

## STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiff Martha Lizaola (“Plaintiff” or “Class Representative”), individually and on behalf of all members of the Settlement Class (defined below), on one hand, and Hawaiian Host Candies of LA LLC, formerly known as Hawaiian Host Candies of L.A. Inc. (“Defendant”), on the other hand. Plaintiff and Defendant are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by Paul K. Haines, Sean M. Blakely and Alexandra R. McIntosh of Haines Law Group, APC (collectively, “Class Counsel”). Defendant is represented by Holger Besch of Seyfarth Shaw LLP.

On May 27, 2021, Plaintiff filed a class action complaint against Defendant in Los Angeles County Superior Court titled *Martha Lizaola v. Hawaiian Host Candies of L.A. Inc.*, Los Angeles Superior Court Case No. 21STCV20136 (the “Action”). On August 13, 2021, Plaintiff filed a First Amended Class and Representative Action Complaint in the Action, alleging that Defendant: (i) failed to pay all minimum wages; (ii) failed to pay all overtime wages; (iii) failed to provide all lawful meal periods; (iv) failed to provide all lawful rest periods; (v) failed to issue accurate, itemized wage statements; (vi) failed to pay all final wages due upon separation of employment; (vii) failed to comply with unfair competition laws; and (viii) is liable for civil penalties under the Private Attorneys General Act (Labor Code § 2698, *et seq.*) (“PAGA”). As part of the Settlement, the Parties will stipulate to the filing of a Second Amended Class and Representative Action Complaint (“SAC”) which will add causes of action under the California WARN Act, Labor Code § 1400, *et seq.*, the federal WARN Act, 29 U.S.C. § 2100, *et seq.*, and violations of the Fair Labor Standards Act (“FLSA”), and add certain factual allegations.

Given the uncertainty of litigation, Plaintiff and Defendant wish to settle both individually and on behalf of the Settlement Class. Accordingly, Plaintiff and Defendant agree as follows:

1. **Settlement Class and PAGA Aggrieved Employees Defined.** For the purposes of this Settlement Agreement only, Plaintiff and Defendant stipulate to the certification of the following Settlement Class:

All current and former non-exempt employees who worked for Defendant in California from May 27, 2017 until August 17, 2022 (the “Class Period”), and who did not sign a “Separation Agreement and General Release.”

The Parties agree that certification for purposes of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

Additionally, the “PAGA Aggrieved Employees” shall be defined as:

All current and former non-exempt employees who worked for Defendant in California from May 27, 2020 until August 17, 2022 (the “PAGA Period”).

2. **Release by Settlement Class Members and Plaintiff.** As of the Effective Date (as defined below), and upon Defendant's complete funding of the Maximum Settlement Amount, Plaintiff and every member of the Settlement Class (except those who submit a timely and valid Request for Exclusion) will release and discharge Defendant and any of its parents, owners, subsidiaries, affiliates, predecessors or successors, and all agents, employees (current and former), officers, directors, insurers and attorneys ("Released Parties"), as follows:

- A. Release by Settlement Class Members. Settlement Class members who do not opt out will release and discharge the Released Parties from liability for all claims that were pled in the operative SAC, or which could have been pled in the operative SAC, based on the factual allegations therein, that arose during the Class Period, including but not limited to claims regarding meal periods, rest periods, calculation and payment of meal and rest period premiums, unpaid wages and overtime, calculation of unpaid wages and overtime (including regular rate), minimum wages, pre and post-shift work, timely payment of wages and final wages, wage statements, recordkeeping, waiting time penalties, improper notice under the federal Worker Adjustment and Retraining Notification Act ("WARN") and/or California WARN Act, and violations of California's Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, et seq.) whether sought under statute, tort, contract or as an unfair business practice, and the Fair Labor Standards Act, 29 U.S.C. Section 201 et seq. or the ("Released Claims"). This release shall run from May 27, 2017 to August 17, 2022.
- B. Released PAGA Claims. Plaintiff and all PAGA Aggrieved Employees will release and discharge the Released Parties from any and all claims under the PAGA premised on the facts and/or allegations in Plaintiff's letter to the LWDA dated May 27, 2021 that arose during the PAGA Period (the "PAGA Release"). It is understood and acknowledged that PAGA Aggrieved Employees receiving a share of the PAGA Amount as set forth in Paragraph 4.B.1 will be issued a check for their share of the PAGA Amount and will not have the opportunity to opt out of, or object to, the PAGA Release as set forth in this Paragraph. The PAGA Release is binding upon Plaintiff and all PAGA Aggrieved Employees upon Court approval and payment of the PAGA Amount as set forth in Paragraph 4.B.1. Further, the PAGA Aggrieved Employees are bound by the PAGA Release regardless of whether they cash their PAGA check.
- C. In light of Plaintiff's Class Representative Enhancement Payment, Plaintiff has agreed to release, as an individual and in addition to the Released Claims described above, all claims, whether known or unknown, under federal law or state law against the Released Parties. Plaintiff understands that this release includes unknown claims and that Plaintiff is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by**

**him or her, would have materially affected his or her settlement with the debtor or released party.**

Nothing contained herein shall constitute a release of any rights or claims that cannot be waived as a matter of law (including but not limited to claims arising under workers' compensation laws). Nor shall anything contained herein be construed to exclude the filing of an administrative charge or complaint with the Equal Employment Opportunity Commission or National Labor Relations Board, or participation in an administrative investigation or proceeding.

3. **Maximum Settlement Amount.** As consideration, Defendant agrees to pay a non-reversionary "Maximum Settlement Amount" of One Hundred Forty Thousand Dollars and Zero Cents (\$140,000.00) in full and complete settlement of the Action, as follows:

- A. The Parties have agreed to engage Phoenix Settlement Administrators as the "Settlement Administrator" to administer this Settlement.
- B. The Maximum Settlement Amount shall be deposited with the Settlement Administrator within thirty (30) calendar days of the Effective Date (which, for this purpose, shall be defined as the later of (1) 60 days after the Court enters an Order granting Final Approval of the Settlement Agreement or, (2) solely in the event that there are any objections to the Settlement Agreement (the filing of an objection being a prerequisite to the filing of an appeal), the later of: (i) the last date on which any appeal might be filed or (ii) the successful resolution of any appeal(s) – including expiration of any time to seek reconsideration or further review.
- C. This is a non-reversionary settlement. The Maximum Settlement Amount includes:
  - (1) All payments (including interest) to the Settlement Class members;
  - (2) All costs of the Settlement Administrator which are anticipated to be no greater than Seven Thousand Dollars and Zero Cents (\$7,000.00);
  - (3) Up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) for Plaintiff's Class Representative Enhancement Payment in recognition for Plaintiff's contributions to the Action and Plaintiff's service to the Settlement Class. In the event that the Court reduces or does not approve the requested Class Representative Enhancement Payment, Plaintiff shall not have the right to revoke the Settlement Agreement for that reason, and the Settlement will remain binding;
  - (4) Up to one-third of the Maximum Settlement Amount in Class Counsel's attorneys' fees (currently estimated at \$46,666.66), plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00). In the event that the Court reduces or does not approve the requested Class Counsel attorneys' fees or costs, Class Counsel shall not have the right to revoke the Settlement

Agreement based on that reason, and the Settlement will remain binding; and

- (5) Ten Thousand Dollars and Zero Cents (\$10,000.00) of the Maximum Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), 75% of such penalties, or Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00), will be payable to the California Labor & Workforce Development Agency (“LWDA”), and the remaining 25%, or Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00), will be payable to the Settlement Class members as the “PAGA Amount,” as described below.
  - D. Any reduction by the Court of these requests will revert to the Net Settlement Amount for distribution to the Settlement Class members who do not opt-out.
  - E. **Escalator Clause.** Defendant represents that there were an estimated 3,085 total workweeks worked by the Settlement Class members during the Class Period. If the number of workweeks worked during the Class Period exceeds this figure by more than 20% (i.e., if there are 3,702 or more total workweeks), Defendant shall increase the Maximum Settlement Amount on a proportional basis above the 20% difference (e.g., if there was a 22% increase in the number of total workweeks, Defendant shall increase the Maximum Settlement Amount by 2%).
  - F. **Employer Payroll Taxes.** The Maximum Settlement Amount does not include Employer Payroll Taxes, which shall be paid by Defendant separate and apart, and in addition to, the Maximum Settlement Amount.
  - G. **Right of Defendant to Rescind.** Defendant has the right to void the settlement if more than 10% of Settlement Class members opt-out of the settlement.
4. **Payments to the Settlement Class.** Settlement Class members are not required to submit a claim form to receive a payment (“Individual Settlement Payment”) from the Settlement. Individual Settlement Payments will be determined and paid as follows:
- A. The Settlement Administrator shall first deduct from the Maximum Settlement Amount the amounts approved by the Court for Class Counsel’s attorneys’ fees, Class Counsel’s costs and expenses, the Class Representative Enhancement Payment, the Settlement Administrator’s fees and expenses for administration, and the amount designated as PAGA civil penalties. The remaining amount shall be known as the “Net Settlement Amount.”
  - B. Payments from the Net Settlement Amount. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class member’s Individual Settlement Payment based on the following formula:
    - i. Wage Statement Amount: 5% of the Net Settlement Amount shall be designated as the “Wage Statement Amount.” Each participating Settlement Class member who was employed by Defendant at any time between May 27,

2020 to August 17, 2022, shall receive a portion of the Wage Statement Amount proportionate to the number of workweeks that he or she worked during the aforementioned time period.

- ii. Waiting Time Amount: 5% of the Net Settlement Amount shall be designated as the “Waiting Time Amount.” The Waiting Time Amount shall be distributed in equal, pro-rata shares to each participating Settlement Class member who separated their employment from Defendant at any time after May 27, 2018.
  - iii. The remainder of the Net Settlement Amount will be distributed to each participating Settlement Class member based on their proportionate number of workweeks worked during the Class Period, by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the Settlement Class member’s total workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all participating Settlement Class members during the Class Period.
- B.1. Payments from the PAGA Amount. In addition to the Net Settlement Amount, 25% of the amount set aside as PAGA penalties (i.e., \$2,500.00) has been set aside as the “PAGA Amount,” as mentioned above. The PAGA Amount shall be paid to all PAGA Aggrieved Employees (regardless of whether they opt out of the Settlement Class) who worked for Defendant at any time during the PAGA Period, based on their proportional number of workweeks worked for Defendant in California during the PAGA Period. Specifically, each Settlement Class member’s payment from the PAGA Amount will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Aggrieved Employee’s number of workweeks worked during the PAGA Period, and the denominator of which is the total workweeks worked by all PAGA Aggrieved Employees during the PAGA Period.
- C. Within ten (10) calendar days following the deposit of the Maximum Settlement Amount with the Settlement Administrator by Defendant, the Settlement Administrator will calculate Individual Settlement Payment amounts, as well as the amount of the employer’s share of payroll taxes due on the wage portion of the Individual Settlement Payments, and provide the same to counsel for review and approval. Within seven (7) calendar days of approval by counsel, the Settlement Administrator will prepare and mail Individual Settlement Payments, less applicable taxes and withholdings, to participating Settlement Class members. The Settlement Administrator shall simultaneously pay the withholdings to the applicable authorities with the necessary reports, submitting copies to Defendant’s counsel.
- D. Each Individual Settlement Payment shall be allocated as 25% wages and 75% penalties and interest. The Settlement Administrator will be responsible for issuing to participating Settlement Class members an IRS Form W-2 (for amounts paid as wages) and an IRS Form 1099 (for amounts paid as penalties and interest). Any payment from the PAGA Amount shall be designated as 100% penalties. The

Settlement Administrator shall be responsible for calculating and withholding all employee-share employment taxes and other legally required withholdings from each Individual Settlement Payment.

- E. Defendant shall fully discharge its obligations to the Settlement Class members through the mailing of an Individual Settlement Payment, regardless of whether such checks are actually received and/or negotiated by the recipients. Each member of the Settlement Class who receives an Individual Settlement Payment must cash that check within 180 days from the date the Settlement Administrator mails it. Any check that is not negotiated within 180 days of mailing to a Settlement Class member will be directed to the State of California's Unclaimed Property Fund, in the name of the Settlement Class members failing to cash their checks, such that there will be no unclaimed residue from this settlement.
- F. Neither Plaintiff nor Defendant shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

5. **Attorneys' Fees and Costs.** Defendant will not object to Class Counsel's request for a total award of attorneys' fees of up to one-third of the Maximum Settlement Amount, which is currently estimated to be Forty-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$46,666.66). Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) from the Maximum Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator for the fee award approved by the Court.

6. **Class Representative Enhancement Payment.** Defendant will not object to a request for Class Representative Enhancement Payment of Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) for Plaintiff's time and risk in prosecuting this case and Plaintiff's service to the Settlement Class. This award will be in addition to Plaintiff's Individual Settlement Payment as a Settlement Class member, and shall be reported on an IRS Form 1099 issued by the Settlement Administrator.

7. **Settlement Administrator.** Defendant will not object to the appointment of Phoenix Settlement Administrators as Settlement Administrator. Defendant will not object to Plaintiff seeking approval to pay up to Seven Thousand Dollars and Zero Cents (\$7,000.00) for the administration services from the Maximum Settlement Amount. The Settlement Administrator shall be responsible for depositing into an account and holding the various payments from Defendant comprising the Maximum Settlement Amount, sending Notice Packets in English and Spanish to the Settlement Class members, calculating Individual Settlement Payments and preparing all checks and mailings, and other duties as described in this Settlement Agreement. The

Settlement Administrator shall be authorized to pay itself from the Maximum Settlement Amount only after Individual Settlement Payments have been mailed to all participating Settlement Class members. The Settlement Administrator shall also give notice of final judgment by posting the Final Judgment to its website.

8. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiff shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for settlement purposes only;
- B. Appointing Paul K. Haines, Sean M. Blakely, and Alexandra R. McIntosh of Haines Law Group, APC as Class Counsel;
- C. Appointing Plaintiff Martha Lizaola as Class Representative for the Settlement Class;
- D. Approving Phoenix Settlement Administrators as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Packet (which is comprised of the Class Notice and Notice of Individual Settlement Payment, and is attached hereto as Exhibits A and B, respectively), and directing the mailing of the same in English and Spanish; and
- G. Scheduling a Final Approval hearing.

9. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within fifteen (15) business days of the Court signing an order preliminarily approving this Agreement, Defendant will provide the Settlement Administrator with the names, last known addresses, phone numbers, social security numbers, positions held, dates of employment, and workweek data for the Settlement Administrator to use to determine the number of workweeks worked by each Settlement Class member during the Class Period, as well as the number of workweeks worked by each PAGA Aggrieved Employee during the PAGA Period.
- B. Within ten (10) business days from receipt of this information, the Settlement Administrator shall (i) run the names of all Settlement Class members through the National Change of Address (“NCOA”) database to determine any updated addresses for Settlement Class members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Individual Settlement Payment for each Settlement Class member; and (iv) mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.

- C. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a “skip trace,” to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within five (5) business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Respond Deadline has expired, whichever is later, to mail a Request for Exclusion, objection, or dispute. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline. If a Settlement Class member’s Notice Packet is returned to the Settlement Administrator more than once as non-deliverable, then an additional Notice Packet shall not be mailed. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Defendant’s Counsel to provide notice of the proposed settlement.
- D. Requests for Exclusion. Any Settlement Class member who wishes to opt-out of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within sixty (60) calendar days of the date of the initial mailing of the Notice Packets (the “Response Deadline”).
- i. The Notice Packet shall state that Settlement Class members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement, except a Request for Exclusion not containing a Settlement Class member’s telephone number and/or last four digits of the Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement (except for any amount due to him or her from the PAGA Amount, if applicable) and will not be bound by the terms of the

Settlement (except for the PAGA release, if applicable) or have any right to object, appeal or comment thereon.

- ii. At no time will the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class member to object to the Settlement or opt-out of the Settlement Class, or encourage any Settlement Class member to appeal from the final judgment.
- E. Objections. Members of the Settlement Class who do not request exclusion may object to this Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendant's counsel, who shall then promptly file all such objections with the Court) by the Response Deadline. Defendant's counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval, unless an objection is filed within ten (10) days of the Motion for Final Approval filing deadline, in which case Defendant's counsel and Class Counsel shall have ten (10) days to respond. To be valid, any objection should: (1) contain the objecting Settlement Class member's full name and current address, as well as contact information for any attorney representing the objecting Settlement Class member for purposes of the objection; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) be postmarked no later than the Response Deadline. Any Settlement Class member who wishes to may also appear in person or through their own counsel and raise an objection at the Final Approval Hearing.
- F. Notice of Individual Settlement Payment / Disputes. Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Settlement Class member's estimated Individual Settlement Payment as well as all of the information that was used to calculate the Individual Settlement Payment. Settlement Class members will have the opportunity, should they disagree with Defendant's records regarding the information stated in the Notice of Individual Settlement Payment, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this Settlement Agreement. However, if the Settlement Administrator and the Parties cannot agree on a resolution, the Parties will submit the dispute to the Court for a final determination.
- G. Defendant understands its legal obligation not to retaliate against the Settlement Class members for their participation and/or election to participate in the benefits to be afforded any of them by the Settlement and/or the Action.

10. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiff's and Class Counsel's application for attorneys' fees and costs, Class Representative Enhancement Payment, settlement administration costs, and payment to the LWDA for its share of civil penalties under PAGA; and
- C. Entering judgment pursuant to California Rule of Court 3.769. Said judgment shall be posted on the Settlement Administrator's website.

11. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this Settlement. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.

12. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

13. **Cooperation.** The Parties agree to work cooperatively, diligently and in good faith to ensure that all necessary documents are timely filed.

14. **Nondisclosure and Nonpublication.** Plaintiff and Class Counsel agree not to disclose or publicize the Settlement Agreement among the parties contemplated herein, the fact of the Settlement Agreement, its terms or contents, and the negotiations underlying the Settlement Agreement, in any manner or form, directly or indirectly, to any person or entity, except Settlement Class members and as shall be contractually required to effectuate the terms of the Settlement Agreement as set forth herein. However, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions, Class Counsel may disclose the names of the Parties in this action and the venue/case number of this action for such purposes.

15. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Plaintiff:

Paul K. Haines of Haines Law Group, APC  
2155 Campus Drive, Suite 180, El Segundo, CA 90245  
phaines@haineslawgroup.com

if to Defendant: Holger Besch of Seyfarth Shaw LLP  
601 South Figueroa Street, Suite 3300, Los Angeles, CA 90017  
hbesch@seyfarth.com

16. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

17. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

18. **Enforcement and Continuing Jurisdiction of the Court.** To the extent consistent with class action procedure, this Settlement Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6. The Court shall retain continuing jurisdiction over this Action and over all Parties and Settlement Class members, to the fullest extent to enforce and effectuate the terms and intent of this Settlement Agreement, and to adjudicate any claimed breaches of this Settlement Agreement. The Court may award reasonable attorneys' fees and costs to the prevailing party in any motion or action taken based on an alleged violation of any material term of this Settlement Agreement.

DATED: DEFENDANT HAWAIIAN HOST CANDIES OF  
LA LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DATED: Nov 28, 2022

PLAINTIFF MARTHA LIZAOLA

By: *Martha Lizaola*  
Martha Lizaola (Nov 28, 2022 11:49 PST)  
Plaintiff and Settlement Class Representative

if to Defendant: Holger Besch of Seyfarth Shaw LLP  
601 South Figueroa Street, Suite 3300, Los Angeles, CA 90017  
hbesch@seyfarth.com

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17. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

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DATED:

11/04/22

DEFENDANT HAWAIIAN HOST CANDIES OF  
LA LLC

By: ESA  
Name: Edward SCHULTZ  
Title: President

DATED:

PLAINTIFF MARTHA LIZAOLA

By: \_\_\_\_\_  
Plaintiff and Settlement Class Representative

**APPROVED AS TO FORM:**

DATED:

SEYFARTH SHAW LLP

By: \_\_\_\_\_  
Holger Besch  
Attorneys for Defendant

DATED: November 28, 2022

HAINES LAW GROUP, APC

By: Sean Blakely \_\_\_\_\_  
Paul K. Haines  
Sean M. Blakely  
Alexandra R. McIntosh  
Attorneys for Plaintiff

**APPROVED AS TO FORM:**

DATED: November 21, 2022

SEYFARTH SHAW LLP

By:   
\_\_\_\_\_  
Holger Besch  
Attorneys for Defendant

DATED:

HAINES LAW GROUP, APC

By: \_\_\_\_\_  
Paul K. Haines  
Sean M. Blakely  
Alexandra R. McIntosh  
Attorneys for Plaintiff

# **EXHIBIT A**

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

MARTHA LIZAOLA, as an individual and on behalf  
of all others similarly situated,

Plaintiff,

vs.

HAWAIIAN HOST CANDIES OF L.A. INC., a  
California Corporation; and DOES 1 through 100,

Defendants.

Case No. 21STCV20136

**NOTICE OF PENDENCY OF CLASS  
ACTION AND PROPOSED SETTLEMENT**

To: All current and former non-exempt employees who worked for Hawaiian Host Candies of L.A. Inc. ("Hawaiian Host") in California from May 27, 2017 until August 17, 2022, and who did not sign a "Separation Agreement and General Release."

**PLEASE READ THIS NOTICE CAREFULLY  
THIS NOTICE IS BEING SENT IN ENGLISH AND SPANISH  
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

***Why should you read this notice?***

The Los Angeles County Superior Court has granted preliminary approval of a proposed class action settlement (the "Settlement") in the case of *Martha Lizaola v. Hawaiian Host Candies of L.A. Inc.*, Los Angeles Superior Court Case No. 21STCV20136 (the "Action"). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

You may be entitled to money from this Settlement. Hawaiian Host's records show that you were employed by Hawaiian Host in California as a non-exempt employee at some point between May 27, 2017 and August 17, 2022 (the "Class Period"). The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this notice is to provide you with a brief description of the Action, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment.

***What is this case about?***

Plaintiff Martha Lizaola ("Plaintiff") brought this Action against Hawaiian Host, seeking to assert claims on behalf of a class of current and former non-exempt employees who worked for Hawaiian Host in California during the Class Period. Plaintiff is known as the "Class Representative," and her attorneys, who also represent the interests of all Settlement Class members, are known as "Class Counsel."

The Action alleges that Hawaiian Host failed to pay Settlement Class members for all earned minimum and overtime wages, failed to provide Settlement Class members with all required meal and rest periods, and violated the California WARN Act by failing to give proper notice of termination. The Action also alleges that Hawaiian Host failed to provide Settlement Class members with accurate and complete wage statements and failed to timely pay all final wages at the time of separation of employment, and as a result of the

foregoing alleged violations, engaged in unfair business practices and is liable for civil penalties under the Labor Code Private Attorneys General Act (“PAGA”).

Hawaiian Host denies that it has done anything wrong. Hawaiian Host denies that it owes Settlement Class members any wages, restitution, penalties, or other damages. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Hawaiian Host, which expressly denies all liability.

The Court has not ruled on the merits of Plaintiff’s claims. However, to avoid additional expense, inconvenience, and interference with its business operations, Hawaiian Host has concluded that it is in its best interests and the interests of Settlement Class members to settle the Action on the terms summarized in this Notice. After Hawaiian Host provided relevant information to Class Counsel, the Settlement was reached after mediation and arm’s-length negotiations between the parties.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Hawaiian Host, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with litigation.

**If you are still employed by Hawaiian Host, your decision about whether to participate in the Settlement will not affect your employment. California law and Hawaiian Host’s policy strictly prohibit unlawful retaliation.** Hawaiian Host will not take any adverse employment action against or otherwise retaliate, or discriminate, against any Settlement Class member because of the Settlement Class member’s decision to either participate or not participate in the Settlement.

#### ***Who are the Attorneys?***

|                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                          |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Attorneys for the Plaintiff/Settlement Class members:<br><br><b>HAINES LAW GROUP, APC</b><br>Paul K. Haines<br>phaines@haineslawgroup.com<br>Sean M. Blakely<br>sblakely@haineslawgroup.com<br>Alexandra R. McIntosh<br>amcintosh@haineslawgroup.com<br>2155 Campus Drive, Suite 180<br>El Segundo, California 90245<br>Tel: (424) 292-2350<br>Fax: (424) 292-2355<br>haineslawgroup.com | Attorneys for Defendant Hawaiian Host:<br><br><b>SEYFARTH SHAW LLP</b><br>Holger G. Besch<br>hbesch@seyfarth.com<br>601 South Figueroa Street, Suite 3300<br>Los Angeles, California 90017<br>Tel: (213) 270-9600<br>Fax: (213) 270-9601<br>seyfarth.com |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

#### ***What are the terms of the Settlement?***

On <<PRELIM APPROVAL DATE>>, the Court preliminarily certified a class, for settlement purposes only, of all current and former non-exempt employees who worked for Hawaiian Host in California between May 17, 2017 and August 17, 2022, and who did not sign a “Separation Agreement and General Release.” Settlement Class members who do not opt out of the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Hawaiian Host as described below.

Hawaiian Host has agreed to pay \$140,000.00 (the “Maximum Settlement Amount”) to fully resolve all claims in the Action, including payments to Settlement Class members, attorneys’ fees and expenses, Settlement Administration costs, PAGA civil penalties, and the Class Representative’s Enhancement Payment.

The following deductions from the Maximum Settlement Amount will be requested by the parties:

Settlement Administration Costs. The Court has approved Phoenix Settlement Administrators to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$7,000.00 from the Maximum Settlement Amount to pay the Settlement Administration costs.

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the Action on behalf of the Settlement Class members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Maximum Settlement Amount. Settlement Class members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for fees of up to one-third of the Maximum Settlement Amount, which is estimated to be \$46,666.66, as reasonable compensation for the work Class Counsel performed and will continue to perform in this Action through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$25,000.00 for verified costs Class Counsel incurred in connection with the Action.

Enhancement Payment to Class Representative. Class Counsel will ask the Court to award the Class Representative an enhancement payment in the amount of \$7,500.00 to compensate her for her service and extra work provided on behalf of the Settlement Class members.

PAGA Civil Penalties. \$7,500.00 will be paid to the California Labor & Workforce Development Agency (“LWDA”), representing 75% of the \$10,000.00 the parties have agreed to allocate to the settlement of Plaintiff’s claim on behalf of the Settlement Class members under the PAGA. The remaining \$2,500.00 will be payable to certain of the Settlement Class members as the “PAGA Amount,” as described below.

Calculation of Settlement Class Members’ Individual Settlement Payments. After deducting the Court-approved amounts above, the balance of the Maximum Settlement Amount will form the Net Settlement Amount (“NSA”), which will be distributed to all Settlement Class members who do not submit a valid and timely Request for Exclusion (described below). The NSA will be divided as follows:

- (i) Wage Statement Amount: 5% of the Net Settlement Amount shall be designated as the “Wage Statement Amount.” Each participating Settlement Class member who was employed by Hawaiian Host at any time between May 27, 2020 and August 17, 2022, shall receive a portion of the Wage Statement Amount proportionate to the number of workweeks that he or she worked during the aforementioned time period.
- (ii) Waiting Time Amount: 5% of the Net Settlement Amount shall be designated as the “Waiting Time Amount.” The Waiting Time Amount shall be distributed in equal, pro-rata shares to each participating Settlement Class member who separated their employment from Hawaiian Host at any time after May 27, 2018.
- (iii) The remainder of the Net Settlement Amount (i.e., 90%) will be distributed to each participating Settlement Class member based on their proportionate number of workweeks worked during the Class Period, by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the Settlement Class member’s total workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all participating Settlement Class members during the Class Period.
- (iv) Payments from the PAGA Amount: In addition to payments from the NSA, \$2,500.00 has been set aside as the “PAGA Amount,” as mentioned above. The PAGA Amount shall be paid to all Settlement Class members (regardless of whether they opt out of the Settlement Class) who worked for Hawaiian Host in California from May 27, 2020 until August 17,

2022 (the “PAGA Period”), based on their proportional number of workweeks worked for Hawaiian Host in California during the PAGA Period.

Payments to Settlement Class Members. If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to all Settlement Class members who did not submit a valid and timely Request for Exclusion. Settlement checks will be valid for 180 days from the date the Settlement Administrator mails it. Any funds payable to Settlement Class members whose checks were not cashed within 180 days after mailing shall be made payable to the State of California’s Unclaimed Property Fund, in the name of the Settlement Class members failing to cash their checks, such that there will be no unclaimed residue from this settlement.

Allocation and Taxes. For tax purposes, each Individual Settlement Payment will be treated as follows: 25% as “wages,” for which an IRS form W-2 will be issued; and 75% as penalties and interest, for which an IRS form 1099 will be issued. Any payment from the PAGA Amount shall be designated as 100% penalties. Settlement Class members are responsible for the proper income tax treatment of the Individual Settlement Payments. The Settlement Administrator, Hawaiian Host and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court approves the Settlement, the Settlement Class, and Settlement Class members who do not opt out will release and discharge Hawaiian Host and any of its parents, owners, subsidiaries, affiliates, predecessors or successors, and all agents, employees (current and former), officers, directors, insurers and attorneys (the “Released Parties”) from liability for all claims that were pled in the operative Second Amended Complaint (“SAC”), or which could have been pled in the operative SAC, based on the factual allegations therein, that arose during the Class Period, including but not limited to claims regarding meal periods, rest periods, calculation and payment of meal and rest period premiums, unpaid wages and overtime, calculation of unpaid wages and overtime (including regular rate), minimum wages, pre and post-shift work, timely payment of wages and final wages, wage statements, recordkeeping, waiting time penalties, improper notice under the federal Worker Adjustment and Retraining Notification Act (“WARN”) and/or California WARN Act, and violations of California’s Unfair Competition Law (Cal. Bus. & Prof. Code & 17200, et seq.) whether sought under statute, tort, contract or as an unfair business practice, and the Fair Labor Standards Act, 29 U.S.C. Section 201 et seq. (“Released Claims”). This release shall run from May 27, 2017 to August 17, 2022. In addition, all Settlement Class members (whether or not they opt out) who worked for Hawaiian Host in California at any point during the PAGA Period will release the Released Parties from any and all claims under the PAGA premised on the facts and/or allegations in Plaintiff’s letter to the LWDA dated May 27, 2021 that arose during the PAGA Period (the “PAGA Release”).

Conditions of Settlement. The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of Judgment.

#### ***How can I claim money from the Settlement?***

Do Nothing. If you do nothing, you will be entitled to your share of the Settlement based on the number of workweeks you worked during the Class Period, the proportionate number of workweeks you worked between May 27, 2020 through August 17, 2022, and whether you ended your employment between May 27, 2018 and August 17, 2022, as stated in the accompanying Notice of Estimated Settlement Award. You also will be bound by the Settlement, including the release of claims stated above.

#### ***What other options do I have?***

Dispute Information in Notice of Settlement Award. Your award is based on the number of workweeks you worked during the Class Period, the proportionate number of workweeks you worked between May 27, 2020 through August 17, 2022, and whether you ended your employment between May 27, 2018 and August 17, 2022. The information contained in Hawaiian Host’s records regarding each of these factors, along with your estimated Individual Settlement Payment, is listed on the accompanying Notice of Estimated Settlement

Award. If you disagree with the information in your Notice of Estimated Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Estimated Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than <<RESPONSE DEADLINE>>. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class members. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this Settlement Agreement. However, if the Settlement Administrator and the Parties cannot agree on a resolution, the Parties will submit the dispute to the Court for a final determination.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator a written "Request for Exclusion" letter or card postmarked no later than <<RESPONSE DEADLINE>>, with your name, address, telephone number, last four digits of your social security number, and your signature.

Send the Request for Exclusion directly to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>. Any person who submits a timely Request for Exclusion from the Settlement shall, upon receipt by the Settlement Administrator, no longer be a Settlement Class member, shall be barred from participating in any portion of the class action Settlement, and shall receive no benefits from the class action Settlement. However, all Settlement Class members who worked for Hawaiian Host during the PAGA Period, including those who opt out, will be bound by the PAGA portion of the Settlement and will receive a portion from the PAGA Amount. **Do not submit both a Dispute and a Request for Exclusion.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you should mail a written objection to the Settlement Administrator. Your written objection must include your name, address, as well as contact information for any attorney representing you regarding your objection, the case name and number, each specific reason in support of your objection, and any legal or factual support for each objection together with any evidence in support of your objection. Objections should be in writing and must be postmarked on or before <<RESPONSE DEADLINE>>. Notwithstanding the foregoing, you do not need to object in writing to be heard at the Final Approval Hearing.

You may also appear at the Final Approval Hearing scheduled for <<FINAL APPROVAL HEARING DATE/TIME>> in Department SSC-12 of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, CA 90012. You have the right to appear either in person or through your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before <<RESPONSE DEADLINE>>. All objections or other correspondence must state the name and number of the case, which is *Martha Lizaola v. Hawaiian Host Candies of L.A. Inc.*, Los Angeles Superior Court Case No. 21STCV20136.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class members who do not object.

#### ***What is the next step?***

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department SSC-12 of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, CA 90012. The Court also will be asked to

rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses and the Enhancement Payment to the Class Representative. The Final Approval Hearing may be postponed without further notice to the Settlement Class. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing. **You are not required to attend the Final Approval Hearing, although any Settlement Class member is welcome to attend the hearing.**

***How can I get additional information?***

This Notice is only a summary of the Action and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, CA. 90012, during regular court hours. You may also contact Class Counsel using the contact information listed above for more information.

**PLEASE DO NOT CALL OR WRITE THE COURT, HAWAIIAN HOST, OR ITS ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS**

***REMINDER AS TO TIME LIMITS***

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is <<RESPONSE DEADLINE>>. These deadlines will be strictly enforced.

**BY ORDER OF THE COURT ENTERED ON <<PRELIM APPROVAL DATE>>.**

# **EXHIBIT B**

## **NOTICE OF ESTIMATED SETTLEMENT AWARD**

*MARTHA LIZAOLA v. HAWAIIAN HOST CANDIES OF L.A. INC.*  
LOS ANGELES COUNTY SUPERIOR COURT CASE NO. 21STCV20136

Please complete, sign, date and return this Form to **<<ADMINISTRATOR CONTACT INFO>>** **ONLY IF** (1) your personal contact information has changed, and/or (2) you wish to dispute any of the items listed in Section (III), below. It is your responsibility to keep a current address on file with the Settlement Administrator.

**(I) Please type or print your name:**

\_\_\_\_\_  
(First, Middle, Last)

**(II) Please type or print the following identifying information if your contact information has changed:**

\_\_\_\_\_  
Former Names (if any)

\_\_\_\_\_  
New Street Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

**(III) Information Used to Calculate Your Settlement Payment:**

According to Hawaiian Host Candies of L.A. Inc.'s ("Hawaiian Host") records:

- (a) you worked [redacted] workweeks for Hawaiian Host in California between May 27, 2017 and August 17, 2022;
- (b) you worked [redacted] workweeks for Hawaiian Host in California between May 27, 2020 and August 17, 2022; and
- (c) your employment with Hawaiian Host **<<DID/DID NOT>>** end between May 27, 2018 and August 17, 2022.

Based on the above, your Settlement Payment is estimated at \$ [redacted].

**(IV) If you disagree with items (a), (b), and/or (c) in Section (III) above, please explain why in the space provided below and include copies of any supporting evidence or documentation with this Form:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If you dispute the above information from Hawaiian Host's records, Hawaiian Host's records will control unless you are able to provide documentation that establishes otherwise and that Hawaiian Host's records are mistaken. If there is a dispute about whether Hawaiian Host's information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved by the Parties and the Settlement Administrator as described in the "Notice of Pendency of Class Action and Proposed Settlement" that accompanies this Form. If the Settlement Administrator and the Parties cannot agree on a resolution, the Parties will submit the dispute to the Court for a final determination.

**ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE POSTMARKED  
NO LATER THAN **<<RESPONSE DEADLINE>>**.**