlement Administrator.

11 54. Notice by First-Class U.S. Mail. Within ten (10) calendar days after receiving the Class
12 List from El Toro, the Settlement Administrator will mail a Notice Packet to all Class Members via
13 regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class
14 List.

15 55. Confirmation of Contact Information in the Class Lists. Prior to mailing, the Settlement
16 Administrator will perform a search based on the National Change of Address Database for information
17 to update and correct for any known or identifiable address changes. Any Notice Packets returned to the
18 Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly
19 via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement
20 Administrator will indicate the date of such re-mailing on the Notice Packet. If no forwarding address is
21 provided, the Settlement Administrator will promptly attempt to determine the correct address using a
22 skip-trace, or other search using the name, address and/or Social Security number of the Class Member
23 involved and will then perform a single re-mailing. Those Class Members who receive a re-mailed
24 Notice Packet, whether by skip-trace or by request, will have either (i) an additional fifteen (15) calendar
25 days or (ii) until the Response Deadline, whichever is later, to submit a Request for Exclusion or an
26 objection to the Settlement.

27 56. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice Packet
28 will provide: (i) information regarding the nature of the Action; (ii) a summary of the Settlement's

principal terms; (iii) the Settlement Class definition; (iv) the total number of Workweeks each respective Class Member worked for El Toro during the Class Period; (v) each Class Member's estimated Individual Settlement Payment and the formula for calculating Individual Settlement Payments; (vi) the dates which comprise the Class Period; (vii) instructions on how to submit Requests for Exclusion or Notices of Objection; (viii) the deadlines by which the Class Member must postmark or fax Request for Exclusions, or postmark Notices of Objection to the Settlement; and (ix) the claims to be released.

57. Procedure to Dispute Information on Notice Packets. Class Members will have an opportunity to dispute the information provided in their Notice Packets. To the extent Class Members dispute their employment dates or the number of Workweeks on record, Class Members may produce evidence to the Settlement Administrator showing that such information is inaccurate. The Settlement Administrator will decide the dispute. El Toro's records will be presumed correct, but the Settlement Administrator will evaluate the evidence submitted by the Class Member and will make the final decision as to the merits of the dispute. All disputes will be decided within ten (10) business days of the Response Deadline.

58. Defective Submissions. If a Class Member's Request for Exclusion is defective as to the requirements listed herein, that Class Member will be given an opportunity to cure the defect(s). The Settlement Administrator will mail the Class Member a cure letter within three (3) business days of receiving the defective submission to advise the Class Member that his or her submission is defective and that the defect must be cured to render the Request for Exclusion valid. The Class Member will have until (i) the Response Deadline or (ii) fifteen (15) calendar days from the date of the cure letter, whichever date is later, to postmark or fax a revised Request for Exclusion. If the revised Request for Exclusion is not postmarked or received by fax within that period, it will be deemed untimely.

59. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the Settlement Agreement must sign and fax or postmark a written Request for Exclusion to the Settlement Administrator on or before the Response Deadline. In the case of Requests for Exclusion that are mailed to the Settlement Administrator, the postmark date will be the exclusive means to determine whether a Request for Exclusion has been timely submitted.

60. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class Member

1 who does not affirmatively opt-out of the Settlement Agreement by submitting a timely and valid
2 Request for Exclusion will be bound by all of its terms, including those pertaining to the Released
3 Claims, as well as any Judgment that may be entered by the Court if it grants final approval to the
4 Settlement. PAGA Members cannot request exclusion from the PAGA component of the settlement and
5 will still receive their pro rata portion of the PAGA Payment.

6 61. Objection Procedures. To object to the Settlement Agreement, a Class Member must
7 postmark a valid Notice of Objection to the Settlement Administrator on or before the Response
8 Deadline. The Notice of Objection must be signed by the Class Member and contain all information
9 required by this Settlement Agreement. The postmark will be deemed the exclusive means for
10 determining that the Notice of Objection is timely. Class Members need not include legal arguments for
11 their objections to be considered. If an objector also wishes to appear at the Final Approval Hearing, in
12 person or through an attorney, he or she need not file a notice of intention to appear at the same time as
13 the objection is filed. Filing the notice of intention to appear is not necessary to preserve the right to
14 appear at the Final Approval hearing. At no time will any of the Parties or their counsel seek to solicit or
15 otherwise encourage Class Members to submit written objections to the Settlement Agreement or appeal
16 from the Order and Judgment. Class Counsel will not represent any Class Members with respect to any
17 such objections to this Settlement.

18 62. Certification Reports Regarding Individual Settlement Payment Calculations. The
19 Settlement Administrator will provide El Toro's counsel and Class Counsel a weekly report that certifies
20 the number of Class Members who have submitted valid Requests for Exclusion, the number of
21 objections to the Settlement (and copies of any such objections), and whether any Class Member has
22 submitted a dispute to any information contained in their Notice Packet. Additionally, the Settlement
23 Administrator will provide to counsel for both Parties any updated reports regarding the administration
24 of the Settlement Agreement as needed or requested.

25 63. Defendant's Option to Terminate. If more than five percent (5%) of the Class Members
26 submit a Request for Exclusion, Defendant, at its sole option, may withdraw from the Settlement and this
27 Agreement is null and void.

28 64. Plaintiff's Option to Terminate. In the event that the class size increased by 15% to over

244 individuals, then Plaintiff has the right to void the settlement unless El Toro increases the Class Settlement Amount proportionately for each new Class Member over 232.

PAYMENTS TO CLASS

65. Distribution Timing of Individual Settlement Payments. Within twenty (20) calendar days of El Toro funding the Class Settlement Amount, the Settlement Administrator will issue payments to: (i) Class Members; (ii) the Labor and Workforce Development Agency; (iii) Plaintiff; and (iv) Class Counsel. The Settlement Administrator will also issue a payment to itself for Court-approved services performed in connection with the Settlement.

66. QSF: The Parties agree that the QSF is intended to be a “Qualified Settlement Fund” under Section 468B of the Code and Treasury Regulations § 1.4168B-1, 26 C.F.R. § 1.468B-1 *et seq.*, and will be administered by the Settlement Administrator as such. The Parties and Settlement Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.

67. Un-cashed Settlement Checks. Participating Class Members and PAGA Covered Employees must cash or deposit their Individual Settlement Payment within one hundred eighty (180) calendar days after the checks are mailed to them. Any funds associated with checks that have not been cashed within one hundred eighty (180) days, will become void and the Individual Settlement Amount associated with the uncashed check will be distributed pursuant to Code of Civil Procedure section 384 to the California State Controller Unclaimed Property in the name of the Participating Settlement Group Member. For the purposes of determining whether Defendant has met its financial obligation to pay the Individual Settlement Payment, Defendant will be deemed to have fulfilled its obligation upon the mailing of the check to the Class Member, regardless of whether such Class Member subsequently negotiates the check.

68. Certification of Completion. Within ten (10) calendar days after the disbursement of all funds, the Settlement Administrator will provide a written declaration under oath to certify the disbursement of all funds and completion of the administration to the Court and counsel for all Parties.

69. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant

1 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
2 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of
3 action or right herein released and discharged.

4 70. Nullification of Settlement Agreement. In the event that: (i) the Court does not finally
5 approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other
6 reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null
7 and void. Any order or judgment entered by the Court in furtherance of this Settlement Agreement will
8 likewise be treated as void from the beginning.

9 **SETTLEMENT APPROVAL PROCESS**

10 71. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to
11 request the Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary Approval
12 Order for: (i) conditional certification of the Settlement Class for settlement purposes only, (ii)
13 preliminary approval of the proposed Settlement Agreement, (iii) setting a date for a final fairness
14 hearing. The Preliminary Approval Order will provide for the Notice Packet to be sent to all Class
15 Members as specified herein. In conjunction with the Preliminary Approval hearing, Plaintiff will
16 submit this Settlement Agreement, which sets forth the terms of this Settlement, and will include the
17 proposed Notice of Class Action Settlement, attached as Exhibit A. Class Counsel will be responsible
18 for drafting all documents necessary to obtain preliminary approval and shall provide a draft of the
19 preliminary approval motion to El Toro's counsel for their input at least seven (7) calendar days prior to
20 filing with the Court.

21 72. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the
22 deadlines to postmark Requests for Exclusion or objections to the Settlement Agreement, and with the
23 Court's permission, a final fairness hearing will be conducted to determine the Final Approval of the
24 Settlement Agreement along with the amounts properly payable for: (i) Attorneys' Fees and Costs; (ii)
25 the Class Representative Enhancement Payment; (iii) Individual Settlement Payments; (iv) the Labor
26 and Workforce Development Agency Payment; (v) all Settlement Administration Costs. Class Counsel
27 will be responsible for drafting all documents necessary to obtain final approval and shall provide a draft
28 of the final approval motion to El Toro's counsel for their input at least seven (7) calendar days prior to

1 filing with the court. Class Counsel will also be responsible for drafting the attorneys' fees and costs
2 application to be heard at the final approval hearing.

3 73. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by the
4 Court or after the final fairness hearing, the Parties will present the Judgment to the Court for its
5 approval. After entry of the Judgment, the Court will have continuing jurisdiction solely for purposes of
6 addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) Settlement
7 administration matters, and (iii) such post-Judgment matters as may be appropriate under court rules or
8 as set forth in this Settlement Agreement.

9 **RELEASES UPON EFFECTIVE DATE**

10 74. Releases by Participating Class Members. As of the date El Toro deposits the Class
11 Settlement Amount with the Settlement Administrator, and except as to such rights or claims as may be
12 created by this Settlement Agreement, each Participating Class Member, together and individually, on
13 their behalf and on behalf of their respective spouses, heirs, executors, administrators, agents, and
14 attorneys, shall be deemed to have fully and forever released and discharged all of the Released Parties,
15 or any of them, from each of the Released Claims arising during the Class Period.

16 75. PAGA Release. As of the date El Toro deposits the Class Settlement Amount with the
17 Settlement Administrator, all PAGA Covered Employees and the State of California shall be deemed to
18 have fully, finally, and forever released, relinquished and will release all claims for civil penalties
19 pursuant to PAGA for the Released Claims during the PAGA Period.

20 76. Release by Plaintiff. As of the date El Toro deposits the Class Settlement Amount with
21 the Settlement Administrator, and in exchange for the Class Representative Enhancement Payment to
22 Plaintiff in the amount of \$12,000 in recognition of her work and effort in obtaining the benefits for the
23 Class, and undertaking the risk for the payment of costs in the event this matter had not successfully
24 resolved, Plaintiff hereby provides a general release of claims for herself and her spouse, heirs,
25 successors and assigns, and forever releases, remises, and discharges the Released Parties from any and
26 all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages,
27 actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature
28 whatsoever, arising from the beginning of time through the date of the Court grants Preliminary

1 Approval, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or otherwise,
2 for violation of any federal, state or local statute, rule, ordinance or regulation, including but not limited
3 to all claims arising out of, based upon, or relating to her employment with El Toro or the remuneration
4 for, or termination of, such employment. Plaintiff expressly waives any and all rights and benefits
5 conferred upon her by the provisions of section 1542 of the California Civil Code which provides as
6 follows:

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

14 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and
15 complete release and discharge of claims, Plaintiff expressly acknowledges that this Agreement is
16 intended to include in its effect, without limitations, all Claims which Plaintiff does not know or suspect
17 to exist in Plaintiff's favor at the time of execution of this Agreement, and that the settlement agreed
18 upon contemplates the extinguishment of any such Claims.

19 **MISCELLANEOUS PROVISIONS**

20 77. Catalyst. El Toro will not contest Plaintiff's representation in court filings that her
21 PAGA letters and/or Complaint caused El Toro, in part, to amend its policies to eliminate the on-
22 premises rest period language and the early arrival clock in language as of January 2021.

23 78. Confidentiality. Neither Plaintiff nor Plaintiff's counsel will publicize this settlement by
24 El Toro's name, through a press release, posting on counsels' website, in social media or by any other
25 public means, other than court filings and proceedings associated with the Settlement. Nothing in this
26 provision is intended to prohibit (i) Plaintiff from discussing this settlement with her spouse, attorneys or
27 tax advisors; (ii) Plaintiff from discussing the settlement with other putative class members after the
28 Settlement has been preliminarily approved by the Court; or (iii) Plaintiff's counsel from communicating
with putative class members in this case or with the Court in which the Action is pending.

79. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class

1 certification for purposes of this Settlement only; except, however, that Plaintiff or Class Counsel may
2 appeal any reduction to the Attorneys' Fees and Costs below the amount they request from the Court,
3 and either party may appeal any court order that materially alters the Settlement Agreement's terms.

4 80. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include
5 the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set
6 forth herein. Any Exhibits to this Settlement Agreement are an integral part of the Settlement.

7 81. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the
8 entirety of the Parties' settlement terms as to the Released Claims. No other prior or contemporaneous
9 written or oral agreements may be deemed binding on the Parties. The Parties expressly recognize
10 California Civil Code Section 1625 and California Code of Civil Procedure Section 1856(a), which
11 provide that a written agreement is to be construed according to its terms and may not be varied or
12 contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written
13 representations or terms will modify, vary or contradict the terms of this Settlement Agreement.

14 82. Amendment or Modification. No amendment, change, or modification to this
15 Settlement Agreement will be valid unless in writing and signed, either by the Parties or by their counsel.

16 83. Interim State of Proceedings. The Parties agree to stay and hold all proceedings in the
17 Action in abeyance, except such proceedings necessary to implement and complete the Settlement,
18 pending the Final Approval hearing to be conducted by the Court.

19 84. Authorization to Enter Into Settlement. Counsel for all Parties warrant and represent
20 they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement
21 and to take all appropriate action required or permitted to be taken by such Parties pursuant to this
22 Settlement Agreement to effectuate its terms and to execute any other documents required to effectuate
23 the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and
24 use their best efforts to effectuate implementation of the Settlement. If the Parties are unable to reach
25 agreement on the form or content of any document needed to implement the Settlement, or on any
26 supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties
27 may seek the assistance of the Court to resolve such disagreement.

28 85. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,

1 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

2 86. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto
3 will be governed by and interpreted according to the laws of the State of California.

4 87. Execution and Counterparts. This Settlement Agreement is subject only to the execution
5 of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All
6 executed counterparts and each of them, including electronic (e.g., DocuSign), facsimile, and scanned
7 copies of the signature page, will be deemed to be one and the same instrument.

8 88. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this
9 Settlement Agreement is a fair, adequate and reasonable settlement of the Action and have arrived at this
10 Settlement after arm's-length negotiations and in the context of adversarial threatened litigation, taking
11 into account all relevant factors, present and potential. The Parties further acknowledge that they are
12 each represented by competent counsel and that they have had an opportunity to consult with their
13 counsel regarding the fairness and reasonableness of this Settlement.

14 89. Invalidity of Any Provision. Before declaring any provision of this Settlement
15 Agreement invalid, the Parties direct the Court to first attempt to construe the provision as valid to the
16 fullest extent possible consistent with applicable precedents so as to define all provisions of this
17 Settlement Agreement valid and enforceable.

18 90. Waiver. No waiver of any condition or covenant contained in this Settlement
19 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to
20 imply or constitute a further waiver by such party of the same or any other condition, covenant, right or
21 remedy.

22 91. Enforcement Actions. In the event that one or more of the Parties institutes any legal
23 action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement
24 or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be
25 entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including
26 expert witness fees incurred in connection with any enforcement actions.

27 92. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
28 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed

more strictly against one party than another merely because it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

93. Representation By Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with the consent and advice of counsel. Further, Plaintiff and Class Counsel warrant and represent that there are no liens on the Settlement Agreement.

94. All Terms Subject to Final Court Approval. All amounts and procedures described in this Settlement Agreement herein will be subject to final Court approval.

95. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

96. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: 2/8/2022 | 2:09 PM PST

Hilda Orellana

DocuSigned by:
Hilda Orellana
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TORTILLERIA EL TORO II, INC.

Dated: 2/11/22

David Bonilla, President, Tortilleria El Toro II, Inc.

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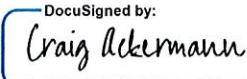
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APPROVED AS TO FORM:

**ACKERMANN & TILAJEF, P.C.
LAW OFFICE OF TATIANA HERNANDEZ,
P.C.**

Dated: 2/8/2022 | 1:21 PM PST

By: 
Craig J. Ackermann
Tatiana Hernandez
Attorneys for Plaintiff Hilda Orellana

RAINES FELDMAN

Dated: 02/22/2022

By: 
Beth Schroeder
Ricardo Rozen
Attorneys for Defendant El Toro