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(erroneously sued as Le Pafe, Inc.)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

ANA HERNANDEZ DE BAHENA,
individually, and on behalf of all others
similarly situated,

Plaintiffs,

vs.

LE PAFE, INC., a California corporation; and
DOES 1 through 10, inclusive,
Defendants.

Case No.: 20STCV44298

**JOINT STIPULATION OF CLASS ACTION
SETTLEMENT**

Complaint filed: November 17, 2020
Trial date: Not set

1 **JOINT STIPULATION OF CLASS ACTION SETTLEMENT**

2 This Joint Stipulation of Class Action Settlement (“Joint Stipulation of Settlement” or
3 “Settlement” or “Agreement”) is made and entered into by and between Plaintiff Ana Hernandez de
4 Bahena, individually, and on behalf of all others similarly situated, (“Plaintiff” or “Class Representative”),
5 and Defendant Le Pafe, Inc. dba “Le Chef Bakery” (“Le Pafe” or “Defendant”). Plaintiff and Defendant
6 are collectively referred to herein as “the Parties.”

7 THE PARTIES STIPULATE AND AGREE as follows:

8 **DEFINITIONS**

9 1. For purposes of this Settlement, “Complaint” refers to the operative First Amended
10 Complaint at the time the Court grants Preliminary Approval of this Settlement.

11 2. For purposes of this Settlement, this matter, entitled *Ana Hernandez de Bahena v. Le Pafe,*
12 *Inc., et al.*, Los Angeles Superior Court Case No. 20STCV44298, is referred to herein as the “Action.”

13 3. For purposes of this Settlement, the “Class Period” is November 17, 2016 through April 1,
14 2022.

15 4. For purposes of this Settlement, the “Class” or “Class Members” consist of: All persons
16 who worked for Defendant Le Pafe, Inc. dba “Le Chef Bakery”, both in their individual and representative
17 capacities at any location of Defendant in California as an hourly, non-exempt employee, from November
18 17, 2016 to April 1, 2022, who has not signed an arbitration agreement and/or class action waiver.
19 Excluded from the definition of Class Member are any temporary, contracted, staffing employee and/or
20 other personnel employed by a third-party other than Defendant Le Pafe, Inc. “Settlement Class
21 Members” are Plaintiff and those Class Members who do not submit timely exclusion requests to the
22 Settlement Administrator.

23 5. For purposes of this Settlement, “Class Counsel” means Kane Moon, Esq., Allen Feghali,
24 Esq., Brett M. Gunther, Esq., and Julie Oh, Esq. of MOON & YANG, APC.

25 6. “Class Representative Service Award” means the amount that the Court authorizes to be
26 paid to Plaintiff, in addition to Plaintiff’s Individual Settlement Payment, in recognition of Plaintiff’s
27 efforts and risks in assisting with the prosecution of the Action.

28 7. For purposes of this Settlement, “Covered Workweeks” means the number of weeks a

1 Class Member was employed by Defendant in California during the Class Period. Defendant's best
2 estimate is that the Class Members worked approximately 20,000 workweeks.

3 8. For purposes of this Settlement, "Response Deadline" means the date forty-five (45) days
4 after the Settlement Administrator initially mails the Notice to Settlement Class Members and the last date
5 on which Settlement Class Members may submit a request for exclusion or written objection to the
6 Settlement. In the case of a re-mailed Notice, the Response Deadline will be the later of 45 calendar days
7 after initial mailing or 14 calendar days from re-mailing. The Response Deadline may be extended only as
8 expressly described herein.

9 9. For purposes of the Settlement, "Defendant's Counsel" means Greg A. Garbacz, Esq. and
10 Ricardo E. Diaz, Esq. of Klinedinst PC for Defendant Le Pafe, Inc.

11 10. "Individual Settlement Payment" means the amount payable from the Net Settlement
12 Amount to each Class Member.

13 11. "Net Settlement Amount" means the Maximum Settlement Amount, less Attorneys' Fees
14 and Costs, the Class Representative Service Award, Settlement Administration Costs, and the PAGA
15 Penalty Payment.

16 12. For purposes of this Settlement, "PAGA Allocation" means the amount that the Parties
17 have agreed to pay to the Labor and Workforce Development Agency ("LWDA") in connection with the
18 Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, "PAGA"). The
19 Parties have agreed that the PAGA Allocation will be \$50,000.00 from the Gross Settlement Amount.
20 Pursuant to PAGA, Seventy Five Percent (75%), or \$37,500.00, of the PAGA Penalty Payment will be
21 paid to the LWDA ("PAGA Penalty Payment"), and Twenty Five Percent (25%), or \$12,500.00 of the
22 LWDA Payment will be included in the Net Settlement Amount for PAGA Employees ("PAGA
23 Settlement Payment").

24 13. For purposes of this Settlement, "PAGA Period" means the period between November 15,
25 2019 through April 1, 2022.

26 14. For purposes of this Settlement, "PAGA Employee" means all Class Members that worked
27 during the PAGA Period.

28 15. For purposes of this Settlement, "PAGA Pay Periods" means the number of pay periods

1 each PAGA Employee worked during the PAGA Period.

2 16. For purposes of this Settlement, "PAGA Representative" means Plaintiff.

3 17. For purposes of this Settlement, "Released PAGA Claims" means all claims asserted
4 through California Labor Code §§ 2698, *et seq.*, that arise out of or are related to the Released Claims set
5 forth below, and are subject to assertion through PAGA.

6 18. For purposes of this Settlement, "Released PAGA Claims Period" means the period
7 between November 15, 2019 through April 1, 2022.

8 19. "Request for Exclusion" means a written request by a Class Member to opt out of, or
9 exclude oneself, from the Settlement.

10 20. "Settlement" means the final and complete disposition of the Action pursuant to this
11 Stipulation.

12 21. For purposes of this Settlement, "Settlement Payments" means all of the payments to
13 Settlement Class Members (the "Settlement Class Payments") and all of the payments to PAGA
14 Employees (the "PAGA Settlement Payment").

15 22. "Settlement Administrator" means ILYM Group, Inc., a third-party class and PAGA action
16 settlement administrator agreed to by the Parties and approved by the Court for purposes of administering
17 this Settlement.

18 23. "Settlement Administration Costs" means the reasonable costs and fees of administration
19 of this Settlement, including, but not limited to: (i) printing, mailing and re-mailing (if necessary) Notice of
20 Settlement to the Class Members; (ii) preparing and submitting to Class Members and government entities
21 all appropriate tax filings and forms; (iii) preparing, with the assistance of Defense Counsel, and serving
22 the CAFA Notice; (iv) computing the amount of and distributing Individual Settlement Payments, the
23 Class Representative Service Award, Attorneys' Fees and Costs, and the LWDA Payment; (vi) processing
24 and validating Requests for Exclusion and Notices of Objection; (vii) establishing a Qualified Settlement
25 Fund ("QSF"), as defined by the Internal Revenue Code; and (viii) calculating and remitting to the
26 appropriate government agencies all employer and employee payroll tax obligations arising from the
27 Settlement and preparing and submitting filings required by law in connection with the payments required
28 by the Settlement.

STIPULATED BACKGROUND

24. On November 15, 2020, Plaintiff submitted a “Notice of Labor Code Violations and PAGA Penalties” online to the Labor & Workforce Development Agency to satisfy the administrative exhaustion requirement that is a prerequisite to filing a claim for Civil Penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.] (“PAGA”). More than 65 days have passed since the Plaintiff’s submission of the notice letter and Plaintiff has not received any notice from the LWDA of its intent to investigate the claims set forth in the November 15, 2020 PAGA letter.

25. On November 17, 2020, Plaintiff Ana Hernandez de Bahena filed a putative Class Action alleging the following labelled causes of action: (1) Failure to Pay Minimum Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198]; (3) Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512]; (4) Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7]; (5) Failure to Indemnify Necessary Business Expenses [Cal. Lab. Code § 2802]; (6) Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203]; (7) Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226]; and (8) Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.]. On April 1, 2021, Plaintiff filed a First Amended Complaint to add a cause of action (the 9th) for Civil Penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.] (the “Complaint”).

26. The parties engaged in significant formal and informal discovery in this action. Defendant produced thousands of pages of responsive documents including a sample of the paystub and time card records for the Class Members, and policies/procedures related to the its obligations under the Labor Code. In addition, Plaintiff both in her individual and representative capacity obtained the names and contact information of all of the Class Members during the Class Period and have conducted detailed interviews.

27. The Parties have performed a thorough study of the facts and the law related to the claims alleged in the Litigation and based on that investigation and discovery, and taking into account the heavily contested issues, the expense and time necessary to pursue prosecution and defense of the Litigation through dismissal or trial, the risks and costs of further prosecution of the litigation, the uncertainty of forthcoming Federal and California judicial decisions, the uncertainty of complex litigation, the fairness and reasonableness of the settlement agreed to by the Parties, and the best interest of the Class Members to

1 whom substantial benefits will accrue, the Parties have reached agreement to the terms of this Settlement.

2 28. On April 27, 2022, the Parties participated in a mediation in the Action with Hon. Carl J.
3 West (Ret.). and reached an agreement on the essential terms of a proposed class action settlement and
4 PAGA settlement and, thereafter executed a memorandum of understanding reflecting their agreement.

5 29. In the Complaint, Plaintiff sought to represent all non-exempt direct hire employees who
6 worked for Defendant in California, and who were allegedly denied minimum and overtime wages, who
7 allegedly did not receive all meal and rest periods legally entitled, who allegedly did not receive minimum,
8 overtime, meal period premium and rest period premium wages at the correct rate of pay, who allegedly
9 did not have accurate records of all hours worked and all meal periods taken or missed, who allegedly did
10 not receive reimbursement for expenses incurred for business purposes, who allegedly did not timely
11 receive all wages upon their resignation or termination of employment, and who allegedly did not received
12 accurate itemized wage statements at any time during the period November 17, 2016 to April 1, 2022.

13 30. The Parties stipulate and agree to the certification of the proposed class for settlement
14 purposes only. The Parties further agree that this Stipulation will not be admissible in this or any other
15 proceeding as evidence that (i) a class action should be certified, (ii) a representative action is appropriate
16 or manageable, or (iii) Defendant is liable to Plaintiff or any Class Member, other than according to the
17 terms of this Stipulation. Solely for purposes of settling this case, the Parties stipulate and agree that:

18 (a) The Class is ascertainable and so numerous as to make it impracticable to join all
19 Class Members.

20 (b) There are common questions of law and fact including, but not limited to, the
21 following:

- 22 1) Whether or not Plaintiff and the Class Members were properly
23 compensated for all hours worked, including minimum and overtime
24 wages;
- 25 2) Whether or not Plaintiff and the Class Members were provided and/or
26 authorized and permitted all meal and rest periods, and/or were paid
27 premium pay at the proper rate of pay for failure to provide meal and rest
28 breaks ;

- 3) Whether or not Plaintiff and the Class Members timely received all wages owed upon the termination and/or resignation of their employment;
- 4) Whether or not Defendants maintained accurate records of all hours Plaintiff and the Class Members worked;
- 5) Whether or not Defendants failed to reimburse necessary business expenses; and,
- 6) Whether or not Defendants engaged in unlawful or unfair business practices affecting the Class in violation of California Business and Professions Code §§ 17200-17208.

(c) Plaintiff's claims are typical of the claims of the Class Members.

(d) Plaintiff and Class Counsel will fairly and adequately protect the interests of the Class.

(e) The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct.

(f) With respect to the Class, questions of law and fact common to the members of the Class predominate over any questions affecting any individual member in such Class, and that a class action is superior to other available means for the fair and efficient adjudication of the controversy.

31. Should, for whatever reason, the Settlement not become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall have no bearing on, and shall not be admissible in connection with, the issue of whether the Class Members and/or the Class Claims should be certified in a non-Settlement context in this Action or in any other lawsuit. Defendants expressly reserve their right to oppose claim or class certification in this or any other action should this Settlement not become effective.

32. Defendant expressly denies any liability or wrongdoing of any kind whatsoever associated with the claims alleged in the Complaint, and Defendant further denies that, for any purpose other than settling this lawsuit, the action is appropriate for class or representative treatment. With respect to

1 Plaintiff's claims, Defendant contends, among other things, that Plaintiff and the Class Members have
2 been paid proper wages, have been provided all meal periods or they have been made available as
3 required, have been provided all rest periods or they have been authorized and permitted as required, did
4 not incur any business expenses that were not reimbursed, have been paid timely wages upon separation of
5 employment, have had all their records of all hours worked and all meal periods taken or missed
6 accurately maintained, and have been provided with accurate itemized wage statements. Defendant
7 contends, among other things, that it has complied at all times with the California Labor Code and the
8 applicable Wage Orders of the Industrial Welfare Commission. Furthermore, with respect to all claims,
9 Defendant contends that it has complied at all times with the California Business and Professions Code.

10 33. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge
11 all disputes and claims arising from or related to the Complaint.

12 34. Class Counsel has conducted a thorough investigation into the facts of this Action,
13 including an extensive review of relevant documents, and has diligently pursued an investigation of the
14 claims of the Class against Defendant. Based on its own independent investigation and evaluation, Class
15 Counsel is of the opinion that the Settlement with Defendant for the consideration and on the terms set
16 forth in this Joint Stipulation of Settlement is fair, reasonable, and adequate and is in the best interest of the
17 Class in light of all known facts and circumstances, including the risk of significant delay, the risk the
18 Class will not be certified by the Court, defenses asserted by Defendant, and numerous, potential appellate
19 issues. Defendant and Defendant's Counsel also agree that the Settlement is fair and in the best interest of
20 the Class.

21 35. The Parties agree to cooperate and take all steps necessary and appropriate to obtain
22 preliminary and final approval of this Settlement.

23 36. The Parties agree to stay all proceedings in the Action, except such proceedings necessary
24 to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the
25 Court.

26 **PRIMARY TERMS OF SETTLEMENT**

27 37. NOW THEREFORE, in consideration of the mutual covenants, promises and agreements
28 set forth herein, the Parties agree, subject to the Court's approval, as follows:

1 (a) It is agreed by and among the Class and Defendant that this case and any claims,
2 damages, or causes of action arising out of the disputes which are the subject of
3 this Action, be settled and compromised as between the Class and Defendant,
4 subject to the terms and conditions set forth in this Settlement and the approval of
5 the Court.

6 (b) Effective Date: The terms of settlement embodied in this Settlement shall become
7 effective when all of the following events have occurred: (i) this Joint Stipulation
8 of Settlement has been executed by all Parties and their respective counsel; (ii) the
9 Court has given preliminary approval to the Settlement; (iii) the Notice has been
10 given to the class, providing them with an opportunity to dispute information
11 contained in the Notice, to opt out of the Settlement, or to object to the Settlement;
12 (iv) the Court has held a final approval hearing and entered a final order and
13 judgment certifying the Class and approving this Settlement; and (v) the later of the
14 following events: (a) the date final approval is granted if there are no objections to
15 the settlement; (b) sixty-five (65) days following notice of entry of the Court's final
16 order approving the Settlement if there are any objections by any Class Member; or
17 (c) if any appeal, writ or other appellate proceeding opposing this Settlement has
18 been filed within sixty-five (65) days following notice of entry of the Court's final
19 order approving the Settlement, then twenty (20) days after when any appeal, writ
20 or other appellate proceeding opposing the Settlement has been resolved finally
21 and conclusively with no right to pursue further remedies or relief. In this regard, it
22 is the intention of the Parties that the Settlement shall not become effective until the
23 Court's order approving the Settlement is completely final, and there is no further
24 recourse by an appellant or objector who seeks to contest the Settlement.

25 (c) Gross Settlement Amount: Defendant's maximum total payment under the
26 Settlement, including all attorney's fees and costs, the Service Payment to the
27 named Plaintiff, the costs of settlement administration, the PAGA Allocation, and
28 any other payments provided by this Settlement, is \$400,000.00 ("Gross Settlement

Amount”), subject to the Escalator Clause and except that, to the extent that any portions of the Class Members’ Settlement Payments constitute wages, Defendant will be separately responsible for any employer payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions.

(d) Escalator Clause: If it is later determined that the number of Covered Workweeks is more than 25% greater than the original estimates of 20,000 workweeks (i.e. 25,000 or more Covered Workweeks), the Gross Settlement Amount may be increased by the percentage that the actual number of class members or workweeks exceeds the original estimates beyond 25% (the “Escalator Clause”). However, should the number of Covered Workweeks exceed 25,000, Defendant shall have the right to amend and shorten the class period as of the date the number of workweeks exceeds 25,000. The Gross Settlement Amount will not be reduced for any reason.

(e) Non-reversionary Settlement: No portion of the Gross Settlement Amount will revert to Defendants.

(f) No Claims Required: Class Members will not be required to submit a claim to receive their Settlement payment.

(g) Net Settlement Amount: The Net Settlement Amount shall be calculated by deducting from the Gross Settlement Amount (\$400,000.00) the following sums, subject to approval by the Court: (1) attorney’s fees (not to exceed 33.33% of the Gross Settlement Amount, or \$133,320.00); (2) reasonable litigation costs (not to exceed \$20,000.00); (3) the Service Payment (not to exceed \$7,500.00); (4) the PAGA Penalty Payment in the amount of \$37,500.00 (which is 75% of the \$50,000.00 PAGA Allocation); and (5) costs of settlement administration (estimated not to exceed \$15,000). Settlement Payments to the Class Members will be calculated by the Settlement Administrator and paid out of the Net Settlement Amount as set forth below.

(h) Payroll Taxes and Required Withholdings: To the extent that any portions of the

1 Settlement Class Members' Settlement Payments constitute wages, Defendant will
2 be separately responsible for any **employer** payroll taxes required by law,
3 including the employer FICA, FUTA, and SDI contributions. Except for any
4 employer payroll taxes, it is understood and agreed that Defendant's maximum
5 total liability under this Settlement shall not exceed the Gross Settlement Amount.
6 The Settlement Administrator will calculate and submit the Defendant's employer
7 share of payroll taxes after advising Defendant of the total amount owed, in
8 aggregate, as employer-side payroll taxes and receiving a lump sum payment from
9 Defendant in that amount when the Gross Settlement Amount is delivered to the
10 Settlement Administrator.

11 (i) Settlement Class Payments (Excludes PAGA Payments): Settlement Class
12 Payments will be paid out of the Net Settlement Amount. Each Settlement Class
13 Member will be paid a pro-rata share of the Net Settlement Amount (less the
14 PAGA Settlement Payments), as calculated by the Settlement Administrator. The
15 pro-rata share will be determined by comparing the individual Settlement Class
16 Member's Covered Workweeks worked during the Class Period in California to
17 the total Covered Workweeks of all the Settlement Class Members during the
18 Class Period as follows:
$$\frac{[\text{Workweeks worked by a Settlement Class Member}]}{[\text{Sum of all Covered Workweeks worked by all Settlement Class Members}]} \times [\text{Net Settlement Amount} - \text{all PAGA Settlement Payments}] = \text{Individual Settlement Payment for a Settlement Class Member.}$$

19 Settlement Class Payments in the
20 appropriate amounts will be distributed by the Settlement Administrator by mail to
21 the Settlement Class Members. Un-cashed, unclaimed or abandoned checks, shall
22 be transmitted to the California Controller's Office, as set forth below.

23 (j) PAGA Payments: PAGA Settlement Payments will be paid out of the Net
24 Settlement Amount. Each PAGA Employee will be paid a pro-rata share of the
25 PAGA Employees' PAGA Settlement Payment, as calculated by the Settlement
26 Administrator. Class Members will not be permitted to exclude themselves from
27
28

1 this portion of the Settlement. The pro-rata share will be determined by comparing
2 the individual PAGA Employees' PAGA Pay Periods during the PAGA Period to
3 the total PAGA Pay Periods of all the PAGA Employees during the PAGA Period
4 as follows: [PAGA Pay Periods worked by a PAGA Employee] ÷ [Sum of all
5 PAGA Pay Periods worked by all PAGA Employees] × [PAGA Settlement
6 Payment] = individual PAGA Employee's portion of the PAGA Settlement
7 Payment. PAGA Settlement Payments to PAGA Employees in the appropriate
8 amounts will be distributed by the Settlement Administrator by mail to the PAGA
9 Employees at the same time Settlement Class Payments issue to the Settlement
10 Class. Un-cashed, unclaimed or abandoned checks, shall be transmitted to the
11 California Controller's Office, as set forth below. The LWDA's PAGA Penalty
12 Payment will issue to the LWDA at the same time Settlement Payments issue to
13 the Settlement Class.

14 (k) Allocation of Settlement Payments: The Parties have agreed that Settlement Class
15 Payments will be allocated as follows: 33.3% to wages, 33.3% to penalties, and
16 33.3% to interest. The PAGA Settlement Payment shares to PAGA Employees
17 will be entirely allocated to penalties. Appropriate federal, state and local
18 withholding taxes will be taken out of the wage allocations, and each Class
19 Member will receive an IRS Form W-2 with respect to this portion of the
20 Settlement Payment. The employer's share of payroll taxes and other required
21 withholdings will be paid as set forth above, including but not limited to the
22 Defendant's FICA, FUTA, and SDI contributions, based on the payment of claims
23 to the Class Members. IRS Forms 1099 will be issued to each Class Member
24 reflecting the payments for penalties and interest. Class Members are responsible
25 to pay appropriate taxes due on the Settlement Payments they receive. To the
26 extent required by law, IRS Forms 1099 and W-2 will be issued to each Class
27 Member with respect to such payments.

28 (l) Settlement Payments Do Not Give Rise to Additional Benefits: All Settlement

1 Payments to individual Class Members shall be deemed to be paid to such Class
2 Member solely in the year in which such payments actually are received by the
3 Class Member. It is expressly understood and agreed that the receipt of such
4 Settlement Payments will not entitle any Class Member to additional compensation
5 or benefits under any company bonus, contest or other compensation or benefit
6 plan or agreement in place during the period covered by the Settlement, nor will it
7 entitle any Class Member to any increased retirement, 401(k) benefits or matching
8 benefits or deferred compensation benefits. It is the intent that the Settlement
9 Payments provided for in this Settlement are the sole payments to be made by
10 Defendants to the Class Members, and that the Class Members are not entitled to
11 any new or additional compensation, including calculations related to overtime
12 and/or the Class Members' regular rate of pay, or benefits as a result of having
13 received the Settlement Payments (notwithstanding any contrary language or
14 agreement in any benefit or compensation plan document that might have been in
15 effect during the period covered by this Settlement).

16 (m) Attorney's Fees and Costs: Subject to approval by the Court, Defendant will not
17 object to Class Counsel's application for attorney's fees not to exceed 33.33% of
18 the Gross Settlement Amount (\$133,320.00) and reimbursement of litigation costs
19 and expenses not to exceed \$20,000.00. The difference between the amounts
20 requested as attorneys' fees and costs and the actual amounts awarded will be
21 distributed to the class as Settlement Payments.

22 (n) Service Payment: Subject to Court approval, and in exchange for a general release,
23 Defendant will not object to Class Counsel's application for an additional payment
24 of up to \$7,500.00 to Plaintiff for service as a Class Representative ("Service
25 Payment"). It is understood that the Service Payment is in addition to the
26 individual Settlement Payment to which Plaintiff is entitled to along with the other
27 Class Members. In exchange, Plaintiff has agreed to release all claims both in
28 her individual and representative capacity, whether known or unknown, under

1 federal law or state law against the Releasees, to the extent permitted by law,
2 through the Class Period ("Plaintiff's Released Claims"). Plaintiff understands
3 that this release includes unknown claims and that they are, as a result, waiving
4 all rights and benefits afforded by Section 1542 of the California Civil Code,
5 which provides:

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

14 Specifically excluded from Plaintiff's Released Claims are any claims for workers'
15 compensation benefits. The Service Payment will issue at the same time all
16 Settlement Payments are mailed to the Settlement Class. The difference between
17 the amounts requested as a service payment and the actual amounts awarded will
18 be distributed to the class as Settlement Payments.

19 (o) Defendant or the Settlement Administrator will issue an IRS Form 1099 for the
20 Service Payment to the Plaintiff. The Plaintiff will be individually responsible for
21 correctly characterizing this compensation on personal income tax returns for tax
22 purposes and for paying any taxes on the amounts received. Should the Court
23 approve a Service Payment in an amount less than that set forth above, the
24 difference between the lesser amount(s) approved by the Court and the Service
25 Payment amount(s) set forth above shall be added to the Net Settlement Amount.
26 Plaintiff agrees not to opt out or object to the Service Payment as the Class
27 Representative.

28 (p) Settlement Administrator: The Settlement Administrator will be ILYM Group,
Inc., or such Settlement Administrator as may be mutually agreeable to the Parties
and approved by the Court. Settlement Administration Costs are estimated not to
exceed \$15,000. The costs of the Settlement Administrator for work done shall be

1 paid regardless of the outcome of this Settlement.

2 (q) Funding of Settlement Account: Defendant agree to make payments required
3 under this settlement within ninety (90) calendar days of the Effective Date.

4 (r) Mailing of Settlement Payments: The Settlement Administrator shall cause the
5 Settlement Payments to be mailed to the Class Members within 14 calendar days
6 after the final funds are deposited with the administrator.

7 (s) Notice of Settlement: Each Class Member will be mailed a notice setting forth the
8 material terms of the proposed Settlement, along with instructions about how to
9 object or request exclusion from the proposed class action Settlement ("Notice").
10 For each Class Member, there will be pre-printed information on the mailed
11 Notice, based on Defendant's records, stating the Class Member's Covered
12 Workweeks during the Class Period and the estimated total Settlement Payment
13 under the Settlement, including the Settlement Class Payment and the PAGA
14 Settlement Payment that will be distributed irrespective of any exclusion request.
15 The pre-printed information based on Defendant's records shall be presumed to be
16 correct. A Class Member may dispute the pre-printed information on the Notice as
17 to his or her Covered Workweeks during the Class Period. Class Members must
18 submit any dispute regarding the information on the Notice as to his or her
19 Covered Workweeks within the Response Deadline. Unless a disputing Class
20 Member submits documentary evidence in support of his or her dispute, the
21 records of the Defendant will be determinative, subject to review by the Court.

22 (t) Settlement Notice Language: The Notice will issue in English and Spanish.

23 (u) Class Members Cannot Exclude Themselves from the Released PAGA Claims:
24 Class Members submitting a Request for Exclusion will nevertheless receive their
25 pro-rata share of the PAGA Settlement Payment. If the Court approves the
26 compromise of the PAGA Claim, all Class Members are bound by the Court's
27 resolution of that Claim. Plaintiff shall serve a notice of settlement on the
28 California Labor and Workforce Development Agency at or before the time

1 Plaintiff file the motion for preliminary approval.

2 (v) Resolution of Workweek Disputes: If a Class Member disputes the accuracy of
3 Defendant's records used to calculate Covered Workweeks, and the Parties'
4 counsel cannot resolve the dispute informally, the matter will be referred to the
5 Settlement Administrator. The Settlement Administrator will review Defendant's
6 records and any information or documents submitted by the Class Member and
7 issue a decision regarding the dispute. The Court reviewing this Settlement shall
8 have the authority to review and make a final decision regarding any Class
9 Member dispute. The Class Member must submit information or documents
10 supporting his or her position to the Settlement Administrator prior to the
11 expiration of the Response Deadline. Information or documents submitted after
12 the expiration of the Response Deadline will not be considered by the Settlement
13 Administrator, unless otherwise agreed to by the Parties.

14 (w) Right of Class Member to Request Exclusion from the Settlement: Any Class
15 Member may request to be excluded from the Class by mailing a "Request for
16 Exclusion" from the Settlement within the Response Deadline. Any Request for
17 Exclusion must include the name, address, telephone number, last four digits of the
18 Class Member's Social Security Number, and the signature of the Class Member
19 requesting exclusion. Any such request must be made in accordance with the
20 terms of the Notice, and the Notice will advise Class Members of these
21 requirements. Any Class Member who timely requests exclusion in compliance
22 with these requirements (i) shall not have any rights under this Settlement other
23 than a right to receive a pro-rata share of the portion of the PAGA payment
24 allocated to the Class Members if the Class Member is also PAGA Employee; (ii)
25 shall not be entitled to receive any Settlement Payments under this Settlement other
26 than as stated in (i) in this paragraph; and (iii) shall not be bound by this Settlement
27 or the Court's Order and Final Judgment other than as it applies to the PAGA
28 Claim. Exclusion requests may also be made by fax or email.

(x) Right of Settlement Class Member to Object to The Settlement: Any Class Member may object to the Settlement. To object, the Class Member may (1) appear in person at the Final Approval Hearing to explain any objection, (2) have an attorney object for the Class Member, or (3) submit a simple written brief or statement of objection to the Settlement Administrator. If any Class Member chooses to submit a written objection, the written objection could be submitted via fax or email to counsel for the Parties no later than seven calendar days before the Final Approval Hearing, and should contain sufficient information to confirm the identity of the objector and the basis of the objection, including (1) the full name of the Settlement Class Member; (2) the signature of the Settlement Class Member; (3) the grounds for the objection; and (4) be postmarked within the Response Deadline to permit adequate time for processing and review by the Parties of the written statement or objection. Class Counsel shall ensure that any written objections are transmitted to the Court for the Court's review (either by Class Counsel or as an attachment to declaration from the Settlement Administrator). A Class Member who does not object prior to or at the Final Approval Hearing, will be deemed to have waived any objections and will be foreclosed from making any objections (whether at the Final Approval Hearing, by appeal, or otherwise) to the Settlement and/or seeking any adjudication or review of the Settlement, by appeal or otherwise.

THE SETTLEMENT ADMINISTRATOR'S PRIMARY DUTIES

38. Subject to the Court's approval, and subject to reconsideration by the Parties after a competitive bidding process, the Parties have agreed to the appointment of ILYM Group, Inc. to perform the customary duties of Settlement Administrator. The Settlement Administrator will mail the Notice, both in English and Spanish, to the Class Members.

39. The Settlement Administrator will independently review the Covered Workweeks attributed to each Class Member and will calculate the estimated amounts due to each Class Member and the actual amounts due to each Settlement Class Member in accordance with this Settlement. The

1 Settlement Administrator shall report, in summary or narrative form, the substance of its findings. The
2 Settlement Administrator shall be granted reasonable access to Defendant's records in order to perform its
3 duties.

4 40. In accordance with the terms of this Settlement, and upon receipt of Gross Settlement
5 Amount from Defendant, the Settlement Administrator will issue and send out the Settlement Payment
6 checks to the Class Members. Tax treatment of the Settlement Payments will be as set forth herein, and in
7 accordance with state and federal tax laws. All disputes relating to the Settlement Administrator's
8 performance of its duties shall be referred to the Court, if necessary, which will have continuing
9 jurisdiction over the terms and conditions of this Settlement until all payments and obligations
10 contemplated by this Settlement have been fully carried out.

11 41. The Settlement Administrator will mail the final judgment approving the Settlement along
12 with the settlement payments.

13 **ATTORNEY'S FEES AND COSTS**

14 42. In consideration for resolving this matter and in exchange for the release of all claims by
15 the Class Members, including Plaintiff, and subject to approval by the Court, Defendant will take no
16 position on and will not oppose Class Counsel's application for attorney's fees not to exceed 33.33% of
17 the Gross Settlement Amount (\$133,320.00 of \$400,000.00) and litigation costs not to exceed \$20,000.00.
18 The amounts set forth above will cover all work performed and all fees and costs incurred to date, and all
19 work to be performed and all fees and costs to be incurred in connection with the approval by the Court of
20 this Settlement and administration of the Settlement. Should Class Counsel request a lesser amount and/or
21 the Court approve a lesser amount(s) of attorney's fees and/or attorneys' costs, the difference between the
22 lesser amount(s) and the maximum amount set forth above shall be added to the Net Settlement Amount.
23 Attorneys' fees and costs approved by the Court shall be paid to Class Counsel within 14 calendar days
24 after the funds are deposited with the Settlement Administrator. This Settlement is not conditioned upon
25 the Court awarding Class Counsel any particular amount of attorneys' fees or costs. In the event that the
26 Court awards less than 25% of the Gross Settlement Amount for attorney's fees, Class Counsel shall retain
27 the right to appeal that portion of any Final Approval Order and Judgment.

THE NOTICE PROCESS

43. A Notice in approximately the form attached hereto as Exhibit "A," and as approved by the Court, shall be sent by the Settlement Administrator to the Class Members by first class mail. The Notice shall be translated into Spanish so that Spanish and English language versions of the Notice are included in the mailing. Any returned envelopes from this mailing with forwarding addresses will be utilized by the Settlement Administrator to forward the Notices to the Class.

(a) Within twenty-one (21) calendar days from the date of entry of the preliminary approval order of this Settlement by the Court, Defendant shall provide to the Settlement Administrator a class database containing the following information for each Class Member: (1) name; (2) last known address; (3) social security number; and (5) dates of employment at Defendant's locations in California. This database shall be based on Defendant's payroll and/or other business records and shall be provided in a format acceptable to the Settlement Administrator. Defendant agrees to consult with the Settlement Administrator prior to the production date to ensure that the format will be acceptable to the Settlement Administrator. The Settlement Administrator will run a check of the Class Members' addresses against those on file with the U.S. Postal Service's National Change of Address List. Absent mutual written agreement of counsel for the Parties or Court order, the Settlement Administrator will keep this database confidential from third-parties and secure and use it only for the purposes described herein, and will return this database to Defendant upon final approval of the settlement or destroy electronic records containing the database after the Settlement is final and all payments are distributed as required under this Agreement. The information provided to the Settlement Administrator shall be kept confidential from unauthorized third-parties and shall not be disclosed, either in writing or orally, by the Settlement Administrator at any time. The Settlement Administrator shall use due care with respect to the storage, custody, use, and/or dissemination of the confidential information. Such information must be stored in a secure fashion and all persons who access the data

1 must agree to keep it confidential.

2 (b) Within fourteen (14) calendar days after the Class database is provided to the
3 Settlement Administrator, the Settlement Administrator will mail the Notices to the
4 Class Members by First Class United States mail.

5 (c) Notices returned to the Settlement Administrator as non-deliverable on or before
6 the initial Response Deadline shall be resent to the forwarding address, if any, on
7 the returned envelope. A returned Notice will be forwarded by the Settlement
8 Administrator any time that a forwarding address is provided with the returned
9 mail. If there is no forwarding address, the Settlement Administrator will do a
10 computer search for a new address using the Class Member's social security
11 number or other information. In any instance where a Notice is re-mailed, the
12 Settlement Administrator must complete re-mailing within three business days, that
13 Class Member will have to respond by the original response deadline or 14
14 calendar days after re-mailing, whichever is later. A letter prepared by the
15 Settlement Administrator will be included in the re-mailed Notice in that instance,
16 stating the extended response deadline. Upon completion of these steps by the
17 Settlement Administrator, Defendants and the Settlement Administrator shall be
18 deemed to have satisfied their obligations to provide the Notice to the affected
19 Class Member. The affected Class Member shall remain a member of the
20 Settlement Class and shall be bound by all the terms of the Settlement and the
21 Court's Order and Final Judgment.

22 (d) Class Counsel shall provide to the Court, at least five calendar days prior to the
23 final approval hearing, or such other date as set by the Court, a declaration by the
24 Settlement Administrator of due diligence and confirming mailing of the Notices.

25 **DISPOSITION OF SETTLEMENT PAYMENTS AND UNCASHED CHECKS**

26 44. As set forth above, each Class Member will have until the expiration of the applicable
27 Response Deadline to submit to the Settlement Administrator any challenge or dispute to the Class
28 Member's Covered Workweek information on the Notice. No disputes will be honored if they are

submitted after the Response Deadline, unless the Parties mutually agree to accept the untimely dispute. Disputes can be communicated via fax or email. Each Class Member is responsible to maintain a copy of any documents sent to the Settlement Administrator and a record of proof of mailing.

45. The Settlement Administrator shall cause the Settlement Payments to be mailed to the Settlement Class Members and PAGA Employees as provided herein. Prior to mailing the Settlement Payment checks, the Settlement Administrator shall check for updated addresses for all recipients, and in the event that any check is returned as undeliverable, the check must be re-mailed within three business days. The check will be re-mailed to the forwarding address, if any, on the returned envelope. If there is no forwarding address, the Settlement Administrator will attempt to determine a correct address by the use of skip-tracing, or other type of automated search for a new address using the Class Member's social security number or other information. Settlement Class Payments and PAGA Payments may be combined into one check. Settlement Payment checks shall remain valid and negotiable for 180 calendar days from the date of their issuance. Settlement Payment checks shall state the expiration date of the checks. Settlement Payment checks will automatically be cancelled by the Settlement Administrator if they are not cashed by the Class Member within that time, and the Class Member's relevant claims will remain released by the Settlement. Settlement Payment checks which have expired will not be reissued.

46. Funds from un-cashed or abandoned Settlement Payment checks, based on a 180-day void date shall be transmitted to the California State Controller's Office for Unclaimed Property in the name of each Class Member who failed to cash their Settlement Payment check prior to the void date.

Upon completion of its calculation of Settlement Payments, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a report listing the amounts of all payments to be made to Class Members (to be identified anonymously by employee number or other identifier). A Declaration attesting to completion of all payment obligations will be provided to Class Counsel and Defendant's Counsel and filed with the Court by Class Counsel.

RELEASE BY THE CLASS

47. Upon the final approval by the Court of this Settlement and payment of all funds due under this Settlement, and except as to such rights or claims as may be created by this Settlement, the Class Representative, the Class and each Class Member who has not submitted a valid and timely request for

1 exclusion as to claims other than the PAGA claim, will release claims as follows:

2 (a) **Identity of Released Parties.** The released parties are Defendant, and each of its
3 former, present and future direct and/or indirect owners, dba's, parents,
4 subsidiaries, affiliated and related companies, divisions, successors, predecessors,
5 or assigns, and past, current and future employees, attorneys, officers, directors,
6 shareholders, owners, agents, trustees, heirs, executors, administrators,
7 predecessors, successors or assigns of any of the foregoing (collectively
8 "Releasees").

9 (b) **Date Release Becomes Active.** The Released Claims will be released upon the
10 Settlement's Effective Date and payment by Defendant of all funds due under the
11 settlement. Class Members will not release the Released Claims or Released
12 PAGA Claims until the Effective Date and payment by Defendant of all funds due
13 under the settlement.

14 (c) **Claims Released by Settlement Class Members.** Each and every Class Member,
15 on behalf of himself or herself and his or her heirs and assigns, unless he or she has
16 submitted a timely and valid Request for Exclusion (which will not effectuate an
17 opt-out from the release of Released PAGA Claims), hereby releases Releasees
18 from the following claims for the entire Class Period:

- 19 1) any and all claims, charges, rights, complaints, liens, demands, obligations,
20 damages, wages, penalties, interest, debts, liabilities, costs, compensation,
21 damages, attorneys' fees, actions, and/or causes of action that were asserted
22 or could have been asserted based upon the facts and circumstances alleged
23 in the operative First Amended Complaint and arising at any time during
24 the Class Period in this Action, including but not limited to all state wage
25 and hour claims (including all claims under the California Labor Code) for
26 unpaid wages, unpaid minimum wages, unpaid overtime wages, off-the-
27 clock work violations, failure to provide meal periods, failure to provide
28 rest periods, failure to maintain accurate employment records,

unreimbursed business expenses, wage statement violations, interest, penalties, and attorneys' fees, waiting time penalties, withholding from wages and the related provisions of the Labor Code including but limited to Labor Code §§ 201-204, 210, 216, 218.6, 223, 226, 226.3, 226.7, 510, 512, 512.5, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 2802, derivative claims under California Business & Professions Code §§ 17200 et seq., and all claims under the governing Wage Order, and Fair Labor Standards Act ("Released Claims"); and all other potential civil and statutory penalties based on or arising from the Released Claims, including but not limited to statutory, constitutional, contractual damages, costs, penalties, punitive damages, interest, attorneys' fees, litigation costs, restitution, and equitable relief;

- 2) as to any Class Member who cashes their Settlement Payment, the Settlement Administrator shall include language on the Settlement Payments that informs the Class Members that the signing and negotiation of that check shall serve as the Class Member's consent to join the Action for purposes of releasing all claims arising under the Fair Labor Standards Act that are alleged in the Action or related to the claims stated or that could have been stated in the Action, implicitly or explicitly;
- 3) in addition, as to *all* Class Members employed during the Released PAGA Claims Period, whether requesting exclusion from the Settlement or not, claims arising under the Private Attorneys General Act of 2004, Labor Code § 2698 et seq., to the extent asserted in Plaintiff's administrative exhaustion letter submitted to the LWDA and any complaint in this matter, including the operative First Amended Complaint (i.e., the Released PAGA Claims).

DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

48. The Parties shall submit this Joint Stipulation of Class Action Settlement to the Court in

support of Plaintiff's unopposed motion for preliminary approval for determination by the Court as to its fairness, adequacy, and reasonableness. Upon execution of this Joint Stipulation of Class Action Settlement, the Parties shall apply to the Court for the entry of an order:

- (a) Scheduling a final approval and fairness hearing on the question of whether the proposed Settlement, including payment of attorney's fees and costs, and the Class Representative's service payment, should be finally approved as fair, reasonable, and adequate as to the members of the Class;
- (b) Certifying a Class for settlement purposes;
- (c) Approving as to form and content the proposed Notice;
- (d) Directing the mailing of the Notice;
- (e) Preliminarily approving the Settlement subject only to the objections of Class Members and final review by the Court;
- (f) Conditionally appointing Plaintiff and Class Counsel as representatives of the proposed Class Members; and,
- (g) Appointing ILYM Group, Inc. as the Settlement Administrator, and order the Settlement Administrator to issue Notices as outlined above.

DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL

49. In conjunction with the hearing of a motion for final approval by the Court of the Settlement provided for in this Joint Stipulation of Settlement, Class Counsel will submit to the Court a proposed final order and judgment containing provisions sufficient to accomplish the following:

- (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;
- (b) Approving Class Counsel's application for an award of attorney's fees and costs;
- (c) Approving the Service Payment to the Class Representative;
- (d) Adjudging the Settlement Administrator has fulfilled its initial notice and reporting duties under the Settlement.
- (e) Adjudging Plaintiff and Class Counsel may adequately represent the Final Settlement Class for the purpose of entering into and implementing the Agreement;

1 and

2 (f) Entering a final judgment in the action based on the Parties' Joint Stipulation of
3 Class Action Settlement.

4 **NULLIFICATION AND TERMINATION**

5 50. This Settlement will be null and void if any of the following occur: (a) the Court should for
6 any reason fail to certify a class for settlement purposes; (b) the Court should for any reason fail to
7 preliminarily or finally approve of this Settlement in the form agreed to by the Parties, other than
8 adjustments made to the attorney's fees and costs or granting of Service Payments; (c) the Court should for
9 any reason fail to enter the final judgment based on the Parties' Joint Stipulation of Class Action
10 Settlement; (d) the final judgment is reversed, modified, or declared or rendered void; (e) the Settlement
11 does not become final for any other reason; or (f) if ten-percent (10%) or more of the Class members opt-
12 out of the settlement, Defendant may, at its sole discretion, within thirty (30) days of the expiration of the
13 opt-out period, elect to revoke the settlement and their stipulation to Class Certification. If Defendant
14 exercises this option, it will be relieved of any obligation to pay the Settlement Amount or any other
15 obligations from the Settlement, with the exception that Defendant will be responsible for one-half of the
16 costs of administration of the Settlement incurred prior to the election to nullify the Settlement, by giving
17 notice to Plaintiff's Counsel and the Settlement Administrator. In addition, in the event that this Settlement
18 is caused to be null and void, subject to the provisions of this paragraph, the Settlement Agreement and all
19 negotiations, court orders, and proceedings relating thereto shall be without prejudice—to the rights of any
20 and all Parties, and all evidence and/or information exchanged relating to mediation and/or the Settlement
21 Agreement and all negotiations—not be admissible or discoverable in the Action or otherwise.

22 **PARTIES' AUTHORITY**

23 51. The signatories hereto hereby represent that they are fully authorized to enter into this
24 Settlement and bind the Parties hereto to the terms and conditions thereof.

25 **MUTUAL FULL COOPERATION**

26 52. The Parties agree to fully cooperate with each other to accomplish the terms of this
27 Settlement including, but not limited to, execution of such documents and taking such other action as
28 reasonably may be necessary to implement the terms of this Settlement. The Parties to this Settlement

1 shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that
2 may become necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set
3 forth herein. As soon as practicable after execution of this Settlement, Class Counsel shall, with the
4 assistance and cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the
5 Court's preliminary and final approval of this Settlement.

6 **NO PRIOR ASSIGNMENTS**

7 53. The Parties and their respective counsel represent, covenant, and warrant that they have not
8 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
9 any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein
10 released and discharged except as set forth herein.

11 **NO ADMISSION OF LIABILITY**

12 54. Nothing contained herein, nor the consummation of this Settlement, is to be construed or
13 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant.
14 Defendant denies all the claims and contentions alleged by the Plaintiff in this Action. The Defendant has
15 entered into this Settlement solely with the intention to avoid further disputes and litigation with the
16 attendant inconvenience and expenses.

17 **ENFORCEMENT ACTIONS**

18 55. In the event that one or more of the Parties to this Settlement institutes any legal action or
19 other proceeding against any other party or parties to enforce the provisions of this Settlement or to declare
20 rights and/or obligations under this Settlement, the successful party or parties shall be entitled to recover
21 from the unsuccessful party or parties reasonable attorney's fees and costs, including expert witness fees
22 incurred in connection with any enforcement actions.

23 **INVALIDITY OF ANY PROVISION**

24 56. Before declaring any provision of this Settlement Agreement invalid, the Court shall first
25 attempt to construe the provision as valid to the fullest extent possible consistent with applicable
26 precedents so as to define all provisions of this Settlement Agreement valid and enforceable, and/or will
27 sever any provision that is found to be unenforceable.

NOTICES

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

Class Counsel:

Kane Moon
 Allen Feghali
 Brett M. Gunther
 Julie Oh
 MOON & YANG, APC
 1055 W. Seventh St., Suite 1880
 Los Angeles, California 90017
 Telephone: (213) 232-3128
 Facsimile: (213) 232-3125
 kane.moon@moonyanglaw.com
 allen.feghali@moonyanglaw.com
 brett.gunther@moonyanglaw.com
 julie.oh@moonyanglaw.com

Counsel for Defendant:

Greg A. Garbacz
 ggarbacz@klindinstlaw.com
 KLINEDINST PC
 2 Park Plaza, Suite 1250
 Irvine, California 92614
 Telephone: (714) 542-1800
 Facsimile: (714) 542-3592

Ricardo E. Diaz
 rdiaz@klindinstlaw.com
 KLINEDINST PC
 777 S. Figueroa Street, Suite 2800
 Los Angeles, California 90017
 Telephone: (213) 406-1100
 Facsimile: (213) 406-1101

Attorneys for Defendant Le Pafe, Inc. dba "Le Chef Bakery"

CONSTRUCTION

58. The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive arms-length negotiations between the Parties, and this Settlement shall not be construed in favor of or against any party by reason of the extent to which any party or his, her or its counsel participated in the drafting of this Settlement.

CAPTIONS AND INTERPRETATIONS

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

MODIFICATION

60. This Settlement may not be changed, altered, or modified, except in writing and signed by

1 the Parties hereto, and approved by the Court. This Settlement may not be discharged except by
2 performance in accordance with its terms or by a writing signed by the Parties hereto.

3 **INTEGRATION CLAUSE**

4 61. This Settlement contains the entire agreement between the Parties relating to the
5 Settlement and transaction contemplated hereby, and all prior or contemporaneous agreements,
6 understandings, representations, and statements, whether oral or written and whether by a party or such
7 party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

8 **BINDING ON ASSIGNS**

9 62. This Settlement shall be binding upon and inure to the benefit of the Parties hereto and
10 their respective heirs, trustees, executors, administrators, successors and assigns.

11 **CLASS COUNSEL SIGNATORIES**

12 63. It is agreed that because the members of the Class are so numerous, it is impossible or
13 impractical to have each member of the Class execute this Settlement. The Notice will advise all Class
14 Members of the binding nature of the Released Claims and Released PAGA Claims, and the release shall
15 have the same force and effect as if this Settlement were executed by each member of the Class.

16 **COUNTERPARTS**

17 64. This Settlement may be executed in counterparts and by electronic or facsimile signatures,
18 and when each party has signed and delivered at least one such counterpart, each counterpart shall be
19 deemed an original, and, when taken together with other signed counterparts, shall constitute one
20 Settlement, which shall be binding upon and effective as to all Parties.

21 **CONFIDENTIALITY & PUBLIC COMMENT**

22 65. The Class Representative and Class Counsel agree they will not make any disparaging
23 comments about Defendant relating to this Settlement of this class action or disclose the negotiations of
24 the Settlement. The Class Representative and Class Counsel shall only disclose matters of public record
25 other than to Class Members, who may receive information about the Settlement that is not in the public
26 record after the Court has preliminarily approved the Settlement. Other than as to Class Members or as
27 expressly allowed below, the Parties and attorneys will keep the settlement confidential until the filing of
28 the motion for preliminary approval of the class settlement. Thereafter, the Parties agree to make no

1 comments to the media or otherwise publicize the terms of the Settlement, other than in court filings. To
 2 the extent counsel for either Party wish to advertise this settlement, such advertising will be limited to a
 3 statement that a matter was settled between a putative class and a “manufacturer of edible goods.” Any
 4 communication about the Settlement to Class Members prior to the Court-approved mailing will be
 5 limited to (1) a statement that a settlement has been reached, (2) a statement of any of the details that
 6 would necessarily be included in any Court-approved Notice if a Class Member requests details about the
 7 proposed Settlement, and (3) a warning that the terms of the proposed Settlement have not yet been
 8 approved by the Court. Prior to preliminary approval, the Class Representative is prohibited from
 9 discussing the terms or the fact of the settlement with third parties other than (1) a spouse, (2) accountants
 10 or lawyers as necessary for tax purposes, or (3) Class Members. At all times, the Class Representative is
 11 prohibited from communicating about the terms or the fact of the settlement on any form of social media
 12 (“Social Media Bar”). In the event of a proven breach of the Social Media Bar, the violating Plaintiff shall
 13 forfeit one-half of the class representative enhancement payment, as a form of liquidated damages. Class
 14 Counsel will take all steps necessary to ensure the Class Representative is aware of, and will adhere to, the
 15 restrictions against any public disclosure of the Settlement. Class Counsel will not include or use the
 16 settlement for any marketing or promotional purposes other than as expressly allowed above.

FINAL JUDGMENT

18 66. The Parties agree that, upon final approval of the Settlement, final judgment of this Action
 19 will be made and entered in its entirety. The final judgment may be included in the Order granting Final
 20 Approval of the Settlement.

21 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint
 22 Stipulation of Class Action Settlement between Plaintiff and Defendants as set forth below:

23 IT IS SO STIPULATED.

25 **Plaintiff & Class Representative:**

26 Dated: 7/26/2022

27 By: _____

DocuSigned by:

Ana Hernandez de Bahena

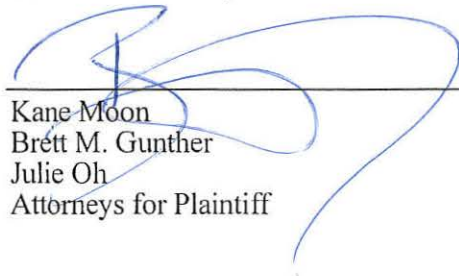
181156325C9A48A...

Ana Hernandez de Bahena

1 **Plaintiff's Counsel:**

2 Dated: 7/26/22

MOON & YANG, APC

4 By: 

5 Kane Moon
6 Brett M. Gunther
7 Julie Oh
8 Attorneys for Plaintiff

7 **Defendant:**

8 Dated: August 1, 2022

LE PAFE, INC. dba "LE CHEF BAKERY"

10 By: JONATHAN LAU

11 Print Name

12 Signature

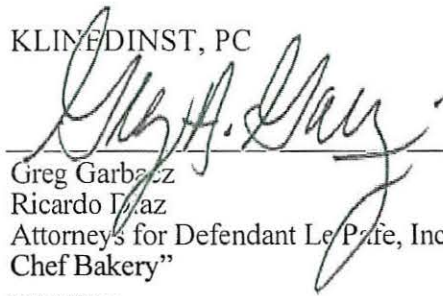
13 CEO/OWNER

14 Title

15 **Defendant's Counsel:**

16 Dated: August 3, 2022

KLINEDINST, PC

18 By: 

19 Greg Garbacz
20 Ricardo Diaz
21 Attorneys for Defendant Le Pafe, Inc. dba "Le
22 Chef Bakery"

23 Bahena v. Le Pafe - Joint Stipulation of Class Action Settlement (draft(20942376.1))

EXHIBIT A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Ana Hernandez De Bahena v. Le Pafe, Inc., et al.
Los Angeles Superior Court Case No. 20STCV44298

A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.

IF YOU WORKED AS A NON-EXEMPT EMPLOYEE OF LE PAFE, INC. DBA “LE CHEF BAKERY” WHO WORKED AT ANY LOCATION OF LE PAFE, INC. DBA “LE CHEF BAKERY” IN CALIFORNIA AT ANY TIME BETWEEN NOVEMBER 17, 2016 AND APRIL 1, 2022, THIS PROPOSED CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.

Why should you read this Notice?

A proposed settlement (the “Settlement”) has been reached in a class action lawsuit entitled *Ana Hernandez De Bahena v. Le Pafe, Inc., et al.*, Los Angeles Superior Court Case No. 20STCV44298 (the “Action”). The purpose of this Notice of Proposed Class Action Settlement (“Notice”) is to briefly describe the Action and to inform you of your rights and options in connection with the Action and the proposed Settlement.

The proposed Settlement will resolve all claims in the Action. A hearing concerning final approval of the proposed Settlement will be held before the Hon. Yvette M. Palazuelos on <<**FA Date and Time**>> in Department Dept. 9 of the Los Angeles Superior Court, Spring Street Courthouse, 312 N. Spring Street, Los Angeles, CA 90012, to determine whether the Settlement is fair, adequate and reasonable. As a Class Member, you are eligible to receive an individual Settlement Payment under the Settlement and will be bound by the release of claims described in this Notice and the Settlement Agreement filed with the Court, unless you timely request to be excluded from the Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

DO NOTHING AND RECEIVE A SETTLEMENT PAYMENT	If you do nothing, you will be considered part of the Class and will receive settlement benefits as explained more fully below. You will also give up rights to pursue a separate legal action against Defendants for the Released Claims asserted in the Action as explained more fully below.
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS DEADLINE TO EXCLUDE YOURSELF: << RESPONSE DATE >>	You have the option to pursue separate legal action against Defendants about the claims in the Action. If you choose to do so, you must exclude yourself, in writing, from the Settlement by submitting a written Request to be Excluded. As a result, you will not receive any benefits under the Settlement. Except that, even if you request exclusion, you will receive payment for PAGA Penalties, and you will release PAGA claims as discussed below.
OBJECT TO THE SETTLEMENT DEADLINE TO SUBMIT WRITTEN OBJECTIONS: << RESPONSE DATE >>	To object to the Settlement, you may mail a written explanation of why you do not agree with the Settlement to the Settlement Administrator, appear at the final approval hearing, or hire an attorney at your expense to object for you. This option is available only if you do <u>not</u> exclude yourself from the Settlement. Do <u>not</u> submit a Request to be Excluded if you wish to object. <i>Written</i> objections must be submitted by << RESPONSE DATE >>. You may arrange to appear at the hearing remotely via LA Court Connect (https://my.lacourt.org/laccwelcome)

Who is affected by this proposed Settlement?

The Court has certified, for settlement purposes only, the following class (the “Class”):

All persons who worked for Defendant Le Pafe, Inc. dba "Le Chef Bakery" at any location of Defendant in California as an hourly, non-exempt employee, from November 17, 2016 to April 1, 2022, who has not signed an arbitration agreement and/or class action waiver. Excluded from the definition of Class Member are any temporary, contracted, staffing employee and/or other personnel employed by a third-party other than Defendant Le Pafe, Inc.

According to Defendant's records, you are a member of the Class ("Class Member").

What is this case about?

In the Action, Plaintiff Ana Hernandez De Bahena ("Plaintiff") alleges on behalf of himself and the Class allege that Defendants: (1) Failed to Pay Minimum Wages; (2) Failed to Pay Overtime Compensation; (3) Failed to Provide Meal Periods; (4) Failed to Authorize and Permit Rest Breaks; (5) Failed to Indemnify Necessary Business Expenses; (6) Failed to Timely Pay Final Wages at Termination; (7) Failed to Provide Accurate Itemized Wage Statements; (8) committed Unfair Business Practices; and (9) violated provisions of the Labor Code giving rise to civil penalty liability under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.]. Plaintiff seeks unpaid wages, reimbursement for necessary business expenses, actual damages, declaratory relief, statutory penalties, civil penalties under PAGA, restitution, interest, attorneys' fees, and costs.

Defendant denies all liability and is confident that they have strong legal and factual defenses to these claims, but they recognize the risks, distractions, and costs associated with litigation. Defendant contends that its conduct is and has been lawful at all times relevant and that Plaintiff's claims do not have merit and do not meet the requirements for class certification.

This Settlement is a compromise reached after good faith, arm's length negotiations between Plaintiff and Defendant (the "Parties"), through their attorneys, and is not an admission of liability on the part of Defendant. Both sides agree that this Settlement is fair, adequate and reasonable. Plaintiff also believes this Settlement is in the best interests of all Class Members.

The Court has not ruled on the merits of Plaintiff's claims or Defendant's defenses.

Who are the attorneys representing the Parties?

The attorneys representing the Parties in the Action are:

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Attorneys for Defendant Le Pafe, Inc.
dba "Le Chef Bakery"

What are the Settlement terms?

Subject to final Court approval, Defendant will pay \$400,000 (the "Gross Settlement Amount") for: (a) individual Settlement Payments to Settlement Class Members; (b) the Court-approved Class Representative Service

Payment to Plaintiff (\$7,500); (c) the Court-approved attorneys' fees and costs to Class Counsel (\$133,320.00 in fees and up to \$20,000 in costs to be requested); (d) payment to the Labor and Workforce Development Agency ("LWDA") for alleged PAGA penalties (\$37,500 of a total of \$50,000 allocated to PAGA penalties); and (e) payment to the Settlement Administrator for settlement administration services (up to an estimated maximum of \$15,000).

Individual Settlement Payments. After deduction from the Gross Settlement Amount for attorneys' fees and costs, the Class Representative Service Payment to Plaintiff, the payment to the LWDA, and settlement administration costs, there will be a Net Settlement Amount. From this Net Settlement Amount, Defendant will make an individual Settlement Payment to each Class Member who does not request to be excluded from the Settlement ("Settlement Class Members").

Defendant will make the settlement payment within 90 calendar days of the effective date of the settlement to the third-party administrator. Your Individual Settlement Payment will be mailed to you 14 days after the administrator receives the settlement payment from Defendant.

The Net Settlement Amount shall be divided among all Settlement Class Members on a pro rata basis based upon the total number of workweeks worked by each respective Settlement Class Member as a non-exempt hourly employee in the State of California during the Class Period. Your estimated individual Settlement Payment is listed below.

Your estimated minimum settlement payment is <<Estimated Payment>> and your covered Work Weeks worked during the relevant period between November 17, 2016 and April 1, 2022 are <<Work Weeks>>. To the extent you dispute the number of Work Weeks, you must make your dispute ("Work Week Dispute") in writing and send it to the Settlement Administrator via fax or mail. Your Work Week Dispute must be postmarked or faxed no later than <<+45 days from date of mailing>> (the "Response Deadline") to:

ILYM Group, Inc., <<Mailing Address>>

Your Work Week Dispute must be in writing and contain: (a) your full name, signature, address, telephone number, and the last four digits of your Social Security number; (b) the number of Work Weeks you contend is correct; and (c) any evidence supporting your contention. Defendants' records will be presumed correct unless you prove otherwise by credible evidence. The Settlement Administrator will resolve and decide all Work Week Disputes, and its' decisions will be reviewable by the Court during the Final Approval Hearing. **REMINDER:** If you believe your estimated individual Settlement Amount is incorrect because your Work Weeks (the number of total weeks you worked within the Class Period only) are wrong, the deadline to dispute the workweeks reported for you is <<RESPONSE DATE>>.

For tax reporting purposes, the payments to Settlement Class Members will be allocated 33.3% as wages, 33.3% as penalties, and 33.3% as interest, excluding the PAGA Settlement Payments, which will be allocated as 100% penalties. The wage portion of the individual Settlement Payments shall be subject to the withholding of applicable local, state, and federal taxes, and the Settlement Administrator shall deduct applicable employee-side payroll taxes from the wage portion of the individual Settlement Payments. The portion of the Settlement Payments allocated to penalties and interest shall be classified as other miscellaneous income and reported on IRS Form 1099-MISC. Any taxes owed on that other miscellaneous income will be the responsibility of Settlement Class Members receiving those payments. The employer's share of any payroll taxes will be separately paid by Defendant.

All checks for individual Settlement Payments paid to Settlement Class Members shall advise that the checks will remain valid and negotiable for one hundred eighty (180) days from the date of the checks' issuance and shall thereafter automatically be void if not cashed by a participating Class Member within that time. Any individual Settlement Payment that is not cashed by a Settlement Class Member within one hundred eighty (180) days of issuance shall be transmitted to the California State Controller's Office for Unclaimed Property in the name of each check recipient who failed to cash their check prior to the void date. The Settlement Administrator shall void any tax documents issued to Settlement Class Members who did not cash their checks within 180 days of issuance. In such event, the Settlement Class Member shall nevertheless remain bound by the Settlement.

None of the Parties or attorneys make any representations concerning the tax consequences of this Settlement or your participation in it. Settlement Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any Class Member.

Class Counsel Attorneys' Fees and Costs, Class Representative Service Award, Settlement Administration Costs and Payment to the LWDA. Class Counsel will ask the Court to award attorneys' fees up to \$133,320.00 (one-third) of the Gross Settlement Amount and reimbursement of reasonable costs incurred in the Action not to exceed \$20,000. In addition, Class Counsel will ask the Court to authorize a Class Representative Service Payment of \$7,500 for Plaintiff for her efforts in bringing the case on behalf of the Class. The Parties estimate the cost of administering the Settlement will not exceed \$15,000.00. A payment in the amount of \$37,500.00 will also be made to the LWDA for PAGA penalties, which represents 75% of the \$50,000 set aside for payment under PAGA.

What claims are being released by the proposed Settlement?

Upon the final approval by the Court of this Settlement and payment of all funds due under this Settlement, and except as to such rights or claims as may be created by this Settlement, the Class Representative, the Class and each Class Member who has not submitted a valid and timely request for exclusion as to claims other than the PAGA claim, will release claims as follows:

Identity of Released Parties. The released parties are Defendant, and each of its former, present and future direct and/or indirect owners, dba's, parents, subsidiaries, affiliated and related companies, divisions, successors, predecessors, or assigns, and past, current and future employees, attorneys, officers, directors, shareholders, owners, agents, trustees, heirs, executors, administrators, predecessors, successors or assigns of any of the foregoing (collectively "Releasees").

Date Release Becomes Active. The Released Claims will be released upon the Settlement's Effective Date and payment by Defendant of all funds due under the settlement. Class Members will not release the Released Claims or Released PAGA Claims until the Effective Date and payment by Defendant of all funds due under the settlement.

Claims Released by Settlement Class Members. Each and every Class Member, on behalf of himself or herself and his or her heirs and assigns, unless he or she has submitted a timely and valid Request for Exclusion (which will not effectuate an opt-out from the release of Released PAGA Claims), hereby releases Releasees from the following claims for the entire Class Period:

- 1) any and all claims, charges, rights, complaints, liens, demands, obligations, damages, wages, penalties, interest, debts, liabilities, costs, compensation, damages, attorneys' fees, actions, and/or causes of action that were asserted or could have been asserted based upon the facts and circumstances alleged in the operative First Amended Complaint and arising at any time during the Class Period in this Action, including but not limited to all state wage and hour claims (including all claims under the California Labor Code) for unpaid wages, unpaid minimum wages, unpaid overtime wages, off-the-clock work violations, failure to provide meal periods, failure to provide rest periods, unreimbursed business expenses, wage statement violations, interest, penalties, and attorneys' fees, waiting time penalties, withholding from wages and the related provisions of the Labor Code including but limited to Labor Code §§ 201-204, 210, 216, 218.6, 223, 226, 226.3, 226.7, 510, 512, 512.5, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 2802, derivative claims under California Business & Professions Code §§ 17200 et seq., and all claims under the governing Wage Order, and Fair Labor Standards Act ("Released Claims"); and all other potential civil and statutory penalties based on or arising from the Released Claims, including but not limited to statutory, constitutional, contractual damages, costs, penalties, punitive damages, interest, attorneys' fees, litigation costs, restitution, and equitable relief;
- 2) as to any Class Member who cashes their Settlement Payment, the Settlement Administrator shall include language on the Settlement Payments that informs the Class Members that the signing and negotiation of that check shall serve as the Class Member's consent to join the Action for purposes of releasing all claims arising under the Fair Labor Standards Act that are alleged in the Action or related to the claims stated or that could have been stated in the Action, implicitly or explicitly;
- 3) in addition, as to *all* Class Members employed during the Released PAGA Claims Period, whether requesting exclusion from the Settlement or not, claims arising under

the Private Attorneys General Act of 2004, Labor Code § 2698 et seq., to the extent asserted in Plaintiff's administrative exhaustion letter submitted to the LWDA and any complaint in this matter, including the operative First Amended Complaint (i.e., the Released PAGA Claims).

What are my options in this matter?

You have two options under this Settlement, each of which is further discussed below. You may: (A) remain in the Class and receive an individual Settlement Payment; or (B) exclude yourself from the Settlement. If you choose option (A), you may also object to the Settlement, as explained below.

If you remain in the Class, you will be represented at no cost by Class Counsel. Class Counsel, however, will not represent you for purposes of making objections to the Settlement. If you do not exclude yourself from the Settlement, you will be subject to any Judgment that will be entered in the Action, including the release of the Released Claims as described above.

OPTION A. Remain in the Class. If you wish to remain in the Class and be eligible to receive an individual Settlement Payment under the Settlement, **you do not need to take any action.** By remaining in the Class and receiving settlement monies, you consent to the release of the Released Claims as described above.

Any amount paid to Settlement Class Members will not count or be counted for determination of eligibility for, or calculation of, any employee benefits (for example, vacations, holiday pay, retirement plans, non-qualified deferred compensation plans, etc.), or otherwise modify any eligibility criteria under any employee pension benefit plan or employee welfare plan sponsored by Defendant, unless otherwise required by law.

Objecting to the Settlement: If you believe the proposed Settlement is not fair, reasonable, or adequate in any way, you have several options that you may use to object to it or express any concerns. To object, you may appear in person at the Final Approval Hearing, have an attorney object for you, or submit a written brief or statement of objection ("written objection") to the Settlement Administrator at ILYM Group, Inc., <<Mailing Address>>. If you submit a written objection, it should contain sufficient information to confirm the your identity and the basis of the objection, including: (1) your full name; (2) the grounds for the objection; (3) your signature; and (4) be postmarked on or before <<Response Deadline>> and returned to the Settlement Administrator at the address listed above to ensure that it is received in time to be transmitted to and considered by the Court. You can also hire an attorney at your own expense to represent you in your objection. The Parties shall file responses to any written objections before the final approval hearing. Regardless of whether you object in writing, the Court may, in its sole discretion, permit you to state any objections you may have at the Settlement Hearing. **Even if you submit an objection, you will be bound by the terms of the Settlement, including the release of Released Claims as set forth above, unless the Settlement is not finally approved by the Court.**

Regardless of the form, an objection, alone will not satisfy the requirement that a Settlement Class Member must formally intervene and become a party of record in the action to appeal a Judgment entered following an Order finally approving this Settlement, as is required under the California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018).

OPTION B. Request to Be Excluded from the Settlement and Receive No Money from the Settlement. If you do not want to be part of the Settlement, you must submit a written request to be excluded from the Settlement to the Settlement Administrator at ILYM Group, Inc., <<Mailing Address>>. In order to be valid, your written request to be excluded from the Settlement must be signed and include your name, address, and telephone number (to confirm your identity and make certain that only persons requesting exclusion are removed from the settlement).

Your written request to be excluded from the Settlement must then be signed and postmarked on or before <<Response Deadline>>. If you do not submit a written request to be excluded from the Settlement on time (as evidenced by the postmark), your written request to be excluded from the Settlement will be rejected, you will be deemed a participating Class Member, and you will be bound by the release of Released Claims as described above and all other terms of the Settlement. If you submit a written request to be excluded from the Settlement by the deadline to request exclusion, you will have no further role in the Action. **You will not be entitled to any benefit, including money,** as a result of the Action and Settlement – except that you will still receive payment for and release claims for Civil Penalties Under PAGA. You will not be able to complain to the Court about any aspect of the Settlement.

What is the next step in the approval of the Settlement?

The Court will hold a Final Approval Hearing regarding the fairness, reasonableness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel's request for attorneys' fees and costs, the Class Representative Service Payment to Plaintiff, the settlement administration costs, and the payment to the LWDA for PAGA penalties on <<FA Date and Time>> in Department 9 of the Los Angeles Superior Court, Spring Street Courthouse, 312 N. Spring Street, Los Angeles, CA 90012.

Due to the COVID-19 pandemic, Class Members may arrange to attend the Final Approval hearing remotely and can make arrangements to do so by visiting <https://my.lacourt.org/laccwelcome>. Additionally, information pertaining to the Los Angeles Superior Court's COVID-19 protocols and social distancing requirements can be found at <https://www.lacourt.org/newsmedia/uploads/14202232517164722NRFACEMASKS.pdf>

The Final Approval Hearing may be continued without further notice to Class Members. You are not required to attend the Final Approval Hearing to receive an individual Settlement Payment.

How can I get additional information?

This Notice summarizes the Action and the basic terms of the Settlement. More details are in the Joint Stipulation of Class Action Settlement attached to the Declaration of Allen Feghali in Support of Plaintiff's Motion for Preliminary Approval. The Joint Stipulation of Class Action Settlement and all other records relating to the lawsuit are available for inspection and/or copying at the Civil Records Office of the Los Angeles County Superior Court. You may also request a copy of the Settlement Agreement from Class Counsel and/or Defendant's Counsel referenced above.

PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.