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Attorneys for Plaintiff Jon Theadore, individually,
and on behalf of all others similarly situated

[Additional counsel listed on following page]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

JON THEADORE, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

BLOMMER CHOCOLATE COMPANY; and
DOES 1 through 20, inclusive,

Defendants.

Case No. RG21089219

*Assigned for all purposes to:
Hon. Brad Seligman
Dept. 23*

JOINT STIPULATION OF SETTLEMENT

HOLLAND & KNIGHT LLP

Christina T. Tellado, State Bar No. 298597

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Attorneys for Defendant

BLOMMER CHOCOLATE COMPANY

1
2 It is stipulated and agreed by and among the undersigned Parties, subject to the approval of
3 the Court pursuant to the California Rules of Court, that the Settlement of this Action shall be
4 effectuated upon and subject to the following terms and conditions. Capitalized terms used herein
5 shall have the meanings set forth in Article I or as defined elsewhere in this Joint Stipulation of
6 Settlement (“Agreement” or “Settlement”).

7 This Agreement is made by and between Named Plaintiff Jon Theadore (“Named Plaintiff”)
8 and the Class Members, on the one hand, and Defendant Blommer Chocolate Company (“Blommer”
9 or “Defendant”), on the other hand. Named Plaintiff and Defendant collectively are referred to in this
10 Agreement as “the Parties.”

11 The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and
12 concluded by agreement of Defendant to pay the settlement amount of One Million Four Hundred
13 Thousand Dollars (\$1,400,000.00) as provided in Section 3.06(a) below (“Gross Settlement
14 Amount”) pursuant to the terms and conditions of this Agreement and for the consideration set forth
15 herein, including but not limited to, a release of all claims by Named Plaintiff and the Class Members
16 as set forth herein.

17 **ARTICLE I**

18 **DEFINITIONS**

19 Unless otherwise defined herein, the following terms used in this Agreement shall have the
20 meanings ascribed to them as set forth below:

21 a. “Action” means the action described as follows: *Jon Theadore, individually and on*
22 *behalf of all others similarly situated v. Blommer Chocolate Company; and DOES 1 through 20,*
23 *inclusive,”* Case No. RG21089219, commenced on February 16, 2021, in the Superior Court of the
24 State of California for the County of Alameda.

25 b. “Agreement” means this Joint Stipulation of Settlement, including the attached
26 Exhibit(s).

27 c. “Class” means all hourly, non-exempt individuals who are or previously were
28 employed by Defendant in California during the Class Period.

d. "Class Counsel" means the attorneys for the Class and the Class Members, who are:

AEGIS LAW FIRM, PC
Kashif Haque
Samuel A. Wong
Jessica L. Campbell
9811 Irvine Center Drive, Suite 100
Irvine, California 92618
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e. "Class List" means a list based on Defendant's business records that identifies each Class Member's name, last known home or mailing address, Social Security number or, as applicable, other taxpayer identification number, dates of employment, and the number of Qualifying Workweeks worked during the Class Period.

f. "Class Member(s)" means all members of the Class.

g. "Class Period" means August 18, 2016 through June 30, 2022.

h. "Court" means the California Superior Court for the County of Alameda, where the Action is currently pending.

i. "Effective Date" means the later of the following: (a) if no timely objections are filed or if all objections are withdrawn, the date upon which the Court enters the Final Approval Order; (b) if an objection is filed and not withdrawn, the date for filing an appeal and no such appeal being filed; and (c) if any timely appeals are filed, the date of the resolution (or withdrawal) of any such appeal in a way that does not alter the terms of the settlement.

j. "Defendant" means Defendant Blommer Chocolate Company.

k. "Defense Counsel" means counsel for Defendant:

HOLLAND & KNIGHT LLP
Christina T. Tellado
Samuel J. Stone
400 South Hope Street, 8th Floor
Los Angeles, California 90071
Telephone: 213.896.2400
Fax No.: 213.896.2450

1 l. “Disposition” means the method by which the Court approves the terms of the
2 Settlement and retains jurisdiction over its enforcement, implementation, construction,
3 administration, and interpretation.

4 m. “Final Order Approving Settlement of Class Action” or “Final Order” means the final
5 formal court order signed by the Court following the Final Fairness and Approval Hearing in
6 accordance with the terms herein, approving this Agreement.

7 n. “Gross Settlement Amount” means One Million Four Hundred Thousand Dollars and
8 Zero Cents (\$1,400,000.00) to be paid by Defendant as provided by this Agreement to settle this
9 Action. All payments to the Class, administration costs, attorney’s fees and costs, and Incentive
10 Award, pursuant to Section 3.07(a) below, shall be paid out of the Gross Settlement Amount. The
11 employer’s share of payroll taxes arising from the payments made under this settlement shall be paid
12 by Defendant separate from and in addition to the Gross Settlement Amount. No part of the Gross
13 Settlement Amount shall revert to Defendant.

14 o. “Incentive Award” means a monetary amount of up to Five Thousand Dollars
15 (\$5,000.00) for the Named Plaintiff, subject to Court approval, in recognition of his effort and work
16 in prosecuting the Action on behalf of Class Members.

17 p. “Individual Settlement Payment(s)” means each Participating Class Member’s
18 respective share of the Net Settlement Amount. Individual Settlement Payments will be determined
19 by the calculations provided in this Agreement.

20 q. “LWDA” means The State of California Labor and Workforce Development Agency.

21 r. “LWDA Payment” means 75% of the \$50,000 allocated to the settlement of PAGA
22 claims which, subject to Court approval, will be paid to the LWDA pursuant to Section 3.07(e) of
23 this Agreement, as provided for below.

24 s. “Motion for Final Approval” means Plaintiff’s submission of a written motion,
25 including any evidence as may be required for the Court to conduct an inquiry into the fairness of
26 the Settlement as set forth in this Agreement, to conduct a Final Fairness and Approval Hearing, and
27 to enter a Final Order in this Action.

1 t. "Motion for Preliminary Approval" means Plaintiff's submission of a written motion,
2 including any evidence as may be required for the Court to grant preliminary approval of the
3 Settlement as required by Rule 3.769 of the California Rules of Court.

4 u. "Named Plaintiff" means Jon Theadore.

5 v. "Net Settlement Amount" means the Gross Settlement Amount less Court-approved
6 administration costs, Class Counsels' attorney's fees and costs, Incentive Award, and LWDA
7 Payment, pursuant to Section 3.07(a)-(f) below.

8 w. "Non-Participating Class Member(s)" means any Class Member(s) who submit to the
9 Settlement Administrator a valid and timely written request to be excluded from the Class pursuant
10 to Section 3.04(b) below.

11 x. "Notice Packet" means the Notice of Proposed Class Action Settlement in a form
12 substantially similar to the Notice Packet attached hereto as **Exhibit A**, subject to Court approval.

13 y. "PAGA" means the California Private Attorneys General Act of 2004, which is
14 codified in California Labor Code §§ 2698 *et seq.*

15 z. "PAGA Settlement Amount" means the portion of the Gross Settlement Amount
16 allocated to the resolution of PAGA Group Members' claims arising under PAGA. The Parties have
17 agreed that the PAGA Settlement Amount is Fifty Thousand Dollars (\$50,000), subject to Court
18 approval. Of the PAGA Settlement Amount, 75% will be considered the LWDA Payment, and the
19 remaining 25% will be added to the Net Settlement Amount and distributed to PAGA Group
20 Members.

21 aa. "PAGA Group Members" means all Class Members employed by Defendant at any
22 time between February 12, 2020 through June 30, 2022 ("PAGA Period").

23 bb. "Participating Class Member(s)" is defined as a Class Member who does not timely
24 exclude himself or herself from the Settlement and will therefore receive his or her share of the Net
25 Settlement Amount automatically without the need to return a claim form. Each Participating Class
26 Member will be paid his/her Individual Settlement Payment.

27 cc. "Preliminary Approval Date" means the date the Court preliminarily approves the
28 Settlement embodied in this Agreement.

dd. “Qualified Settlement Fund” or “QSF” means a fund within the meaning of Treasury Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, that is established by the Settlement Administrator for the benefit of Participating Class Members.

ee. “Qualifying Workweeks” means the number of weeks that Class Members worked for Defendant as hourly non-exempt employees during the Class Period.

ff. “Released Parties” means Defendant’s past and present corporate affiliates, subsidiaries, divisions, related entities, divested businesses and business units, and the board members, officers, employees, agents, representatives, insurers and attorneys of any of the same.

gg. “Response Deadline” means the deadline by which Class Members must postmark or fax to the Settlement Administrator requests for exclusion or written notices of objection. The Response Deadline will be sixty (60) calendar days after the initial mailing of the Notice Packet by the Settlement Administrator, unless the sixtieth (60th) calendar day falls on a Sunday or federal holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open. The Response Deadline will be extended as set forth herein if there is a re-mailing.

hh. “Settlement Administration Costs” means all costs incurred by the Settlement Administrator in administration of the Settlement, including, but not limited to, mailing of notice to the class, calculation of Individual Settlement Payments, generation of Individual Settlement Payment checks and related tax reporting forms, administration of unclaimed checks, and generation of checks to Class Counsel for attorneys’ fees and costs, to Named Plaintiff for his Incentive Award, and to the LWDA. The Settlement Administration Costs shall be paid from the Gross Settlement Amount.

ii. “Settlement Administrator” means Phoenix Administration which the Parties have agreed will be responsible for the administration of the Individual Settlement Payments to be made by Defendant from the Gross Settlement Amount and related matters under this Agreement.

ARTICLE II

CONTINGENT NATURE OF THE AGREEMENT

Section 2.01: Stipulation of Class Certification for Settlement Purposes

1 Because the Parties have stipulated to the certification of the Class with respect to all causes
2 of action alleged in the Action for settlement purposes only, this Agreement requires preliminary and
3 final approval by the Court. Accordingly, the Parties enter into this Agreement on a conditional basis.
4 This Agreement is contingent upon the approval and certification by the Court. If the Effective Date
5 does not occur, the fact that the Parties were willing to stipulate for the purposes of this Agreement
6 to a Class shall have no bearing on, nor be admissible in connection with, the issue of certification
7 of the Class with respect to all causes of action alleged in the Action. Defendant does not consent to
8 certification of the Class for any purpose other than to effectuate settlement of the Action. If the
9 Effective Date does not occur, or if Disposition of this Action is not effectuated, any certification of
10 the Class as to Defendant will be vacated and Named Plaintiff, Defendant, and the Class will be
11 returned to their positions with respect to the Action as if the Agreement had not been entered into.
12 In the event that the Effective Date does not occur: (a) any Court orders preliminarily or finally
13 approving certification of any class contemplated by this Agreement shall be null, void, and vacated,
14 and shall not be used or cited thereafter by any person or entity; and (b) the fact of the settlement
15 reflected in this Agreement, the fact that Defendant did not oppose the certification of a Class under
16 this Agreement, or that the Court preliminarily approved the certification of the Class, shall not be
17 used or cited thereafter by any person or entity, including in any manner whatsoever, including
18 without limitation any contested proceeding relating to the certification of any class. If the Effective
19 Date does not occur, this Agreement shall be deemed null and void, shall be of no force or effect
20 whatsoever, and shall not be referred to or used for any purpose whatsoever. Defendant expressly
21 reserves the right to challenge the propriety of class certification in the Action for any purpose, if the
22 Effective Date does not occur.

23 The Parties and their respective counsel shall take all steps that may be requested by the Court
24 relating to the approval and implementation of this Agreement and shall otherwise use their
25 respective best efforts to obtain Court approval and implement this Agreement. If the Court does not
26 grant the Motion for Preliminary Approval and/or the Motion for Final Approval, the Parties agree
27 to meet and confer to address the Court's concerns. If the Parties are unable to agree upon a
28 resolution, the Parties agree to seek the assistance of mediator Jeffrey A. Ross to resolve the dispute.

ARTICLE III

PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF THE SETTLEMENT

The procedure for obtaining Court approval of and implementing this Agreement shall be as follows:

Section 3.01: Motion for Conditional Class Certification and Preliminary Approval

Named Plaintiff will bring a motion before the Court for an order conditionally certifying the Class to include all claims pled in the Action based on the preliminary approval of this Agreement. The date that the Court grants preliminary approval of this Agreement will be the “Preliminary Approval Date.”

Section 3.02: The Settlement Administrator

The Parties have chosen Phoenix Administration to administer this Settlement and to act as the Settlement Administrator, including but not limited to distributing and responding to inquiries about the Notice Packet, determining the validity of exclusions/opt-outs, calculating the Net Settlement Amount and the Individual Settlement Payments, issuing the Individual Settlement Payment checks and distributing them to Participating Class Members, establishing and maintaining the QSF, and issuing the payment to Class Counsel for attorneys’ fees and costs, the Incentive Award check to Named Plaintiff, and the employer payroll taxes to the appropriate taxing authorities. The Settlement Administrator shall expressly agree to all of the terms and conditions of this Agreement.

All costs of administering the Settlement, including but not limited to all costs and fees associated with preparing, issuing and mailing any and all notices to Class Members and/or Participating Class Members, all costs and fees associated with computing, processing, reviewing, and mailing the Individual Settlement Payments, all costs and fees associated with preparing any tax returns and any other filings required by any governmental taxing authority or agency, all costs and fees associated with preparing any other checks, notices, reports, or filings to be prepared in the course of administering disbursements from the Net Settlement Amount, and any other costs and fees incurred and/or charged by the Settlement Administrator in connection with the execution of its duties under this Agreement (“Settlement Administration Costs”), shall be paid to the Settlement Administrator from the Gross Settlement Amount.

Section 3.03: Notice to Class Members

No later than five (5) business days after the Preliminary Approval Date, Defendant will provide the Settlement Administrator with a "Class List" in electronic format based on its business records, identifying the names of the Class Members, their last known home addresses, Social Security numbers or, as applicable, other taxpayer identification number, their dates of employment and weeks worked during the Class Period.

Within ten (10) business days of receiving a Class List from Defendant, the Settlement Administrator will send Class Members, by first-class mail, at their last known address, the Court approved Notice Packet, including notice of this Settlement and of the opportunity to opt out of the Settlement Class. The Notice Packet will include a calculation of the Class Member's approximate share of the Net Settlement Amount. Class Members will have sixty (60) days from the date of mailing in which to postmark objections or requests for exclusion. Prior to the initial mailing, the Settlement Administrator will check all Class Member addresses against the National Change of Address database and shall update any addresses before mailing. The Settlement Administrator will skip trace and re-mail all returned, undelivered mail within five (5) days of receiving notice that a Notice Packet was undeliverable. If a Class Member's notice is re-mailed, the Class Member shall have fifteen (15) calendar days from the re-mailing, or sixty (60) calendar days from the date of the initial mailing, whichever is later, in which to postmark objections or requests for exclusion. Class Members shall not be required to submit claim forms in order to receive a proportional share of the Net Settlement Amount.

If the Notice Packet is returned with a forwarding address, the Settlement Administrator shall re-mail the Notice Packet to the forwarding address. With respect to those Class Members whose Notice Packet is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or mass search on LexisNexis or comparable databases based on set criteria and, if another address is identified, shall mail the Notice Packet to the newly identified address. It is the intent of the parties that reasonable means be used to locate Class Members and that the Settlement Administrator be

1 given discretion to take steps in order to facilitate notice of the Settlement and delivery of the
2 Individual Settlement Payments to all Participating Class Members.

3 If the Notice Packet is re-mailed, the Settlement Administrator will note for its own records
4 and notify Class Counsel and Defense Counsel of the date of each such re-mailing as part of a weekly
5 status report provided to the Parties.

6 In the event a Class Member's Notice Packet remains undeliverable sixty (60) calendar days
7 after the Notice Packet was initially mailed, the Settlement Administrator will not mail the Class
8 Member's Individual Settlement Payment. The Settlement Administrator will hold the Class
9 Member's Individual Settlement Payment during the check cashing period on behalf of the Class
10 Member. If at the conclusion of the check cashing period the Class Member's Notice Packet and
11 Individual Settlement Payment remain undeliverable and/or unclaimed and uncashed, the Settlement
12 Administrator will distribute the funds from unclaimed/uncashed checks in accordance with the
13 procedures set forth in Section 3.07(g) below.

14 No later than twenty (20) court days prior to the Final Fairness and Approval Hearing, the
15 Settlement Administrator shall provide Defense Counsel and Class Counsel with a declaration
16 attesting to completion of the notice process, including any attempts to obtain valid mailing addresses
17 for and re-sending of any returned Notice Packets, as well as the number of valid requests for
18 exclusion and objections that the Settlement Administrator received.

19 **Section 3.04: Responses to Notice**

20 **a. Class Member Disputes**

21 If any Class Member disagrees with Defendant's records as to his or her Qualifying
22 Workweeks during the Class Period as reflected in the Notice Packet, the Class Member shall set
23 forth in writing the Qualifying Workweeks he/she claims to have worked during the Class Period
24 and submit such writing to the Settlement Administrator by the Response Deadline, along with any
25 supporting documentation. The Notice will also provide a method for the Class Member to challenge
26 the employment data on which his or her Individual Settlement Payment is based. The Settlement
27 Administrator shall contact the Parties regarding the dispute and the Parties will work in good faith
28 to resolve it. If the Parties are unable to resolve the dispute, the Settlement Administrator will be the

final arbiter of the Qualifying Workweeks for each Class Member during the Class Period based on the information provided to it.

b. Requests for Exclusion from Class

In order for any Class Member to validly exclude himself or herself from the Class and this Settlement (*i.e.*, to validly opt out), a written request for exclusion must be signed by the Class Member or his or her authorized representative, and must be sent to the Settlement Administrator, postmarked no later than the Response Deadline (or fifteen (15) days after the Settlement Administrator re-mails the Notice to the Class Member, whichever is later). The Notice Packet shall contain instructions on how to validly exclude himself or herself from the Class and this Settlement (*i.e.*, opt out), including the language to be used in a request for exclusion. The date of the initial mailing of the Notice Packet, and the date the signed request for exclusion was postmarked, shall be conclusively determined according to the records of the Settlement Administrator. Any Class Member who timely and validly requests exclusion from the Class and this Settlement will not be entitled to any Individual Settlement Payment, will not be bound by the terms and conditions of this Agreement, and will not have any right to object, appeal, or comment thereon.

Any Class Member who fails to timely submit a request for exclusion shall automatically be deemed a Class Member whose rights and claims with respect to the issues raised in the Action are determined by the Court's Final Order Approving Settlement of Class Action, and by the other rulings in the Action. Thus, said Class Member's rights to pursue any claims covered by the Action and/or released in this Agreement will be extinguished.

Plaintiff waives his right to request exclusion.

c. Objections to Settlement

For any Class Member to object to this Agreement, or any term of it, the person making the objection must not submit a request for exclusion (*i.e.*, must not opt out), and should send to the Settlement Administrator, postmarked or faxed no later than the Response Deadline (or fifteen (15) days after the Settlement Administrator re-mails the Notice to the Class Member, whichever is later), a written statement of the grounds of objection, signed by the objecting Class Member or his or her attorney, along with all supporting papers. The date of the initial mailing of the Notice Packet, and

the date the signed objection was postmarked, shall be conclusively determined according to the records of the Settlement Administrator. The Settlement Administrator shall send any objections it receives to Defense Counsel and Class Counsel within three (3) business days of receipt. Class Members may also appear at the final approval hearing to object. The Court retains final authority with respect to the consideration and admissibility of any Class Member objections.

d. Encouragement of Class Members

The Parties to this Agreement and the counsel representing such Parties shall not, directly or indirectly, through any person, encourage or solicit any Class Member to exclude him or herself from this Settlement (opt out), or to object to it. However, Class Counsel may respond to inquiries from Class Members.

e. Workweek Information

It is currently estimated that there are approximately 327 Class Members who worked 35,891 pay periods between August 18, 2016 and March 2, 2022. The Gross Settlement Amount shall be consideration for, and apply to, the 35,891 pay periods between August 18, 2016 and March 2, 2022, plus an additional ten percent (10%) of pay periods, for a total not to exceed 39,481 workweeks for the Class Period commencing August 18, 2016 and ending no later than June 30, 2022.

Section 3.05: Final Fairness and Approval Hearing

On the date set forth in the Order for Preliminary Approval and Notice Packet, a Final Fairness and Approval Hearing shall be held before the Court in order to (1) review this Agreement and determine whether the Court should give it final approval, and (2) consider any objections made and all responses by the Parties to such objections. At the Final Fairness and Approval Hearing, the Parties shall ask the Court to grant final approval to this Agreement and shall submit to the Court a Proposed Final Order Approving Settlement of Class Action.

Section 3.06: Settlement Payment Procedures

a. Settlement Amount

In exchange for the Released Claims set forth in this Agreement, Defendant agrees to pay the Gross Settlement Amount in the amount of One Million Four Hundred Thousand Dollars (\$1,400,000.00), subject to a pro rata increase under the condition set forth in Section 3.04(e). The

Gross Settlement Amount includes all Individual Settlement Amounts to Participating Class Members, all administration costs, Class Counsel's attorney's fees and costs, PAGA Settlement Amount, and the Incentive Payments.

Within thirty (30) days of the Effective Date, Defendant shall transfer the Gross Settlement Amount plus Defendant's share of employer-side payroll taxes, as set forth herein, into a QSF established by the Settlement Administrator either directly or by sending the funds to the Settlement Administrator to be deposited and distributed. The Settlement Administrator will use these funds to fund payment of the Individual Settlement Payments to Participating Class Members, Class Counsel's attorneys' fees and costs, the Incentive Award, the LWDA Payment, and the Settlement Administration Costs.

Within fifteen (15) days after receiving Defendant's final payment, funding the Gross Settlement Amount in full, the Settlement Administrator will pay the Individual Settlement Payments to Participating Class Members, Class Counsel's attorneys' fees and costs, LWDA Payment, the Incentive Award, and employer and employee tax withholdings applicable to the Net Settlement Amount allocated to wages. Prior to this distribution, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct for any known or identifiable address changes.

b. Payment of Attorneys' Fees and Costs

Class Counsel shall submit an application for an award of attorneys' fees of up to one-third of the Gross Settlement Amount, which, based on the current Gross Settlement Amount, is Four Hundred Sixty-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$466,666.66). Class Counsel shall submit an application for an award of costs not to exceed Twenty-Five Thousand Dollars (\$25,000.00). Such application for attorneys' fees and costs shall be heard by the Court at the Final Fairness and Approval Hearing. Defendant shall not object to or oppose any such application in these amounts. Class Counsel shall serve Defendant with copies of all documents submitted in support of their application for an award of attorneys' fees and costs.

Any attorneys' fees and costs awarded to Class Counsel by the Court shall be paid from the Gross Settlement Amount and shall not constitute payment to any Class Member(s). The attorneys'

1 fees and costs for Class Counsel approved by the Court shall encompass all work performed, costs,
2 and expenses related to the investigation, prosecution, and settlement of the Action incurred through
3 the Effective Date. To the extent that the Court approves less than the amount of attorney's fees
4 and/or costs that Class Counsel requests, the difference between the requested and awarded amounts
5 will be reallocated to the Net Settlement Amount.

6 **c. Payment of Settlement Administration Costs**

7 The Settlement Administration Costs shall be paid out of the Gross Settlement Amount and
8 shall not constitute payment to any Participating Class Member(s). The amount shall not exceed
9 Eight Thousand Five Hundred Dollars (\$8,500.00).

10 **d. Payment of Incentive Award to Named Plaintiff**

11 Subject to Court approval, the Named Plaintiff shall receive an Incentive Award of up to Five
12 Thousand Dollars (\$5,000.00), the request for which Defendant will not object to or oppose. The
13 Incentive Award shall be paid out of the Gross Settlement Amount and shall not constitute payment
14 to any Participating Class Member(s) other than Named Plaintiff. To the extent that the Court
15 approves less than the amount of incentive award that Class Counsel request, the difference between
16 the requested and awarded amounts will be reallocated to the Net Settlement Amount.

17 Because it is the intent of the Parties that the Incentive Award represents payment to Named
18 Plaintiff for his service to the Class Members, and not wages, the Settlement Administrator will not
19 withhold any taxes from the Incentive Award. The Incentive Award will be reported on a Form 1099,
20 which the Settlement Administrator will provide to Named Plaintiff and to the pertinent taxing
21 authorities as required by law.

22 **e. Payment to the Labor and Workforce Development Agency**

23 In consideration of claims made under PAGA, Class Counsel will request that the Court
24 approve allocation of Fifty Thousand Dollars (\$50,000) of the Gross Settlement Amount to these
25 claims. Seventy-five percent (75%) of this payment will be paid to the California Labor and
26 Workforce Development Agency ("LWDA Payment"), and twenty-five percent (25%) will be paid
27 to the Net Settlement Amount for distribution to PAGA Group Members. Defendant will not oppose
28 this request. The entire PAGA Settlement Amount will be paid out of the Gross Settlement Amount.

The Court's adjustment, if any, of the amount allocated to Named Plaintiff's PAGA claim in the Action, will not invalidate this Agreement.

f. Payment of Individual Settlement Payments to Participating Class Members

The Parties agree that the Net Settlement Amount shall be used to fund Individual Settlement Payments. The Parties agree that the Net Settlement Amount shall be divided between all Participating Class Members in proportion to the number of individual Qualifying Workweeks for each Class Member. To calculate the minimum amount each Class Member will receive based on their individual Qualifying Workweeks, the Net Settlement Amount will be divided by the total number of Qualifying Workweeks by all Class Members during the Class Period and then allocated on a pro rata basis. Qualifying Workweeks will be rounded up to the next whole integer. Each Class Member's approximate Individual Settlement Payment amount will be included in his or her Notice Packet. After final approval by the Court, the Net Settlement Amount will be dispersed to Participating Class Members (those who did not exclude themselves) on a pro rata basis based on the individual Qualifying Workweeks worked during the Class Period by each Participating Class Member.

Each Individual Settlement Payment will represent wages and penalties allocated using the following formula: 40% allocated to wages; 10% allocated to interest, and 50% allocated to penalties. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms. The employer-side taxes will be paid separate from and in addition to the Gross Settlement Amount. The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms.

No later than fifteen (15) days after receiving the Gross Settlement Amount from Defendant, the Settlement Administrator shall prepare and mail the checks for the Individual Settlement Payments to Participating Class Members. Individual Settlement Payments paid from the Net Settlement Amount allocated to wages will be reduced by applicable employer and employee tax withholdings, and the Settlement Administrator will issue a Form W-2 for the wage portion of the

Individual Settlement Payments. The Settlement Administrator will issue a Form 1099 to the extent required by law for the interest and penalty portions of the Individual Settlement Payments. Participating Class Members shall have 180 days from the date their Individual Settlement Payment checks are dated to cash their Settlement checks. Any checks that are not cashed upon the expiration of that 180-day time period will be void, and the uncashed funds shall be paid to the State Controller Unclaimed Property Fund in the name of the Class Member for whom the funds are designated.

If a check is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or a mass search on LexisNexis or a comparable databases based on set criteria and, if another address is identified, the Settlement Administrator shall mail the check to the newly identified address. If the Settlement Administrator is unable to obtain a valid mailing address through this process, the Settlement Administrator will tender the funds from the undeliverable checks to the State Controller Unclaimed Property Fund in the name of the Class Member for whom the funds are designated.

g. Default on Payment.

Defendant's failure to fund the Gross Settlement Amount within ten (10) calendar days after the date that the Court grants final approval of the Settlement shall be considered a default. In the event Defendant fails to timely fund the Gross Settlement Amount, the Settlement Administrator will provide notice to Class Counsel and Defendant's counsel within three (3) business days of the missed payment. Thereafter, Defendant will have seven (7) days to cure the default and tender payment to the Settlement Administrator. In the event Defendant fails to cure the default within the times set forth herein, Named Plaintiff may elect to enter judgment against Defendant, on an ex parte basis, for the balance of the unpaid Gross Settlement Amount to date, and Named Plaintiff will be entitled to recover interest at ten percent (10%) per year from the due date for such payment and reasonable attorneys' fees and costs.

h. No Credit Toward Benefit Plans.

The Individual Settlement Payments made to Participating Class Members under this Agreement, as well as any other payments made pursuant to this Agreement, will not be utilized to calculate any additional benefits under any benefit plans to which any Class Members may be

1 eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase
2 plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties'
3 intention that this Agreement will not affect any rights, contributions, or amounts to which any Class
4 Members may be entitled under any benefit plans.

5 **ARTICLE IV**

6 **LIMITATIONS ON USE OF THIS SETTLEMENT**

7 **Section 4.01: No Admission**

8 Defendant disputes the allegations in the Action and disputes that, but for this Settlement, a
9 Class should not have been certified in the Action. This Agreement is entered into solely for the
10 purpose of settling highly disputed claims. Nothing in this Agreement is intended nor will be
11 construed as an admission of liability or wrongdoing by Defendant.

12 **Section 4.02: Non-Evidentiary Use**

13 Whether or not the Effective Date occurs, neither this Agreement, nor any of its terms, nor
14 the Settlement itself, will be: (a) construed as, offered, or admitted in evidence as, received as, or
15 deemed to be evidence for any purpose adverse to Defendant or any other of the Released Parties,
16 including but not limited to, evidence of a presumption, concession, indication, or admission by any
17 of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or
18 (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further
19 proceeding in the Action, except for the purposes of effectuating the Settlement pursuant to this
20 Agreement or for Defendant to establish that a Class Member has resolved any of his or her claims
21 released through this Agreement.

22 **Section 4.03: Nullification**

23 The Parties have agreed to the certification of the Class encompassing all claims alleged in
24 the Action for the sole purpose of effectuating this Agreement. If (a) the Court should for any reason
25 fail to certify this Class for settlement, or (b) the Court should for any reason fail to approve this
26 Settlement, or (c) the Court should for any reason fail to enter the Final Order, or (d) the Final Order
27 is reversed, or declared or rendered void, or (e) the Court should for any reason fail to dispose of the
28 Action in its entirety, then (i) this Agreement shall be considered null and void; (ii) neither this

1 Agreement nor any of the related negotiations or proceedings shall be of any force or effect; (iii) all
2 Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had
3 been neither entered into nor filed with the Court; and (iv) the fact that the Parties were willing to
4 stipulate to class certification of all causes of action pled in the Action as part of the Settlement will
5 have no bearing on, and will not be admissible in connection with, the issue of whether the Class
6 should be certified by the Court in a non-settlement context in this Action or any other action, and in
7 any of those events, Defendant expressly reserves the right to oppose certification of the Class.

8 In the event of a timely appeal from the Final Order, the Final Order shall be stayed and the
9 Gross Settlement Amount shall not be distributed pending the completion of the appeal.

10 **Section 4.04: Defendant's Right to Void**

11 Defendant, at its sole discretion, shall have the right but not the obligation to revoke this
12 Agreement if twelve and one-half percent (12.5%) or more of Class elects to request exclusion from
13 the class and settlement. Defendant shall exercise its revocation rights, if at all, within seven (7)
14 business days of the end of the agreed upon opt out period by providing written notice of that
15 revocation to Theodore's counsel. In the event that Defendant exercises this option, it shall be solely
16 responsible for all administrative costs incurred to date.

17 **ARTICLE V**

18 **RELEASES**

19 **Section 5.01: Released Claims by Class Members**

20 Upon entry of final judgment and, in consideration for Defendant's promises and obligations
21 under this Agreement, the Defendant shall be entitled to a release from the State of California of all
22 PAGA claims pled or could have been pled based on the factual allegations contained in in the
23 Complaints filed in the Action and the written notice(s) sent to the Labor & Workforce Development
24 Agency pursuant to California Labor Code § 2699.3(a)(1) that occurred during the PAGA Period as
25 to the Aggrieved Employees, and a release from the Class Members who decline to request exclusion
26 from these Actions and settlement shall thereby release the Released Parties from all claims that were
27 or could have been alleged in the Complaints filed in the Actions under any state law, federal law,
28 common law, equity or other theory arising in any way from the facts alleged in the Complaints filed

1 in the Action regarding the provision (or alleged non-provision) of rest breaks, meal breaks,
2 overtime, minimum wage, waiting time penalties, and/or wage statements provided to those class
3 members (or the content or lack of content of any wage statements received), from August 18, 2016
4 through June 30, 2022, and the Released Claims as further defined below.

5 The Released Claims include all claims, rights, demands, liabilities, causes of action, and
6 theories of liability of every nature and description, whether known or unknown, that were alleged
7 against Defendant and/or any of the Released Parties, or which could have been alleged based on the
8 facts pled against them in the written notice sent to the Labor & Workforce Development Agency
9 pursuant to California Labor Code § 2699.3(a)(1) or the Complaints in the Actions. These claims
10 include claims for failure to provide and/or maintain copies of accurate itemized wage statements,
11 failure to provide timely and uninterrupted meal and rest breaks, failure to pay overtime, failure to
12 pay minimum wage, failure to properly calculate the regular rate of pay, failure to pay minimum
13 wage or overtime as applicable for all hours worked including but not limited to unpaid wages due
14 to inaccurate time rounding, time spent donning and doffing uniforms, on-call compensation, and
15 any and all off-the-clock work, failure to timely pay wages during employment in violation of Labor
16 Code section 204, and/or for penalties (regardless of the recipient), damages, interest, costs or
17 attorneys' fees, and violations of applicable local, state or federal law, whether for economic
18 damages, non-economic damages, liquidated, or punitive damages, restitution, tort, contract,
19 equitable relief, injunctive or declaratory relief, that occurred during the applicable Class Period and
20 arising from the facts that were alleged or could have been alleged in the written notice sent to the
21 Labor & Workforce Development Agency pursuant to California Labor Code § 2699.3(a)(1) or the
22 Complaints in the Actions, including claims under any common laws, the California Business &
23 Professions Code Sections 17200, et seq. ("UCL"), including claims asserted under the UCL
24 predicated on violations of any state and/or federal law alleged in the Complaints and/or Amended
25 Complaints in the Action, including the Cal. Code of Regulations, Title 8, Sections 11000, et seq.,
26 any applicable Wage Order, the California Labor Code, and the California Private Attorneys General
27 Act of 2004, Labor Code Sections 2698, et seq. Notwithstanding the foregoing, the Released Claims
28 do not include vested benefits, wrongful termination, unemployment insurance, disability, social

1 security, workers' compensation, class claims outside of the Class Period, class claims not based on
2 the facts alleged in the Complaint and/or the written notice provided to the Labor & Workforce
3 Development Agency pursuant to California Labor Code § 2699.3, PAGA claims outside of the
4 PAGA period, and any individual claim under the Section 16(b) of the FLSA, 29 U.S.C. § 216(b), as
5 to a Class Member who does not opt-in to the Settlement by cashing, depositing or endorsing his or
6 her Settlement Payment check, to the extent that opting-in is required to release such FLSA claims.

7 **Section 5.03: Named Plaintiff's Release of Unknown Claims**

8 In consideration for Defendant's promises and obligations under this Agreement, Plaintiff
9 agrees to a general and comprehensive release of all of his respective known and unknown claims
10 against Defendant's past and present corporate affiliates, subsidiaries, divisions, related entities,
11 divested businesses and business units, and the board members, officers, employees, agents,
12 representatives, insurers and attorneys of any of the same ("Released Parties"), including, without
13 limitation, all claims that were or could have been alleged in the written notice sent to the Labor &
14 Workforce Development Agency pursuant to California Labor Code § 2699.3(a)(1) and the
15 Complaints and/or Amended Complaints in the Actions under any state law, federal law, common
16 law, equity or other theory. As part of this release, Plaintiff further release all unknown claims against
17 Defendant and any of the Released Parties, covered by California Civil Code Section 1542, which
18 states: "A general release does not extend to claims that the creditor or releasing party does not know
19 or suspect to exist in his or her favor at the time of executing the release and that, if known by him
20 or her, would have materially affected his or her settlement with the debtor or released party."
21 Plaintiff understands that he is an individual, a "creditor" and "releasing party" within the meaning
22 of Civil Code section 1542, and thereby expressly waives and relinquishes any and all rights and
23 benefits under Section 1542 of the Civil Code of the State of California and under any statute, rule,
24 or principle of common law or equity, of any jurisdiction, that is similar to Section 1542.

1 **ARTICLE VI**

2 **MISCELLANEOUS PROVISIONS**

3 **Section 6.01: Amendments or Modification**

4 The terms and provisions of this Agreement may be amended or modified only by an express
5 written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel,
6 and approved by the Court.

7 **Section 6.02: Assignment**

8 None of the rights, commitments, or obligations recognized under this Agreement may be
9 assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express written
10 consent of each other Party and their respective counsel. The representations, warranties, covenants,
11 and agreements contained in this Agreement are for the sole benefit of the Parties under this
12 Agreement and shall not be construed to confer any right or to avail any remedy to any other person.

13 **Section 6.03: Governing Law**

14 This Agreement shall be governed, construed, and interpreted, and the rights of the Parties
15 shall be determined, in accordance with the laws of the State of California, without regard to conflicts
16 of laws.

17 **Section 6.04: Entire Agreement**

18 This Agreement, including the Exhibits referred to herein, which form an integral part hereof,
19 contains the entire understanding of the Parties with respect to the subject matter contained herein.
20 In case of any conflict between text contained in Articles I through VI of this Agreement and text
21 contained in the Exhibits to this Agreement, the former (*i.e.*, Articles I through VI) shall be
22 controlling, unless the Exhibits are changed by or in response to a Court order. There are no
23 restrictions, promises, representations, warranties, covenants, or undertakings governing the subject
24 matter of this Agreement other than those expressly set forth or referred to herein. This Agreement
25 supersedes all prior agreements and understandings among the Parties with respect to the settlement
26 of the Action, including correspondence between Class Counsel and Defense Counsel and drafts of
27 prior agreements or proposals.
28

1 **Section 6.05: Waiver of Compliance**

2 Any failure of any Party, Defense Counsel, or Class Counsel hereto to comply with any
3 obligation, covenant, agreement, or condition set forth in this Agreement may be expressly waived
4 in writing, to the extent permitted under applicable law, by the Party or Parties and their respective
5 counsel entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or
6 failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or
7 condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

8 **Section 6.06: Counterparts and Fax/PDF Signatures**

9 This Agreement, and any amendments hereto, may be executed in any number of counterparts
10 and any Party and/or their respective counsel may execute any such counterpart, each of which when
11 executed and delivered shall be deemed to be an original. All counterparts taken together shall
12 constitute one instrument. A fax or PDF signature on this Agreement shall be as valid as an original
13 signature.

14 **Section 6.07: Meet and Confer Regarding Disputes**

15 Should any dispute arise among the Parties or their respective counsel regarding the
16 implementation or interpretation of this Agreement, a representative of Class Counsel and a
17 representative of Defense Counsel shall meet and confer in an attempt to resolve such disputes prior
18 to submitting such disputes to the Court.

19 **Section 6.08: Agreement Binding on Successors**

20 This Agreement will be binding upon, and inure to the benefit of, the successors in interest
21 of each of the Parties.

22 **Section 6.09: Cooperation in Drafting**

23 The Parties have cooperated in the negotiation and preparation of this Agreement. This
24 Agreement will not be construed against any Party on the basis that the Party, or the Party's counsel,
25 was the drafter or participated in the drafting of this Agreement.

26 **Section 6.10: Fair and Reasonable Settlement**

27 The Parties believe that this Agreement reflects a fair, reasonable, and adequate settlement of
28 the Action and have arrived at this Agreement through arm's-length negotiation and in the context

of adversarial litigation, taking into account all relevant factors, current and potential. The Parties further believe that the Settlement is and is consistent with public policy, and fully complies with applicable law.

Section 6.11: Headings

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

Section 6.12: Notice

Except as otherwise expressly provided in the Agreement, all notices, demands, and other communications under this Agreement must be in writing and addressed as follows:

To Named Plaintiff and the Class:

Kashif Haque
Samuel A. Wong
Jessica L. Campbell
AEGIS LAW FIRM, PC
9811 Irvine Center Drive, Suite 100
Irvine, California 92618
Telephone: (949) 379-6250
Facsimile: (949) 379-6251

And

To Defendant:

HOLLAND & KNIGHT LLP
Christina T. Tellado
Samuel J. Stone
400 South Hope Street, 8th Floor
Los Angeles, California 90071
Telephone: 213.896.2400
Fax No.: 213.896.2450

Section 6.13: Enforcement of Settlement and Continuing Court Jurisdiction

To the extent consistent with class action procedure, this Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court 3.769(h). The Final Order entered by the Court will not adjudicate the merits of the Action or the liability of the Parties resulting from the allegations of the Action. Its sole purpose is to adopt the

1 terms of the Settlement and to retain jurisdiction over its enforcement. To that end, the Court shall
2 retain continuing jurisdiction over this Action and over all Parties and Class Members, to the fullest
3 extent to enforce and effectuate the terms and intent of this Agreement. In the event that one or more
4 of the Parties institutes any legal action or other proceeding against any other Party or Parties to
5 enforce the provisions of this Settlement, the successful Party or Parties will be entitled to recover
6 from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness
7 fees incurred in connection with any enforcement actions.

8 **Section 6.14: Mutual Full Cooperation**

9 The Parties agree fully to cooperate with each other to accomplish the terms of this
10 Agreement, including but not limited to the execution of such documents, and the taking of such
11 other action, as may reasonably be necessary to implement the terms of this Agreement. The Parties
12 to this Agreement shall use their best efforts, to effectuate and implement this Agreement and its
13 terms. In the event the Parties are unable to reach agreement on the form or content of any document
14 needed to implement the Settlement, or on any supplemental provisions that may become necessary
15 to effectuate the terms of the Settlement, the Parties agree to seek the assistance of the Court.

16 **Section 6.15: Authorization to Act**

17 Class Counsel warrants and represents that they are authorized by Named Plaintiff, and
18 Defense Counsel warrants that they are authorized by Defendant, to take all appropriate action
19 required to effectuate the terms of this Agreement, except for signing documents, including but not
20 limited to this Agreement, that are required to be signed by the Parties themselves. Defendant
21 represents and warrants that the individual executing this Agreement on its behalf has the full right,
22 power, and authority to enter into this Agreement and to carry out the transactions contemplated
23 herein.

24 **Section 6.16: No Reliance on Representations**

25 The Parties have made such investigation of the facts and the law pertaining to the matters
26 described herein and to this Agreement as they deem necessary, and have not relied, and do not rely,
27 on any statement, promise, or representation of fact or law, made by any of the other parties, or any
28 of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted

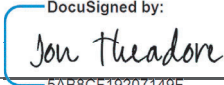
rights, or with regard to the advisability of entering into and executing this Agreement, or with respect to any other matters. No representations, warranties, or inducements, except as expressly set forth herein, have been made to any party concerning this Agreement.

EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: 7/11/2022

JON THEADORE

By: 
DocuSigned by: Jon Theadore
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 Named Plaintiff

Dated: 7/11/2022 | 3:13:53 PM PDT

BLOMMER CHOCOLATE COMPANY

By: 
DocuSigned by: Robert Karr
847A9567463F4C9...
 (Signature)
 Printed Name
 Robert Karr
 (Printed Name)
 Chief Legal Officer, VP Administration (Legal, Risk, HR, EHS) and Corporate Secretary
 (Title)

APPROVED AS TO FORM ONLY:

Dated: July 11, 2022

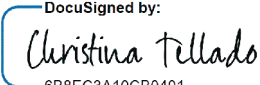
AEGIS LAW FIRM, PC

By: 
 Samuel Wong
 Jessica L. Campbell
 Chelsea D. Hollins

Attorneys for Named Plaintiff Jon Theadore

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Dated: 7/11/2022 | 6:07:15 PM EDT

HOLLAND & KNIGHT LLP
By: 
Christina T. Tellado
Samuel J. Stone

Attorneys for Defendant Bloomer Chocolate Company