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TIBURON PENINSULA CLUB

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

SEAN SPILLER, individually, and on behalf of
all others similarly situated,

Plaintiff,

vs.

TIBURON PENINSULA CLUB, and DOES 1
through 100, inclusive,

Defendant.

Case No. CIV2101589

**STIPULATION OF SETTLEMENT OF
CLASS ACTION AND PRIVATE
ATTORNEYS GENERAL ACT ACTION,
AND RELEASE OF CLAIMS**

[Assigned for all purposes to The Honorable
Stephen P. Freccero, Dept. A]

Action Filed: April 26, 2021
Trial Date: None Set

Case No. CIV2101589

STIPULATION OF SETTLEMENT OF CLASS ACTION, SETTLEMENT OF PAGA ACTION,
AND RELEASE OF CLAIMS

1 This Stipulation of Settlement of Class Action, Settlement of Private Attorneys General Act
2 Action, and Release of Claims is entered into between plaintiff Sean Spiller on behalf of the Class
3 and Aggrieved Employees, and defendant Tiburon Peninsula Club.

4 **I. DEFINITIONS**

- 5 A. "Action" means *Sean Spiller v. Tiburon Peninsula Club*, filed on April 26, 2021 in
6 the Superior Court for the State of California, County of Marin, and assigned Case
7 Number CIV2101589.
- 8 B. "Aggrieved Employees" means all non-exempt persons working at the Cafe and in
9 any other food service capacity employed by Tiburon Peninsula Club who worked
10 in California at any time on or after April 26, 2020 to the date of Preliminary
11 Approval (the "PAGA Period").
- 12 C. "Agreement" or "Settlement Agreement" means this Stipulation of Settlement of
13 Class Action and Private Attorneys General Act Action, and Release of Claims.
- 14 D. "Class" or "Class Members" means all non-exempt persons working at the Cafe and
15 in any other food service capacity employed by Tiburon Peninsula Club who
16 worked in California at any time on or after April 26, 2017 to the date of
17 Preliminary Approval (the "Class Period").
- 18 E. "Class Counsel" means Cole & Van Note, 555 12th Street, Suite 1725, Oakland,
19 California 94607.
- 20 F. "Class Counsel Award" means such award of fees and costs and expenses as the
21 Court may authorize to be paid to Class Counsel for the services they have rendered
22 and will render to Named Plaintiff, the Class, and Aggrieved Employees in the
23 Action. The Class Counsel Award will not exceed 35% of the Maximum Settlement
24 Amount, which Maximum Settlement Amount is Three Hundred Thousand Dollars
25 (\$300,000.000), plus Class Counsel's actual costs and expenses as supported by
26 declaration.
- 27 G. "Class Data" means information regarding Class Members and Aggrieved
28 Employees that Defendant will in good faith compile from its records and provide to

the Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include: each Class Member's or Aggrieved Employee's employee number; full name; last known address; last known home telephone number; Social Security number; start dates and end dates of employment with Defendant; number of workweeks worked by each Class Member during the Class Period; and, number of pay periods worked by each Aggrieved Employee during the PAGA Period.

H. "Class Representative" means Named Plaintiff Sean Spiller.

I. "Class Representative Service Award" means the amount that the Court authorizes to be paid to Named Plaintiff, if appointed Class Representative, that is in addition to his own Individual Settlement Payment, in recognition of his efforts and risks in assisting with the prosecution of the Action and in exchange for executing a General Release of Defendant.

J. "Complaint" means the First Amended Complaint filed by Named Plaintiff Sean Spiller on or about July 14, 2021 in this Action.

K. "Court" means the Superior Court for the State of California, County of Marin.

L. "Class Period" means the period from April 26, 2017 through the date of preliminary approval, inclusive.

M. "Defendant" means Tiburon Peninsula Club, Nonprofit Corporation.

N. "Defendant's Counsel" means Douglas J. Farmer and Jade Butman of Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

O. "Effective Date" means: (a) the date when the Final Approval Order is signed, if there are no objectors, or (b) in the event there are objectors, thirty-two (32) days after service of notice of entry of the Final Approval Order and Judgment on the Parties and all objectors to the Settlement without any appeals or request for review being taken, or (c) orders affirming said Final Approval Order and Judgment or denying review after exhaustion of all appellate remedies, if appeals or requests for review have been taken.

- 1 P. "Final Approval" means that the Final Approval Order and Judgment have been
2 entered by the Court.
- 3 Q. "Final Approval Hearing" or "Final Approval/Settlement Fairness Hearing" means
4 the hearing on the Motion for Final Approval of the Settlement.
- 5 R. "Final Approval Order" means the Order Granting Final Approval of the Class
6 Settlement, which shall be submitted with the Motion for Final Approval of the
7 Settlement.
- 8 S. "Individual Settlement Payment" means the amount payable from the Net
9 Settlement Amount to each Settlement Class Member and Aggrieved Employee.
- 10 T. "Maximum Settlement Amount" means the maximum amount of Three Hundred
11 Thousand Dollars (\$300,000.00) that Defendant will pay as a result of this Stipulation of
12 Settlement. The Maximum Settlement Amount includes payment by the employer of its
13 share of payroll taxes, which payroll taxes shall be subtracted from the Maximum
14 Settlement Amount.
- 15 U. "Named Plaintiff" means Sean Spiller.
- 16 V. "Net Settlement Amount" or "NSA" means the Maximum Settlement Amount, less
17 Class Counsel Award, Class Representatives Service Awards, PAGA Payment, and
18 Settlement Administration Costs.
- 19 W. "Notice Packet" means the Notice of Class Action Settlement in a form substantially
20 similar to the form attached hereto as **Exhibit 1**.
- 21 X. "PAGA Payment" means the sum of Ten Thousand Dollars (\$10,000.00) which
22 shall be allocated from the Maximum Settlement Amount. Seventy-Five Percent
23 (75%) of the PAGA Payment, or, Seven Thousand and Five Hundred Dollars
24 (\$7,500.00), shall be used to pay all applicable penalties under PAGA to the Labor
25 and Workforce Development Agency ("LWDA") as specified in Section III.L.5
26 herein; and (25%) of the PAGA Payment, or, Two Thousand and Five Hundred
27 Dollars (\$2,500.00), shall be used to pay all applicable penalties under PAGA to the
28 Aggrieved Employees as specified in Section III.L.5 herein.

- 1 Y. "PAGA Period" means the period from April 26, 2020 through the date of
2 preliminary approval, inclusive.
- 3 Z. "Parties" means Named Plaintiff and Defendant, collectively and "Party" shall mean
4 either Named Plaintiff or Defendant, individually.
- 5 AA. "Payment Ratio - Class" means the respective Qualifying Workweeks for each
6 Settlement Class Member divided by the total Qualifying Workweeks for all
7 Settlement Class Members.
- 8 BB. "Payment Ratio - PAGA" means the respective Qualifying Pay Periods for each
9 Aggrieved Employee divided by the total Qualifying Pay Periods for all Aggrieved
10 Employees.
- 11 CC. "Preliminary Approval Date" means the date the Court enters an order granting
12 preliminary approval of the Settlement.
- 13 DD. "Qualifying Workweeks" means the number of workweeks Class Members worked
14 for Defendant during the Class Period.
- 15 EE. "Qualifying Pay Periods" means the number of pay periods Aggrieved Employees
16 worked for Defendant during the PAGA Period.
- 17 FF. "Released Claims" means a release from each of the Aggrieved Employees and the
18 State of California of all PAGA claims pled or that could have been pled based on
19 the factual allegations contained in the operative complaint and PAGA letters sent
20 by Named Plaintiff that occurred during the PAGA Period, and a release from the
21 Class Members of all claims pled or that could have been pled based on the factual
22 allegations contained in the operative complaint which occurred during the Class
23 Period, and expressly excluding all legally unreleasable claims, including claims for
24 vested benefits, unemployment insurance, social security, and workers'
25 compensation. The Released Claims include claims based upon the relevant
26 California Industrial Welfare Commission Orders, and the following statutes:
27 California Labor Code sections 200-204, 210, 218, 218.5, 218.6, *et seq.*, 223, 225.5,
28 226, 226.7, 226.8, *et seq.*, 256, 406, 510, 512, 558, 1174, 1174.5, 1182.12, 1194,

1194.2 *et seq.*, 1197, 1197.1, 1198, 2698, *et seq.*, 2800, 2802; California Business and Professions Code sections 17200-17208 *et seq.*; and, California Code of Civil Procedure section 1021.5. The Released Claims include all of the following legal claims: (a) unlawful failure to pay all wages, including minimum wages and overtime wages, tips, wages for all hours worked at correct rates, including overtime at the correct regular rates, and all other potential wages; (b) failure to provide proper meal periods, and to properly provide premium pay in lieu thereof; (c) failure to provide proper rest breaks, and to properly provide premium pay in lieu thereof; (d) waiting time penalties for untimely pay during employment and untimely final pay; (e) improper and/or inaccurate wage statements; (f) failure to reimburse expenses; (g) unfair business practices; (h) civil penalties under the Labor Code Private Attorneys General Act (“PAGA”); (i) any other claims or penalties under the wage and hour laws pleaded in the Action; and (j) all damages, penalties, interest and other amounts recoverable under said causes of action under California and federal law, to the extent permissible, including but not limited to the California Labor Code as to the facts alleged in the Action, the applicable Wage Orders as to the facts alleged in the Action, and the California Unfair Competition Law. The period of the Release shall extend to the limits of the Class Period. The *res judicata* effect of the Judgment will be the same as that of the Release.

GG. “Released PAGA Claims” is a subset of the Released Claims, and means any and all claims for recovery of civil penalties and attorneys’ fees and costs permissible under PAGA which Plaintiff and/or the PAGA Group Members had, or may claim to have, against Defendant Tiburon Peninsula Club Releasees during the PAGA Period, arising from or related to the same set of operative facts as those alleged in the Action, or in the PAGA Notice submitted to the LWDA by Class Counsel on Plaintiff’s behalf on or about April 26, 2021, including: (a) unlawful failure to pay all wages, including minimum wages and overtime wages, tips, wages for all hours worked at correct rates, including overtime at the correct regular rates, and all other

1 potential wages; (b) failure to provide proper meal periods, and to properly provide
2 premium pay in lieu thereof; (c) failure to provide proper rest breaks, and to
3 properly provide premium pay in lieu thereof; (d) waiting time penalties for
4 untimely pay during employment and untimely final pay; (e) improper and/or
5 inaccurate wage statements; (f) record keeping violations; (g) failure to reimburse
6 expenses; (h) unfair business practices; (i) civil penalties under the Labor Code
7 Private Attorneys General Act ("PAGA"); (j) violations of California Labor Code
8 sections 200-204, 210, 218, 218.5, 218.6, et seq., 223, 225.5, 226, 226.7, 226.8, et
9 seq., 256, 406, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2 et seq., 1197,
10 1197.1, 1198, 2698, et seq., 2800, 2802; (k) any other claims or penalties under the
11 wage and hour laws pleaded in the Action; and (l) all damages, penalties, interest
12 and other amounts recoverable under said causes of action under California and
13 federal law, to the extent permissible, alleged in the Action, the applicable Wage
14 Orders, and California Unfair Competition Law.

15 HH. "Released Parties" means Defendant and its past, present and/or future, direct
16 and/or indirect, officers, directors, principals, fiduciaries, members, managers,
17 employees, agents, representatives, attorneys, accountants, auditors, insurers and
18 reinsurers, consultants, partners, investors, shareholders, administrators, parent
19 companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and
20 joint venturers, and any party that was or could have been named as a defendant in
21 the Action.

22 II. "Response Deadline" means the date thirty (30) days after the Settlement
23 Administrator mails Notice Packets to Settlement Class Members and the last date
24 on which Settlement Class Members may submit requests for exclusion or
25 objections to the Settlement.

26 JJ. "Settlement" means the disposition of the Action pursuant to this Agreement.

27 KK. "Settlement Administration Costs" means the fees and expenses reasonably incurred
28 by the Settlement Administrator as a result of the procedures and processes

expressly required by this Agreement, which are estimated to be approximately \$6,000.00.

LL. "Settlement Administrator" means ILYM Group, or such other claims administrator that is agreed to by the Parties and approved by the Court.

MM. "Settlement Class Members" or "Settlement Class" means all Class Members after excluding any person who submits a timely and valid request for exclusion as provided in this Agreement.

II. RECITALS

A. Class Certification. The Parties stipulate to provisional class certification for purposes of settlement only. If the Court does not grant either preliminary or final approval of this settlement, this provisional class certification shall immediately be set aside and the Settlement Class immediately decertified (subject to further proceedings on motion of any party to certify or deny certification thereafter) and this Stipulation of Settlement shall not constitute or be used as evidence that class certification is appropriate. If the Court does not grant either preliminary or final approval of this settlement, the Parties shall be returned to their respective statuses as of the date and time immediately prior to the execution of the Stipulation of Settlement, and the Parties shall proceed in all respects as if this Agreement had not been executed, except that any costs actually incurred by the Settlement Administrator shall be paid by equal apportionment among the Parties. The Settlement Class is smaller than the class proposed in the operative complaint. The operative complaint sought claims on behalf of all non-exempt employees, but the settlement encompasses only all Cafe and food service workers because there was not substantial similarity amongst all non-exempt employees as relates to the claims made in the operative complaint.

B. Procedural History. On April 26, 2021, Named Plaintiff Sean Spiller filed a putative class action Complaint in the Marin County Superior Court, alleging claims for (1) Unlawful Failure to Pay Wages; (2) Failure to Provide Meal and Rest

1 Periods; (3) Failure to Provide Accurate Itemized Wage Statements; (4) Failure to
2 Pay Wages on Termination; (5) Failure to Reimburse Expenses and/or Prohibited
3 Cash Bond; and (6) Unfair Business Practices Under the Unfair Competition Act.
4 On that same day, April 26, 2021, Named Plaintiff also submitted notice to the
5 Labor and Workforce Development Agency ("LWDA") regarding his intent to
6 pursue civil penalties under the Labor Code Private Attorneys General Act. The
7 LWDA did not respond to the April 26, 2021 notice letter submitted to it by Named
8 Plaintiff. On July 14, 2021, Plaintiff filed a First Amended Complaint adding a
9 representative action for civil penalties under the Labor Code Private Attorneys
10 General Act.

- 11 C. The Class Representative believes he has meritorious claims based on alleged
12 violations of the California Labor Code, and that class certification is appropriate
13 because the prerequisites for class certification can be satisfied in the Action.
- 14 D. Defendant denies any liability or wrongdoing of any kind associated with the claims
15 alleged in the Action, disputes the damages and penalties claimed by the Class
16 Representative, and further contends that, for any purpose other than settlement, the
17 Action is not appropriate for class or representative action treatment. Defendant
18 contends, among other things, that at all times it complied with the California Labor
19 Code, the California Business and Professions Code, and the Industrial Wage
20 Commission Orders.

- 21 E. The Named Plaintiff and Class Representative is represented by Class Counsel.
22 Class Counsel conducted an investigation into the facts relevant to the Action,
23 including reviewing documents and information provided by Defendant pursuant to
24 informal requests for information to prepare for mediation. Defendant produced for
25 the purpose of settlement negotiations certain employment data concerning the
26 Class, which Class Counsel reviewed and analyzed. Based on their own
27 independent investigation and evaluation, Class Counsel is of the opinion that the
28 Settlement with Defendant is fair, reasonable and adequate, and in the best interest

1 of the Class in light of all known facts and circumstances, including the risks of
2 significant delay, defenses asserted by Defendant, and uncertainties regarding class
3 certification. Although Defendant denies any liability, Defendant is agreeing to this
4 Settlement solely to avoid the cost of further litigation. The Parties and their counsel
5 have agreed to settle the claims on the terms set forth herein.

6 F. The Parties attended a day-long mediation session with David Perrault, Esq., a well-
7 respected mediator with considerable experience in mediating wage and hour class
8 actions. The mediation resulted in an agreement in principal as to the terms of a
9 settlement, which was to be followed by a long form settlement agreement.

10 G. The Parties believe that the Settlement is fair, reasonable and adequate. The
11 Settlement was arrived at through arm's-length negotiations, taking into account all
12 relevant factors. The Parties recognize the uncertainty, risk, expense and delay
13 attendant to continuing the Action through trial and any appeal. Accordingly, the
14 Parties desire to fully, finally, and forever settle, compromise and discharge all
15 disputes and claims arising from or relating to the Action.

16 **III. TERMS OF AGREEMENT**

17 A. Settlement Consideration. Defendant shall pay the Maximum Settlement Amount
18 which consists of the sum of the Individual Settlement Payments (including the
19 employer's share of payroll taxes), the Class Representative Service Award, the
20 Class Counsel Award, the PAGA Payment and the Settlement Administration Costs,
21 as specified in this Agreement. The Parties agree that this is a non-reversionary
22 Settlement and that no portion of the Maximum Settlement Amount shall revert to
23 Defendant. In no event shall Defendant be required to pay more or less than the
24 Maximum Settlement Amount.

25 B. Release By All Settlement Class Members and Aggrieved Employees. As of the
26 Effective Date, in exchange for the consideration set forth in this Agreement,
27 Named Plaintiff, Aggrieved Employees and the Settlement Class Members release
28 the Released Parties from the Released Claims for the Covered Period. If an

1 Aggrieved Employee is not a Settlement Class Member, the Aggrieved Employee
2 releases the Released Parties from the Released PAGA Claims for the PAGA
3 Period. Named Plaintiff and the Settlement Class Members may hereafter discover
4 facts or legal arguments in addition to or different from those they now know or
5 currently believe to be true with respect to the claims, causes of action and legal
6 theories of recovery in this case which are the subject matter of the Released
7 Claims. Regardless, the discovery of new facts or legal arguments shall in no way
8 limit the scope or definition of the Released Claims, and by virtue of this
9 Agreement, Named Plaintiff and the Settlement Class Members shall be deemed to
10 have, and by operation of the final judgment approved by the Court, shall have,
11 fully, finally, and forever settled and released all of the Released Claims as defined
12 in this Agreement.

13 C. General Release By Named Plaintiff Sean Spiller. As of the Effective Date, in
14 consideration for the consideration set forth in this Agreement, Named Plaintiff, for
15 himself and his heirs, successors and assigns, does hereby waive, release, acquit and
16 forever discharge the Released Parties, from any and all claims, actions, charges,
17 complaints, grievances and causes of action, of whatever nature, whether known or
18 unknown, which exist or may exist on Named Plaintiff's behalf as of the Effective
19 Date, and that relate in any way to Plaintiff's employment with Defendant,
20 including but not limited to any and all tort claims, contract claims, wage claims,
21 wrongful termination claims, disability claims, benefit claims, public policy claims,
22 retaliation claims, statutory claims, personal injury claims, emotional distress
23 claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit
24 claims, and any and all claims arising under any federal, state or other governmental
25 statute, law, regulation or ordinance, including, but not limited to claims for
26 violation of the Fair Labor Standards Act, the California Labor Code, the Wage
27 Orders of California's Industrial Welfare Commission, other state wage and hour
28 laws, the Americans with Disabilities Act, the Employee Retirement Income

1 Security Act, Title VII of the Civil Rights Act of 1964, the California Fair
2 Employment and Housing Act, the California Family Rights Act, the Family
3 Medical Leave Act, California's Whistleblower Protection Act, California Business
4 & Professions Code Section 17200 *et seq.*, and any and all claims arising under any
5 federal, state or other governmental statute, law, regulation or ordinance. Named
6 Plaintiff hereby expressly waives and relinquishes any and all claims, rights or
7 benefits that he may have under California Civil Code § 1542, which provides as
8 follows: *A general release does not extend to claims which the creditor or*
9 *releasing party does not know or suspect to exist in his or her favor at the time of*
10 *executing the release and that, if known by him or her, would have materially*
11 *affected his or her settlement with the debtor or released party.* Named Plaintiff
12 may hereafter discover claims or facts in addition to, or different from, those which
13 he now knows or believes to exist, but he expressly agrees to fully and finally settle
14 and release any and all claims against the Released Parties, known or unknown,
15 suspected or unsuspected, which exist or may exist on behalf of or against the other
16 as of the Effective Date that relate to or arise from Named Plaintiff's employment
17 with Defendant. The Parties further acknowledge, understand and agree that this
18 representation and commitment is essential to the Agreement and that this
19 Agreement would not have been entered into were it not for this representation and
20 commitment.

21 D. Conditions Precedent: This Settlement will become final and effective only upon
22 the occurrence of all of the following events:

- 23 1. The Court enters an order granting preliminary approval of the Settlement;
- 24 2. The Court enters an order granting final approval of the Settlement and a
25 Final Judgment pursuant to the Settlement Agreement;
- 26 3. In the event there are objectors, then the time for appeal of the Final
27 Judgment and Order Granting Final Approval of Class Action Settlement
28 expires; or, if an appeal is timely filed, there is a final resolution of any

1 appeal from the Judgment and Order Granting Final Approval of Class
2 Action Settlement; and

3 4. Neither Party invokes its right to revoke the Settlement as described in
4 paragraph III(N) herein.

5 E. Nullification of Settlement Agreement. In the event that this Settlement Agreement
6 is not preliminarily or finally approved by the Court, fails to become effective, or is
7 reversed, withdrawn or modified by the Court, or in any way prevents or prohibits
8 Defendant from obtaining a complete resolution of the claims as described herein:

9 1. This Settlement Agreement shall be void *ab initio* and of no force or effect,
10 and shall not be admissible in any judicial, administrative or arbitral
11 proceeding for any purpose or with respect to any issue, substantive or
12 procedural;

13 2. The conditional class certification (obtained for any purpose) shall be void
14 *ab initio* and of no force or effect, and shall not be admissible in any judicial,
15 administrative or arbitral proceeding for any purpose or with respect to any
16 issue, substantive or procedural; and

17 3. None of the Parties to this Settlement will be deemed to have waived any
18 claims, objections, defenses or arguments in the Action, including with
19 respect to the issue of class certification.

20 F. Certification of the Settlement Class. The Parties stipulate to conditional class
21 certification of the Settlement Class for the Covered Period for purposes of
22 settlement only. The Settlement Class is smaller than the class proposed in the
23 operative complaint. Namely, the Settlement Class consists only of Café and food
24 service workers, whereas the operative complaint sought to certify all non-exempt
25 employees. The distinction is appropriate in this case because the Café and food
26 service workers were not substantially similar to the other non-exempt employees as
27 to the claims being made in the operative complaint. For example, the meal and rest
28 break practices of a non-exempt employees who was a lifeguard was not

1 substantially similar to the meal and rest break practices of a non-exempt food
2 server. In the event that this stipulation is not approved by the Court, fails to
3 become effective, or is reversed, withdrawn or modified by the Court, or in any way
4 prevents or prohibits Defendant from obtaining a complete resolution of the claims
5 as described herein, the conditional class certification (obtained for any purpose)
6 shall be void *ab initio* and of no force or effect, and shall not be admissible in any
7 judicial, administrative or arbitral proceeding for any purpose or with respect to any
8 issue, substantive or procedural.

9 G. Tax Liability. The Parties make no representations as to the tax treatment or legal
10 effect of the payments called for hereunder, and Settlement Class Members are not
11 relying on any statement or representation by the Parties in this regard. Settlement
12 Class Members understand and agree that they will be responsible for the payment
13 of any taxes and penalties assessed on the Individual Settlement Payments described
14 herein and will hold the Parties free and harmless from and against any claims,
15 liabilities, costs and expenses, including attorney's fees, resulting in any way from
16 personal tax treatment of the payments made pursuant to this Agreement, including
17 the treatment of such payments as not subject to withholding or deduction for
18 payroll and employment taxes.

19 H. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
20 the "acknowledging party" and each Party to this Agreement other than the
21 acknowledging party, an "other party") acknowledges and agrees that: (1) no
22 provision of this Agreement, and no written communication or disclosure between
23 or among the Parties or their attorneys and other advisers, is or was intended to be,
24 nor shall any such communication or disclosure constitute or be construed or be
25 relied upon as, tax advice within the meaning of United States Treasury Department
26 circular 230 (31 CFR part 10, as amended); (2) the acknowledging party (a) has
27 relied exclusively upon his, her or its own, independent legal and tax counsel for
28 advice (including tax advice) in connection with this Agreement, (b) has not entered

1 into this Agreement based upon the recommendation of any other Party or any
2 attorney or advisor to any other Party, and (c) is not entitled to rely upon any
3 communication or disclosure by any attorney or advisor to any other party to avoid
4 any tax penalty that may be imposed on the acknowledging party, and (3) no
5 attorney or advisor to any other Party has imposed any limitation that protects the
6 confidentiality of any such attorney's or adviser's tax strategies (regardless of
7 whether such limitation is legally binding) upon disclosure by the acknowledging
8 party of the tax treatment or tax structure of any transaction, including any
9 transaction contemplated by this Agreement.

- 10 I. Preliminary Approval Motion. At the earliest practicable time, Plaintiff shall file
11 with the Court a Motion for Order Granting Preliminary Approval and supporting
12 papers, which shall include this Settlement Agreement. Class Counsel shall provide
13 a copy of the draft Motion for Order Granting Preliminary Approval to Defendant's
14 Counsel for review before filing it with the Court.
- 15 J. Settlement Administrator. The Settlement Administrator shall be responsible for:
16 printing and mailing the Notice Packets to the Settlement Class Members as directed
17 by the Court; receiving and reporting the objections and requests for exclusion;
18 processing and mailing payments to the Class Representative, Class Counsel,
19 LWDA and Settlement Class Members; distributing tax forms; processing and
20 mailing tax payments to the appropriate state and federal taxing authorities;
21 providing declaration(s) as necessary in support of preliminary and/or final approval
22 of this Settlement; and other tasks as the Parties mutually agree or the Court orders
23 the Settlement Administrator to perform. The Settlement Administrator shall keep
24 the Parties timely apprised of the performance of all Settlement Administrator
25 responsibilities.

26 K. Notice Procedure.

- 27 1. Class Data. No later than fourteen (14) calendar days after the Preliminary
28 Approval Date, Defendant shall provide the Settlement Administrator with

1 the Class Data for purposes of preparing and mailing Notice Packets to Class
2 Members. The Class Data shall be confidential. The Settlement
3 Administrator shall not provide the Class Data to Class Counsel or Named
4 Plaintiff or any third party, or use the Class Data or any information
5 contained therein for any purpose other than to administer this Settlement.

6 2. Notice Packets.

7 a) The Notice of Class Action Settlement shall be disseminated in a
8 form substantially similar to the form attached hereto as Exhibit 1.
9 The Notice of Class Action Settlement shall be provided in English
10 and Spanish. The Settlement Administrator will hire a professional
11 translation service to translate the Notice of Class Action Settlement
12 in a form substantially similar to the form attached hereto as Exhibit
13 1. Notice of Class Action Settlement shall include the Settlement
14 Class Member's starting and ending dates of employment during the
15 Settlement Covered Period, the number of Qualifying Workweeks
16 and Qualifying Pay Periods worked during the Covered Period, and
17 the estimated amount of their Individual Settlement Payment if they
18 do not request to be excluded from the Settlement. The Notice of
19 Class Action Settlement shall also inform Settlement Class Members
20 that in order to receive an Individual Settlement Payment, they do not
21 need to do anything except to keep the Settlement Administrator
22 apprised of their current mailing addresses. The Notice of Class
23 Action Settlement shall set forth the release to be given by all
24 members of the Class who do not request to be excluded from the
25 Settlement Class in exchange for an Individual Settlement Payment.

26 3. Notice By First Class U.S. Mail. Upon receipt of the Class Data, the
27 Settlement Administrator will perform a search based on the National
28 Change of Address Database to update and correct any known or identifiable

1 address changes. No later than fourteen (14) calendar days after receiving
2 the Class Data from Defendant as provided herein, the Settlement
3 Administrator shall mail copies of the Notice Packet to all Settlement Class
4 Members via regular First Class U.S. Mail. The Settlement Administrator
5 shall exercise its best judgment to determine the current mailing address for
6 each Settlement Class Member. The address identified by the Settlement
7 Administrator as the current mailing address shall be presumed to be the best
8 mailing address for each Settlement Class Member.

9 4. Undeliverable Notices. Any Notice Packets returned to the Settlement
10 Administrator as non-delivered on or before the Response Deadline shall be
11 re-mailed to the forwarding address affixed thereto. If no forwarding
12 address is provided, the Settlement Administrator shall promptly attempt to
13 determine a correct address by lawful use of skip-tracing, or other search
14 using the name, address and/or Social Security number of the Settlement
15 Class Member involved, and shall then perform a re-mailing, if another
16 mailing address is identified by the Settlement Administrator. Settlement
17 Class Members who received a re-mailed Notice Packet shall have their
18 Response Deadline extended fifteen (15) days from the original Response
19 Deadline.

20 5. Disputes Regarding Individual Settlement Payments. Class Members and
21 Aggrieved Employees will have the opportunity, should they disagree with
22 Defendant's records regarding the number of pay periods or weeks worked,
23 as stated on their Employment Information Sheet, to provide documentation
24 and/or an explanation to support a different number of shifts worked. If
25 there is a dispute, the Settlement Administrator will consult with the Parties
26 to determine whether an adjustment is warranted. The Settlement
27 Administrator shall determine the eligibility for, and the amounts of, any
28 Individual Settlement Payments under the terms of this Agreement. The

1 Settlement Administrator's determination of the eligibility for and amount of
2 any Individual Settlement Payment shall be binding upon the Class Member
3 and the Parties.

4 6. Disputes Regarding Administration of Settlement. Any disputes not
5 resolved by the Settlement Administrator concerning the administration of
6 the Settlement will be resolved by the Court under the laws of the State of
7 California. Prior to any such involvement of the Court, counsel for the
8 Parties will confer in good faith to resolve the disputes without the necessity
9 of involving the Court.

10 7. No Claim Form Required. Class Members are not required to submit a
11 claim form to receive an Individual Settlement Payment. The Notice of
12 Class Action Settlement contained in the Notice Packet shall state that
13 Settlement Class Members who wish to receive Individual Settlement
14 Payments need not do anything except to keep the Settlement Administrator
15 apprised of a current mailing address in order to receive an Individual
16 Settlement Payment check following the Effective Date of the Settlement.

17 8. Exclusions. The Notice of Class Action Settlement contained in the Notice
18 Packet shall state that Class Members who wish to exclude themselves from
19 the Settlement must submit a written request for exclusion by the Response
20 Deadline. The written request for exclusion must state that the Class
21 Member wishes to exclude himself or herself from the Settlement and (1)
22 must contain the name, address, telephone number and the last four digits of
23 the Social Security number of the person requesting exclusion; (2) must be
24 signed by the Class Member; (3) must be postmarked or fax stamped by the
25 Response Deadline and returned to the Settlement Administrator at the
26 specified address or fax telephone number; and (4) contain a typewritten or
27 handwritten notice stating in substance: "I have read the enclosed Notice
28 and I wish to Opt Out of the class action and the Settlement of the case: *Sean*

1 *Spiller v. Tiburon Peninsula Club*, Marin County Superior Court Case
2 Number CIV2101589.” The request for exclusion will not be valid if it is
3 not timely submitted, if it is not signed by the Class Member, or if it does not
4 contain the name and address of the Class Member. The date of the
5 postmark on the return mailing envelope on the request for exclusion shall
6 be the exclusive means used to determine whether the request for exclusion
7 was timely submitted. Any Class Member who requests to be excluded from
8 the Settlement Class will not be entitled to any recovery under the
9 Settlement, unless they are also an Aggrieved Employee,¹ and will not be
10 bound by the terms of the Settlement or have any right to object, appeal or
11 comment thereon. Class Members who fail to submit a valid and timely
12 written request for exclusion on or before the Response Deadline shall be
13 bound by all terms of the Settlement and any final judgment entered in this
14 Action if the Settlement is approved by the Court. No later than fourteen
15 (14) calendar days after the Response Deadline, the Settlement
16 Administrator shall provide counsel for the Parties with a final list of the
17 Class Members who have timely submitted written requests for exclusion.
18 At no time shall any of the Parties or their counsel seek to solicit or
19 otherwise encourage members of the Class to submit requests for exclusion
20 from the Settlement.

- 21 9. Objections. The Notice of Class Action Settlement contained in the Notice
22 Packet shall state that Class Members who wish to object to the Settlement
23 must serve on the Settlement Administrator a written statement of objection
24 (“Notice of Objection”) by the Response Deadline. The date on the proof of
25 service shall be deemed the exclusive means for determining that a Notice of
26 Objection was served timely. The Notice of Objection must be signed by the

27
28 ¹ Aggrieved Employees may not opt out of the PAGA Release and will receive a pro-rated share of the Aggrieved Employee share (\$2,500) of the funds described at III.L.5 even if they exclude themselves from the Settlement Class.

1 Class Member and state: (1) the full name of the Class Member; (2) the dates
2 of employment of the Class Member; (3) the last four digits of the Class
3 Member's Social Security number and/or the Employee ID number; (4) the
4 basis for the objection; and (5) if the Class Member intends to appear at the
5 Final Approval/Settlement Fairness Hearing. Class Members who fail to
6 make objections in the manner specified above shall be deemed to have
7 waived any objections and shall be foreclosed from making any objections
8 (whether by appeal or otherwise) to the Settlement. Class Members who
9 submit a timely Notice of Objection will have a right to appear at the Final
10 Approval/Settlement Fairness Hearing in order to have their objections heard
11 by the Court. No Class Member may appear at the Final
12 Approval/Settlement Fairness Hearing unless he or she has served a timely
13 objection that complies with the procedures provided in this paragraph. At
14 no time shall any of the Parties or their counsel seek to solicit or otherwise
15 encourage Class Members to file or serve written objections to the
16 Settlement or appeal from the Order and Final Judgment. Class Members
17 who submit a written request for exclusion are not entitled to object to the
18 Settlement.

19 L. Funding and Allocation of the Maximum Settlement Amount. Defendant is
20 required to pay the Maximum Settlement Amount, which includes the sum of the
21 Individual Settlement Payments (plus employer share of payroll taxes), the Class
22 Representative Service Award, the Class Counsel Award, the PAGA Payment and
23 the Settlement Administration Costs.

24 1. Funding Due Date. No later than seven (7) calendar days after the Effective
25 Date, Defendant shall provide the Maximum Settlement Amount to the
26 Settlement Administrator to fund the Settlement, as set forth in this
27 Agreement.
28

1 2. Individual Settlement Payments. Individual Settlement Payments shall be
2 paid from the Net Settlement Amount and the Aggrieved Employee share
3 (\$5,000.00) of the PAGA Payment and shall be paid pursuant to the formula
4 set forth below.

5 a) Calculation of Individual Settlement Payments. The Individual
6 Settlement Payments will include two portions: (1) a payment
7 calculated to represent a Settlement Class Member's pro-rated
8 portion of the Net Settlement Amount; and, (2) a payment calculated
9 to represent an Aggrieved Employee's pro-rated portion of the 25%
10 (\$5,000) of funds from the PAGA Payment that are allocated to the
11 Aggrieved Employees.

12 (1) Settlement Class Member Portion. Using the Class
13 Information, the Settlement Administrator will calculate the total
14 Qualifying Work Weeks for all Settlement Class Members, and the
15 total Qualifying Pay Periods for all Aggrieved Employees. The
16 respective Qualifying Work Weeks for each Settlement Class
17 Member will be divided by the total Qualifying Work Weeks for all
18 Settlement Class Members, resulting in the Payment Ratio - Class for
19 each Settlement Class Member. Each Settlement Class Member's
20 Payment Ratio - Class will then be multiplied by the Net Settlement
21 Amount to calculate each Settlement Class Member's estimated class
22 portion of the Individual Settlement Payments.

23 (2) Aggrieved Employee Portion. The respective Qualifying Pay
24 Periods for each Aggrieved Employee will be divided by the total
25 Qualifying Pay Periods for all Aggrieved Employees, resulting in the
26 Payment Ratio - PAGA for each Aggrieved Employee. Each
27 Aggrieved Employee's Payment Ratio - PAGA will then be
28 multiplied by the appropriate amount of the PAGA Payment

described below at III.L.5. to calculate each Aggrieved Employee's estimated PAGA portion of the Individual Settlement Payments.

- b) Allocation. For tax purposes, Individual Settlement Payments shall be allocated and treated as follows: (i) forty-five percent (45%) as penalties; (ii) forty percent (40%) as interest; and, (iii) fifteen percent (15%) as wages. The Settlement Administrator shall report the wage portion of said payments via IRS Form W-2, and the non-wage portion of said payments via IRS Form 1099 — MISC. Except that if an Aggrieved Employee has opted out of the class portion of the settlement, the Aggrieved Employee will receive a pro rata share of the funds allocated to PAGA penalties, as described herein, and those funds will be allocated for tax purposes one hundred percent (100%) as penalties and interest and reported via IRS Form 1099-MISC.
- c) Mailing. Individual Settlement Payments shall be mailed by regular First Class U.S. Mail to Settlement Class Members' last known mailing address no later than fourteen (14) calendar days after the Effective Date.
- d) Expiration. Any checks issued to Settlement Class Members shall remain valid and negotiable for one hundred and eighty (180) days from the date of their issuance. In the event an Individual Settlement Payment check has not been negotiated within one hundred and eighty (180) days, the check shall be voided and funds associated with such voided checks plus any accrued interest that has not otherwise been distributed shall be transmitted as follows: Unpaid residue shall be tendered to the California Secretary of State — Unclaimed Property Fund under the unclaimed property laws in the name of the Settlement Class Member or Aggrieved Employee.

1 3. Class Representative Service Award. Defendant agrees not to oppose or
2 object to any application or motion by Named Plaintiff for a Class
3 Representative Service Award of up to Five Thousand Dollars (\$5,000.00) to
4 Named Plaintiff. The Settlement Administrator shall pay the Class
5 Representative Service Award to Named Plaintiff from the Maximum
6 Settlement Amount no later than fourteen (14) calendar days after the
7 Effective Date. Any portion of the requested Class Representative Service
8 Award that is not awarded to the Class Representative shall be part of the
9 Net Settlement Amount and shall be distributed to Settlement Class
10 Members as provided in this Agreement. The Settlement Administrator
11 shall issue an IRS Form 1099 — MISC to Named Plaintiff for his Class
12 Representative Service Award. Named Plaintiff shall be solely and legally
13 responsible to pay any and all applicable taxes on his Class Representative
14 Service Award and shall hold harmless Defendant from any claim or liability
15 for taxes, penalties, or interest arising as a result of the Class Representative
16 Service Award. The Class Representative Service Award shall be in
17 addition to Named Plaintiff's respective Individual Settlement Payment as a
18 Settlement Class Member. In the event that the Court reduces or does not
19 approve the requested Class Representative Service Award, Named Plaintiff
20 shall not have the right to revoke the Settlement, and it will remain binding,
21 subject to Named Plaintiff's right to appeal.

22 4. Class Counsel Award. Defendant agrees not to oppose or object to any
23 application or motion by Class Counsel for attorneys' fees not to exceed
24 thirty-five percent (35%) of the Maximum Settlement Amount (\$105,000.00
25 out of \$300,000.00), plus costs and expenses supported by declaration, from
26 the Maximum Settlement Amount. Any portion of the requested Class
27 Counsel Award that is not awarded to Class Counsel shall be part of the Net
28 Settlement Amount and shall be distributed to Settlement Class Members as

provided in this Agreement. The Settlement Administrator shall pay the Class Counsel Award to Class Counsel from the Maximum Settlement Amount no later than fourteen (14) calendar days after the Effective Date. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the payment made pursuant to this paragraph. The Settlement Administrator shall issue an IRS Form 1099 — MISC to Class Counsel for the payments made pursuant to this paragraph. In the event that the Court reduces or does not approve the requested Class Counsel Award, Named Plaintiffs and Class Counsel shall not have the right to revoke the Settlement and the Settlement will remain binding, subject to Named Plaintiffs' and Class Counsel's right to appeal.

5. PAGA Payment. Ten Thousand dollars (\$10,000.00) shall be allocated from the Maximum Settlement Amount for settlement of claims for civil penalties under the Labor Code Private Attorneys General Act of 2004. The Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Payment, or \$7,500.00 to the California Labor and Workforce Development Agency no later than fourteen (14) calendar days after the Effective Date. Twenty-five (25%), or \$2,500.00, will be distributed to the Aggrieved Employees on a pro-rated basis as described in this Agreement. If an Aggrieved Employee opts out of the class action portion of this settlement, that Aggrieved Employee will still receive his or her pro rata portion of the PAGA Payment, and for tax purposes it will be allocated 100% to penalties and interest and reported on an IRS Form 1099-Misc.

6. Settlement Administration Costs. The Settlement Administrator shall be paid for the costs of administration of the Settlement from the Maximum Settlement Amount, presently estimated to be \$[NUMBER]. The Settlement Administrator shall be paid the Settlement Administration Costs no later

than fourteen (14) calendar days after Defendant provides funds to the Settlement Administrator for disbursement under this Agreement.

M. Final Approval Motion. At the earliest practicable time following the expiration of the Response Deadline, Named Plaintiff shall file with the Court a Motion for an Order Granting Final Approval and Entering Judgment, which motion shall request final approval of the Settlement and the amounts payable for the Class Representatives Service Award, the Class Counsel Award, and the Settlement Administration Costs.

1. Declaration by Settlement Administrator. The Settlement Administrator shall submit a declaration in support of Named Plaintiffs' motion for final approval of this Settlement detailing the number of Notice Packets mailed and re-mailed to Class Members, the number of undeliverable Notice Packets, the number of timely requests for exclusion, the number of objections received, the amount of the average Individual Settlement Payment, the Settlement Administration Costs, and any other information as the Parties mutually agree or the Court orders the Settlement Administrator to provide.

N. Option to Terminate Settlement. Defendant represented that as of February 4, 2022, there were estimated to be 89 class members and 3,804 work weeks covered by this Settlement. In the event the actual class size or number of work weeks as of February 4, 2022 exceeded these figures by 10% or more then Plaintiff shall have, in his sole discretion, the option to terminate this Settlement. Defendant has the unilateral right to terminate the Settlement if, after the Response Deadline and before the Final Approval/Settlement Fairness Hearing, the number of Settlement Class Members who submitted timely and valid written requests for exclusion from the Settlement is at least ten percent (10%) of all Class Members. All signatories and their counsel must not encourage opt-outs. Named Plaintiff and Class Counsel specifically agree not to solicit opt-outs. Named Plaintiff stipulates and agrees not to

1 opt out. Named Plaintiff further agrees not to disparage Defendant or engage in any
2 conduct tending to discourage participation in the Settlement. If a Party exercises
3 the option to terminate this Settlement, the Party exercising the option shall: (a)
4 provide written notice to counsel for the opposing Party within seven (7) calendar
5 days after the Response Deadline and (b) the Party exercising the option shall pay
6 all Settlement Administration Costs incurred up to the date or as a result of the
7 termination; and the Parties shall proceed in all respects as if this Agreement had not
8 been executed.

9 O. Motions for Preliminary and Final Approval. Class Counsel will provide an
10 opportunity for Counsel for Defendant to review the Motions for Preliminary and
11 Final Approval prior to filing with the Court. The Parties and their counsel will
12 cooperate with each other and use their best efforts to effect the Court's approval of
13 the Motions for Preliminary and Final Approval of the Settlement.

14 P. Cooperation. The Parties and their counsel will cooperate with each other and use
15 their best efforts to effect the implementation of the Settlement.

16 Q. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
17 except such proceedings necessary to implement and complete the Settlement,
18 pending the Final Approval/Settlement Fairness Hearing to be conducted by the
19 Court.

20 R. Amendment or Modification. This Agreement may be amended or modified only
21 by a written instrument signed by counsel for all Parties or their successors-in-
22 interest.

23 S. Entire Agreement. This Agreement and any attached Exhibits constitute the entire
24 Agreement among these Parties, and no oral or written representations, warranties
25 or inducements have been made to any Party concerning this Agreement or its
26 Exhibits other than the representations, warranties and covenants contained and
27 memorialized in the Agreement and its Exhibits.
28

- 1 T. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant
2 and represent they are expressly authorized by the Parties whom they represent to
3 negotiate this Agreement and to take all appropriate actions required or permitted to
4 be taken by such Parties pursuant to this Agreement to effectuate its terms, and to
5 execute any other documents required to effectuate the terms of this Agreement.
6 The persons signing this Agreement on behalf of Defendant represent and warrant
7 that they are authorized to sign this Agreement on behalf of Defendant. Named
8 Plaintiff represents and warrants that he is authorized to sign this Agreement and
9 that he has not assigned any claim, or part of a claim, covered by this Settlement to
10 a third-party.
- 11 U. Binding on Successors and Assigns. This Agreement shall be binding upon, and
12 inure to the benefit of, the successors or assigns of the Parties hereto, as previously
13 defined.
- 14 V. California Law Governs. All terms of this Agreement and the Exhibits hereto and
15 any disputes arising hereunder shall be governed by and interpreted according to the
16 laws of the State of California.
- 17 W. Counterparts. This Agreement may be executed in one or more counterparts. All
18 executed counterparts and each of them shall be deemed to be one and the same
19 instrument provided that counsel for the Parties to this Agreement shall exchange
20 among themselves copies or originals of the signed counterparts.
- 21 X. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this
22 Settlement is a fair, adequate and reasonable settlement of this Action and have
23 arrived at this Settlement after extensive arms-length negotiations, taking into
24 account all relevant factors, present and potential.
- 25 Y. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction
26 with respect to the interpretation, implementation and enforcement of the terms of
27 this Agreement and all orders and judgments entered in connection therewith, and
28 the Parties and their counsel hereto submit to the jurisdiction of the Court for

1 purposes of interpreting, implementing and enforcing the settlement embodied in
2 this Agreement and all orders and judgments entered in connection therewith.

3 Z. Invalidity of Any Provision. Before declaring any provision of this Agreement
4 invalid, the Court shall first attempt to construe the provisions valid to the fullest
5 extent possible consistent with applicable precedents so as to define all provisions of
6 this Agreement valid and enforceable.

7 AA. Publicity. Named Plaintiff and Class Counsel agrees not to disclose or publicize the
8 Settlement, including the fact of the Settlement, its terms or contents, and the
9 negotiations underlying the Settlement, in any manner or form, directly or
10 indirectly, to any person or entity, except potential class members and as shall be
11 contractually required to effectuate the terms of the Settlement as set forth herein.
12 For the avoidance of doubt, this section means Named Plaintiff and Class Counsel
13 agree not to issue press releases or website postings, communicate with, or respond
14 to any media or publication entities, publish information in any manner or form,
15 whether printed or electronic, on any medium or otherwise communicate, whether
16 by print, video, recording or any other medium, with any person or entity
17 concerning the Settlement, including the fact of the Settlement, its terms or contents
18 and the negotiations underlying the Settlement, except as shall be contractually
19 required to effectuate the terms of the Settlement as set forth herein. However, for
20 the limited purpose of allowing Class Counsel to prove adequacy as class counsel in
21 other actions, Class Counsel may disclose the name of the Parties in this action and
22 the venue/case number of this action (but not any other settlement details) for such
23 purposes. This does not preclude Named Plaintiff and Class Counsel from
24 disclosing all necessary information to the Court for purposes of seeking approval of
25 this Settlement or, after the Court enters the Final Approval Order and Judgment,
26 from discussing the Settlement with their accountant(s), lawyer(s), and/or as
27 required by law.

BB. No Unalleged Claims. Named Plaintiff and Class Counsel represent that they do not currently intend to pursue any claims against Defendant, including, but not limited to, any and all claims relating to or arising from Named Plaintiff's employment with Defendant, and that Class Counsel is not currently aware of any facts or legal theories upon which any claims or causes of action could be brought against Defendant, excepting those facts or legal theories alleged in the operative complaint in this Action. Named Plaintiff and Class Counsel further represent that they will not assist or cooperate in any third party efforts to pursue any claims against Defendant. The Parties further acknowledge, understand and agree that these representations are essential to the Agreement and that this Agreement would not have been entered into were it not for these representations.

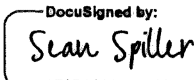
CC. No Admissions. Named Plaintiff has claimed and continues to claim that the Released Claims have merit and give rise to liability on the part of Defendant. Defendant claims that the Released Claims have no merit and do not give rise to liability. This Agreement is a compromise of disputed claims. Nothing contained in this Agreement and no documents referred to herein and no action taken to carry out this Agreement may be construed or used as an admission by or against the Defendant or Named Plaintiff or Class Counsel as to the merits or lack thereof of the claims asserted.

IN WITNESS WHEREOF, this Settlement Agreement is executed by and on behalf of the Settling Parties and their duly authorized attorneys, as of the day and year herein set forth.

IT IS SO AGREED:

DATED: 8/23/2022, 2022

Plaintiff SEAN SPILLER

By: 
6FAB64C8042B41C...

1 DATED: 4/2, 2022

Defendant TIBURON PENINSULA CLUB

By: 

Name: Rick Siegel
Title: TPC Pres. Dent
On Behalf of Defendant

6 APPROVED AS TO FORM:

7 DATED: 09/07, 2022

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

By: 

DOUGLAS J. FARMER
JADE BUTMAN

Attorneys for Defendant
TIBURON PENINSULA CLUB

14 DATED: 8/23, 2022

COLE & VAN NOTE

By: 

SCOTT EDWARD COLE
LAURA GRACE VAN NOTE
CODY ALEXANDER BOLCE

Attorneys for Representative Plaintiff

51386832.v3-OGLETREE

EXHIBIT 1

Spiller v. Tiburon Peninsula Club
SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN
(CASE NO. CIV2101589)

NOTICE OF CLASS ACTION SETTLEMENT

«BarcodeString»
SIMID «SIMID»

ATTN: «FirstName» «LastName»

«Address1» «Address2»

«City» «Abbrev» «Zip»

**YOU ARE ESTIMATED TO RECEIVE
APPROXIMATELY
\$«MERGED_EstSettAmnt_CALC»
THROUGH THIS CLASS ACTION
SETTLEMENT**

**IF YOU ARE OR WERE A NON-EXEMPT PERSON WORKING AT THE CAFE AND IN ANY
OTHER FOOD SERVICE CAPACITY EMPLOYED BY TIBURON PENINSULA CLUB
("DEFENDANT") DURING THE PERIOD OF APRIL 26, 2017 TO <<PRELIMINARY APPROVAL
DATE>>, YOU MAY BE ABLE TO COLLECT MONEY FROM A CLASS ACTION SETTLEMENT.**

The Marin County Superior Court authorized this notice. This is not an ad. This is not a solicitation from a lawyer.

DEFENDANT CANNOT AND WILL NOT RETALIATE AGAINST YOU IN ANY WAY FOR
PARTICIPATING IN THIS SETTLEMENT.

- A former employee has sued Defendant on behalf of himself and all other similarly situated employees (the "Action");
- The parties to the Action have reached a tentative settlement, and the Court has preliminarily approved it;
- The settlement resolves the Action;
- Your legal rights are affected whether you act, or don't act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT

You Can DO NOTHING	You will receive a payment from the settlement. If you do nothing, you continue your participation in this lawsuit and you will be impacted by the outcome of this case. You will receive a settlement payment; however, you will lose any rights to sue Defendant separately about the same legal claims made in this lawsuit. The estimated amount of your Individual Settlement Payment is shown above. To receive your payment, all you need to do is keep the Administrator informed of your current mailing address. Once the Court grants final approval of the Settlement, the Administrator will mail your check to the address on file for you.
You Can ASK TO BE EXCLUDED FROM THE SETTLEMENT (Deadline: _____, 2022)	If you ask to be excluded from the class action portion of the settlement, you will get no payment from the class action portion of the settlement. You will keep any rights to sue Defendant separately about the same legal claims made in this lawsuit. You cannot, however, ask to be excluded from the Private Attorneys General Act portion of the lawsuit. <u>IMPORTANT:</u> YOU CANNOT ASK TO BE EXCLUDED FROM THE CLASS ACTION <u>AND</u> STILL GET A PAYMENT FOR THE CLASS CLAIMS.

You Can OBJECT TO THE SETTLEMENT**(Deadline: _____, 2022)**

If you do not like the settlement, you can file an objection with the court. If your objection is overruled by the Court, you will still receive a payment from the settlement, and you will be bound by the terms of this settlement. BUT IF YOU OBJECT TO THE SETTLEMENT, YOU CANNOT ASK TO BE EXCLUDED TOO.

THESE RIGHTS AND OPTIONS – AND THE DEADLINES TO EXERCISE THEM – ARE EXPLAINED IN THIS NOTICE.

The Court is in charge of this case and still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after appeals, if any, are resolved. **Please be patient.**

1. Why Should You Read This Notice?

You should read this notice because you may be entitled to money from a class action settlement.

2. What is this lawsuit about?

This lawsuit claimed that Defendant did not provide proper meal and rest breaks, did not provide accurate itemized wage statements, failed to pay all wages, failed to reimburse all expenses, and other alleged violations of California law for the time period of April 26, 2017 through <<date of preliminary approval>>.

3. Why Is This A Class Action?

This case is a class action. In a class action, one or more people, called Class Representatives (in this case Sean Spiller), sue on behalf of people who have similar claims. All these people are a Class or Class Members. One case resolves the issues for all Class Members, except for those who exclude themselves from the Class. The Marin County Superior Court is in charge of the case. The lawsuit is known as *Spiller v. Tiburon Peninsula Club*, Case No. CIV2101589.

4. Why is There a Settlement?

The Court did not decide in favor of Plaintiff or Defendant. The Plaintiff thinks he could have won at trial. Defendant thinks the Plaintiff would not have won anything. But there was no trial. Instead, both sides agreed to a settlement. That way, they avoid the cost of litigation, and the individuals potentially affected will get compensation. The Class Representative and the attorneys think the settlement is best for Class Members.

5. How Do I Know If I Am Part Of The Settlement?

The Court has decided that anyone who was employed by Defendant as a non-exempt Café or food service worker for Defendant in the State of California at any time from April 26, 2017 to <<preliminary approval date>> (the “Class Period”) are Class Members.

6. What Does the Settlement Provide?

The proposed Settlement provides for a cash payment by Defendant of \$300,000.00 to fully and finally resolve all claims in the Action (referred to as the “Maximum Settlement Amount”). The total amount to be distributed to Class Members who can be located and who do not exclude themselves from the settlement will be the value

of the Maximum Settlement Amount after deducting for the following (the “Net Settlement Amount”): (a) Settlement Administrator Costs not to exceed \$_____ ; (b) a Class Representative Service Award to Plaintiff Sean Spiller not to exceed \$5,000 for his work and efforts in prosecuting this case, and for undertaking the risks of costs (in the event the outcome of this Action was not favorable) and a general release of all claims; (c) Class Counsel’s attorney’s fees not to exceed \$105,000; (d) Class Counsel’s actual litigation costs and expenses as supported by declaration; (e) Defendant’s share of payroll taxes; and (f) payment of \$20,000 to the Labor and Workforce Development Agency. **Class Counsel’s attorney’s fees and costs and Plaintiff’s Service Award remain subject to Court approval.**

No portion of the Net Settlement Amount will be returned to Tiburon Peninsula Club under any circumstances.

7. How much will my payment be?

Your estimated share of the settlement is shown above and is based on the number of pay periods and weeks you worked for Tiburon Peninsula Club during the Class Period (“Compensable Pay Periods and Workweeks”) as compared to the total Compensable Pay Periods and Workweeks of all Class Members for the same period. Based upon Tiburon Peninsula Club records, your Compensable Pay Periods and Workweeks is determined to be *** weeks and *** pay periods. If this information appears correct, you do not need to do anything further to receive your Individual Settlement Payment. If you disagree with the number of Compensable Pay Periods and Workweeks, see below (Question 9).

8. How do I get a payment?

To qualify for payment, you need not do anything. The Settlement Administrator will mail you a check within about 30 days after the court enters a judgment based on this Settlement, but possibly later depending on whether there is any appeal of the judgment entered by the court.

9. What If The Information On The Class Member Information Form Is Inaccurate?

If you believe your number of Compensable Pay Periods and Workweeks is inaccurate, you may dispute it by sending a letter to ***** [ADMINISTRATOR’S ADDRESS] no later than _____, 2022. Be sure to include your name, address, telephone number, last four digits of your social security number, a statement what and why you are disputing, and attaching a copy of any documentation you want to include to support your dispute.

10. What Am I Giving Up to Get an Individual Settlement Payment?

Unless you request to be excluded from the Settlement, you stay part of the Settlement Class and that means you cannot sue, continue to sue, or be part of any other lawsuit against Tiburon Peninsula Club about the legal issues arising in this case during the Class Period. Specifically, you will be giving up or “releasing” the claims described below:

Release of Claims: After the Court has approved the Settlement, each Settlement Class Member who has not submitted a timely and valid request to be excluded from the Settlement will be bound by the approval and judgment and thereby release Tiburon Peninsula Club and its past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers (“Released Parties”), from all causes of action that were alleged or

reasonably could have been alleged in the operative complaint based on the facts, legal theories, or causes of action contained therein, including but not limited to all of the following claims for relief: (a) unlawful failure to pay all wages, including minimum wages and overtime wages, tips, wages for all hours worked at correct rates, including overtime at the correct regular rates, and all other potential wages; (b) failure to provide proper meal periods, and to properly provide premium pay in lieu thereof; (c) failure to provide proper rest breaks, and to properly provide premium pay in lieu thereof; (d) waiting time penalties for untimely pay during employment and untimely final pay; (e) improper and/or inaccurate wage statements; (f) failure to reimburse expenses; (g) unfair business practices; (h) civil penalties under the Labor Code Private Attorneys General Act ("PAGA"); (i) any other claims or penalties under the wage and hour laws pleaded in the Action; and (j) all damages, penalties, interest and other amounts recoverable under said causes of action under California and federal law, to the extent permissible, including but not limited to the California Labor Code as to the facts alleged in the Action, the applicable Wage Orders as to the facts alleged in the Action, and the California Unfair Competition Law, to the extent permissible, as to the facts alleged in the Action, including the applicable Wage Orders as to the facts alleged in the operative complaint (collectively, the "Released Claims"). The period of the Release shall extend to the limits of the Class Period. The *res judicata* effect of the Judgment will be the same as that of the Release.

11. How Do I Exclude Myself From The Settlement?

To exclude yourself from the settlement, you must send a letter by mail saying that you want to be excluded from the *Spiller v. Tiburon Peninsula Club* Settlement. The letter must state in substance: "I wish to opt out of the settlement of the class action lawsuit entitled *Spiller v. Tiburon Peninsula Club*, Case No. CIV2101589, filed in the Superior Court of California, County of Marin."

Be sure to include your name, address, telephone number, last four digits of your Social Security number, and your signature. You must mail your exclusion request postmarked no later than _____, 2022 and addressed to *****

If you ask to be excluded, you will not get any settlement payment, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) Defendant in the future.

12. If I Don't Exclude Myself, Can I Sue Defendant Or Get Money From The Settlement?

If you do not exclude yourself from the settlement, you cannot sue Defendant for any of the claims that this settlement resolves. If you have a pending lawsuit against the Defendant, speak to your lawyer in that case immediately. You must exclude yourself from this case to continue on your own lawsuit. Remember, the exclusion deadline is _____, 2022.

Similarly, if you exclude yourself from this settlement, you cannot get money from this settlement. But, if you do exclude yourself, you may sue, continue to sue, or be part of a different lawsuit against Defendant.

13. How do I tell the Court that I don't like the Settlement?

If you are a Class Member, you can object to the settlement if you don't like any part of it. You can give reasons why you think the Court should not approve the settlement. If you object in time and follow the following procedures, the Court will consider your views. You may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense, provided you notify the Court of your intent to do so.

All written objections, supporting papers and/or notices of intent to appear at the Final Approval Hearing must (a) clearly identify the case name and number (*Spiller v. Tiburon Peninsula Club*, Case Number CIV2101589), (b) be submitted to the Court either by mailing the to: Clerk of Court, Superior Court of California, County of Marin, 3501 Civic Center Drive, San Rafael, California 94903, or by filing in person at any location of the Superior Court, County of Marin that includes a facility for civil filings, (c) also be mailed to Class Counsel and Defense Counsel, (d) also be mailed to the Settlement Administrator at ****, and (e) be filed and postmarked on or before _____, 2022.

COURT	CLASS COUNSEL	DEFENSE COUNSEL
Superior Court County of Marin 3501 Civic Center Drive San Rafael, CA 94903	COLE & VAN NOTE Scott E. Cole Laura Grace Van Note Cody Alexander Bolce 555 12 th Street, Suite 1725 Oakland, CA 94607	OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C. Douglas J. Farmer Jade Butman One Embarcadero Center, Suite 900 San Francisco, CA 94111

14. What Is The Difference Between Objecting And Excluding?

Objecting is simply telling the Court that you don't like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you. However, if you file an objection, you will still receive settlement benefits under the settlement, if it is approved by the court.

15. Do I have a lawyer in this case?

The Court decided that the law firm of Cole & Van Note is qualified to represent you and all Class Members. You will not be charged for these lawyers. This law firm is referred to as "Class Counsel." If you want to be represented by your own lawyer, you may hire one at your own expense.

16. How Will The Attorneys For The Class and Class Representative Be Paid?

The attorneys for the Plaintiff and the Settlement Class will be paid from the \$300,000.00 Maximum Settlement Amount. Class Counsel will ask for up to \$105,000.00 in attorney's fees and for actual litigation costs incurred, the actual amount of which will be determined by the Court at the Final Approval Hearing (see section 17 below for details). Class Members (like you) do not have to pay the fees and costs of Class Counsel. **If you elect, however, to hire your own lawyer, you have to make your own arrangements to compensate your lawyer.**

If approved by the Court, a Class Representative Service Payment for the Plaintiff of an amount up to \$5,000 will be paid from the Maximum Settlement Amount for his service.

17. Notice of Hearing on Final Approval and Objections to Class Action Settlement.

You are hereby notified that a Final Approval Hearing will be held before the Honorable Stephen P. Freccero, on _____, 2022 at ____ a.m., in Department A of the Superior Court of California for the County of Marin, located at 3501 Civic Center Drive, San Rafael, California 94903, to determine whether the proposed Settlement

is fair, reasonable, and adequate, and should be finally approved by the Court. The Court may adjourn or continue the hearing from time to time, without further notification, as the Court may direct.

Once final approval is granted by the Court, the Court will enter judgment against Defendant, and all Class Members who have not requested exclusion will be deemed to have waived and released any and all causes of action or claims against Defendant that were or could have been asserted in the Action, for such claims which arose between April 26, 2017 through *****.

18. How Do I Get More Information?

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by contacting Plaintiff's Counsel, Scott E. Cole, Esq., of COLE & VAN NOTE, P.C., (510) 891-9800.

WHAT IF I HAVE QUESTIONS?

If you have any questions about the Settlement, you may contact the Settlement Administrator:

Spiller v. Tiburon Peninsula Club,
c/o [Settlement Administrator]
Address
City, CA, Zip
Toll-Free Phone Number: [insert]

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

PLEASE DO NOT CONTACT DEFENDANT, ITS MANAGERS, OR ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS.