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15 Attorneys for Defendants
 VELVET YOGURT, INC. d/b/a ACTIVE CULTURE,
 16 and FAYE WICKLAND

17
 18 **SUPERIOR COURT OF CALIFORNIA**
 19 **COUNTY OF ORANGE**

20 MAYTE PEREZ, an individual, on behalf
 of herself and others similarly situated,

21 Plaintiff,

22 vs.

23 VELVET YOGURT, INC. d/b/a ACTIVE
 24 CULTURE, a California corporation; FAYE
 WICKLAND, an individual; and DOES 1
 25 through 50, inclusive,

26 Defendants.
 27
 28

Case No. 30-2021-01221399-CU-OE-CXC

Assigned for All Purposes to:
 Hon. Peter Wilson
 Dept. CX101

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

Action Filed: September 15, 2021
 Trial Date: None Set

1 **JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT**

2 It is stipulated and agreed by and between Plaintiff Mayte Perez (“Plaintiff”) and Defendants
3 Velvet Yogurt, Inc. dba Active Culture and Faye Wickland (collectively “Defendants”) (collectively,
4 Plaintiff and Defendants are referred to as the “Parties”), subject to the approval of the Court pursuant
5 to the California Rules of Court, that the Settlement of this Action shall be effectuated upon and subject
6 to the following terms and conditions. Capitalized terms used herein shall have the meanings set forth
7 in Article I or as defined elsewhere in this Joint Stipulation of Class Action and PAGA Settlement
8 (“Settlement”).

9 This Settlement is made by and between the Parties following a full day mediation session on
10 November 1, 2022 and December 16, 2022 with Henry Bongiovi, Esq. and subsequent mediator’s
11 proposal.

12 The Parties agree that the Action shall be, and is, ended, settled, resolved, and concluded by
13 agreement of Defendants to pay the settlement amount of Ninety Thousand Dollars (\$90,000), as
14 provided in Section III(D)(7)(a) below (“Gross Settlement Amount”) pursuant to the terms and
15 conditions of this Settlement and for the consideration set forth herein, including but not limited to, a
16 release of all claims by Plaintiff and the Class Members as set forth herein.

17 **I. DEFINITIONS**

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

20 A. “Action” means the action filed on September 15, 2021 in the Orange Superior Court,
21 titled *Perez v. Velvet Yogurt, Inc. d/b/a Active Culture, et al.*, Case No. 30-2021-01221399-CU-OE-
22 CXC.

23 B. “Aggrieved Employees” means all persons currently or formerly employed as non-
24 exempt employees in California by Defendants at any time during the PAGA Period (defined below).

25 C. “Class” means all persons currently or formerly employed as non-exempt employees
26 in California by Defendants at any time during the Class Period (defined below) who do not timely
27 and validly exclude themselves from the Class in compliance with the exclusion procedures set forth
28 in this Settlement.

D. “Class Counsel” means the attorneys for the Class and the Class Members, as follows:

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E. “Class Member(s)” means all members of the Class.

F. “Class Notice” means the Notice of Proposed Class Action Settlement in a form substantially similar to the notice attached hereto as **Exhibit A**, subject to Court approval.

G. “Class Period” means September 15, 2017 through the Preliminary Approval Date of the Settlement or an earlier date at Defendants’ discretion per Section III(D)(5).

H. “Court” means the Orange Superior Court, where the Action is pending.

I. “Effective Date” means the later of the following: (1) the date the Final Approval Order is signed if no objections are filed to the Settlement; (2) if objections are filed and overruled, and no appeal is taken of the Final Approval Order, sixty (60) days after the Final Approval Order is signed; or (3) if an appeal is taken from the Court’s overruling of objections to the Settlement, ten (10) days after the appeal is withdrawn or after an appellate decision affirming the final approval decision becomes final.

J. “Defendants” mean Velvet Yogurt, Inc. d/b/a Active Culture and Faye Wickland.

K. “Defense Counsel” means counsel for Defendants, who are:

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

4 M. "Enhancement Award" means an amount of up to Five Thousand Dollars (\$5,000) for
5 Plaintiff Mayte Perez, subject to Court approval.

6 N. "Final Approval Order" means the final formal court order signed by the Court and
7 entering a judgment approving this Settlement on substantially the terms provided herein or as the
8 same may be modified by subsequent written agreement of the Parties as approved by the Court
9 following the Final Approval Hearing in accordance with the terms herein.

10 O. "Gross Settlement Amount" means Ninety Thousand Dollars (\$90,000), unless
11 increased on a pro rata basis pursuant to Section III(D)(5) to be paid by Defendants, at their discretion
12 based on the pro rata factors, and pursuant to the terms of this Settlement to settle this Action. All
13 claims of the Settlement Class, including all wages, damages, interest, penalties, and all administration
14 costs, attorney's fees and costs, Enhancement Award, and LWDA Payment (defined below) pursuant
15 to Section III(D)(7) below, shall be paid out of the Gross Settlement Amount. The employer's share
16 of payroll taxes arising from the payments made under this settlement shall be paid by Defendants
17 separate from and in addition to the Gross Settlement Amount. No part of the Gross Settlement amount
18 shall revert to Defendants.

19 P. "Individual Settlement Payments" means the amounts of money from the Net
20 Settlement Amount that shall be paid to Participating Class Members less the employee's portion of
21 required federal and state withholdings. Individual Settlement Payments will be each Participating
22 Class Member's proportional share of the Net Settlement Amount (which shall be determined by the
23 calculations provided in this Settlement).

24 Q. "Judgment" refers to the judgment entered by the Court in conjunction with the Final
25 Approval Order.

26 R. "LWDA Payment" means 75% of the \$2,500 allocated to settlement of PAGA claims,
27 which will be paid to the Labor and Workforce Development Agency ("LWDA") pursuant to Section
28 III(D)(7)(e) of this Settlement, subject to Court approval.

1 S. "Net Settlement Amount" means the Gross Settlement Amount less the Court-
2 approved settlement administration costs, attorney's fees and costs, Enhancement Award, and LWDA
3 Payment, pursuant to Section III(D)(7) below.

4 T. "Non-Participating Class Member(s)" means those Class Members who submit to the
5 Settlement Administrator a valid and timely Exclusion Form to be excluded from the Class pursuant
6 to Section III(D)(2) below.

7 U. "Objection" means a signed written objection to the Settlement by a Class Member,
8 that is timely mailed to the Settlement Administrator, setting forth the grounds for the objection, along
9 with any supporting documents, the Class Member's address, telephone number, reference to the
10 Action, and whether they intend to appear at the Final Approval Hearing.

11 V. "PAGA Period" means September 11, 2020 through the Preliminary Approval Date of
12 the Settlement or an earlier date at Defendants' discretion per Section III(D)(5).

13 W. "Participating Class Member(s)" is defined as a Class Member who does not timely
14 exclude himself or herself from the Settlement and will therefore receive his or her share of the
15 Settlement proceeds automatically without the need to return a claim form. Each Participating Class
16 Member will be paid his/her Individual Settlement Payment.

17 X. "Plaintiff" means Mayte Perez.

18 Y. "Preliminary Approval Date" means the date the Court preliminarily approves the
19 Settlement.

20 Z. "Qualifying Pay Periods" means any pay period during which an Aggrieved Employee
21 was employed by Defendants during the PAGA Period.

22 AA. "Qualifying Workweeks" means any week during which a Class Member was
23 employed by Defendants during the Class Period.

24 BB. "Request for Exclusion" means the Exclusion Form that will be enclosed with the Class
25 Notice that Class Members can use to opt out or exclude themselves from the Settlement. In order for
26 a Request for Exclusion to be valid, the Exclusion Form must be signed and postmarked by the
27 deadline provided for in Sections III(C) and III(D)(2) below, and mailed to the Settlement
28 Administrator at the address specified in the Class Notice.

1 CC. "Settlement" means this Joint Stipulation of Class Action Settlement, including the
2 attached Exhibit.

3 DD. "Settlement Administration Costs" means an amount of up to Eight Thousand Seven
4 Hundred and Fifty Dollars (\$8,750), subject to Court approval, for all costs incurred by the Settlement
5 Administrator in administration of the Settlement, including, but not limited to, mailing of notice to
6 the class, calculation of Individual Settlement Payments, generation of Individual Settlement Payment
7 checks and related tax reporting forms, administration of unclaimed and/or uncashed checks to the
8 California State Controller's Office's Unclaimed Property Division, and distribution of checks to
9 Class Counsel for attorneys' fees and costs, to Plaintiff for her Enhancement Award, and to the
10 LWDA. The Settlement Administration Costs shall be paid from the Gross Settlement Amount.

11 EE. "Settlement Administrator" means Phoenix Class Action Administration Solutions,
12 which the Parties have agreed will be responsible for the administration of the Individual Settlement
13 Payments to be made by Defendants from the Gross Settlement Amount and related matters under this
14 Settlement.

15 **II. CONTINGENT NATURE OF THE AGREEMENT**

16 Because the Parties have stipulated to the certification of the Class with respect to all causes
17 of action alleged in the Action for settlement purposes only, this Settlement requires preliminary and
18 final approval by the Court. Accordingly, the Parties enter into this Settlement on a conditional basis.
19 This Settlement is contingent upon the approval and certification by the Court. If the Effective Date
20 does not occur, the fact that the Parties were willing to stipulate for the purposes of this Settlement
21 shall have no bearing on, nor be admissible in connection with, the issue of certification of the Class
22 with respect to all causes of action alleged in the Action, and this Settlement shall not be referred to
23 or used for any purpose whatsoever. Defendants do not consent to certification of the Class for any
24 purpose other than to effectuate settlement of the Action. If the Effective Date does not occur, or if
25 disposition of this Action is not effectuated, any certification of the Class as to Defendants will be
26 vacated and Plaintiff, Defendants, and the Class will be returned to their respective positions in the
27 Action as if the Settlement had not been executed. In the event that the Effective Date does not occur:
28 (a) any Court orders preliminarily or finally approving certification of any class contemplated by this

1 Settlement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or
2 entity; and (b) the fact of the settlement reflected in this Settlement, the fact that Defendants did not
3 oppose the certification of a Class under this Settlement, or that the Court preliminarily approved the
4 certification of the Class, shall not be used or cited thereafter by any person or entity, including in any
5 manner whatsoever, including without limitation any contested proceeding relating to the certification
6 of any class. If the Effective Date does not occur, this Settlement shall be deemed null and void, shall
7 be of no force or effect whatsoever, and shall not be referred to or used for any purpose whatsoever.
8 Defendants expressly reserve the right to challenge the propriety of class certification in the Action
9 for any purpose if the Effective Date does not occur.

10 The Parties and their respective counsel shall take all steps that may be requested by the Court
11 relating to the approval and implementation of this Settlement and shall otherwise use their respective
12 best efforts to obtain Court approval and implement this Settlement. If the Court does not grant the
13 Motion for Preliminary Approval and/or the Motion for Final Approval, the Parties agree to meet and
14 confer in good faith to address the Court's concerns. If the Parties are unable to agree upon a
15 resolution, the Parties agree to seek guidance from the Court to resolve the dispute.

16 **III. PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT**

17 The procedure for obtaining Court approval of and implementing this Settlement shall be as
18 follows:

19 **A. Motion for Conditional Class Certification and Preliminary Approval**

20 Plaintiff will bring a motion before the Court for an order conditionally certifying the Class to
21 include all claims pled in the Action based on the preliminary approval of this Settlement. The date
22 that the Court grants preliminary approval of this Agreement will be the "Preliminary Approval Date."
23 Pursuant to California Labor Code § 2699(1)(1), Plaintiff shall submit to the LWDA a copy of this
24 Agreement and all supporting approval documents required by the LWDA at the same time that
25 Plaintiff submits them to the Court for approval.

26 **B. The Settlement Administrator**

27 The Parties have chosen Phoenix Class Action Administration Solutions to administer this
28 Settlement and to act as the Settlement Administrator, including but not limited to distributing and

1 responding to inquiries about the Class Notice, determining the validity of exclusions/opt-outs,
2 calculating the Net Settlement Amount and the Individual Settlement Payments, issuing the Individual
3 Settlement Payment checks and distributing them to Participating Class Members, administering and
4 making payment of unclaimed and/or uncashed checks to the California State Controller's Office's
5 Unclaimed Property Division, issuing the payment to Class Counsel for attorneys' fees and costs, the
6 Enhancement Award check to Plaintiff, the LWDA Payment, and the employer payroll taxes to the
7 appropriate taxing authorities. The Settlement Administrator shall expressly agree to all of the terms
8 and conditions of this Settlement.

9 All costs of administering the Settlement, including but not limited to all costs and fees
10 associated with preparing, issuing and mailing any and all notices to Class Members and/or
11 Participating Class Members, all costs and fees associated with computing, processing, reviewing, and
12 mailing the Individual Settlement Payments, all costs and fees administering and making payment of
13 unclaimed and/or uncashed checks to the California State Controller's Office's Unclaimed Property
14 Division, all costs and fees associated with preparing any tax returns and any other filings required by
15 any governmental taxing authority or agency, all costs and fees associated with preparing any other
16 checks, notices, reports, or filings to be prepared in the course of administering disbursements from
17 the Net Settlement Amount, and any other costs and fees incurred and/or charged by the Settlement
18 Administrator in connection with the execution of its duties under this Settlement ("Settlement
19 Administration Costs"), shall be paid to the Settlement Administrator from the Gross Settlement
20 Amount.

21 **C. Notice to Class Members**

22 No later than fifteen (15) business days after the Preliminary Approval Date, Defendants will
23 provide the Settlement Administrator with a "Class List," compiled using Microsoft Excel, based on
24 its business records, identifying the names of the Class Members, their last known home addresses,
25 Social Security numbers or, as applicable, other taxpayer identification number, and their dates of
26 employment during the Class Period. This information shall be treated as confidential and shall not be
27 disclosed to Plaintiff, Class Counsel or any other person without prior approval from Defendants'
28 Counsel.

1 Within ten (10) business days of receiving the Class List from Defendants, the Settlement
2 Administrator will send Class Members, by first-class mail, at their last known address, the Court
3 approved Class Notice, including notice of this settlement and of the opportunity to opt out of the
4 Settlement Class or object to the Settlement. The Class Notice will include a calculation of the Class
5 Member's minimum share of the Net Settlement Amount. Class Members will have forty-five (45)
6 days from the date of mailing in which to postmark Requests for Exclusion or Objections. Prior to the
7 initial mailing, the Settlement Administrator will check all Class Member addresses against the
8 National Change of Address database and shall update any addresses before mailing. The Settlement
9 Administrator will skip trace and re-mail all returned, undelivered mail within five (5) days of
10 receiving notice that a notice was undeliverable. If a Class Member's notice is re-mailed, the Class
11 Member shall have fifteen (15) days from the re-mailing, or forty-five (45) days from the date of the
12 initial mailing, whichever is later, in which to postmark a Request for Exclusion or Objection. Class
13 Members shall not be required to submit claim forms in order to receive their Individual Settlement
14 Payments.

15 If the Class Notice is returned with a forwarding address, the Settlement Administrator shall
16 re-mail the Class Notice to the forwarding address. With respect to those Class Members whose Class
17 Notice is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall
18 promptly attempt to obtain a valid mailing address by performing a skip trace or mass search on
19 LexisNexis databases based on set criteria and, if another address is identified, shall mail the Class
20 Notice to the newly identified address. It is the intent of the parties that reasonable means be used to
21 locate Class Members and that the Settlement Administrator be given discretion to take steps in order
22 to facilitate notice of this Settlement and delivery of the Individual Settlement Payments to the
23 Settlement Class. If no address can be determined by the Settlement Administrator after these efforts,
24 no further efforts to determine an address shall be required.

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

28 In the event a Class Member's Class Notice remains undeliverable sixty (60) days after the

1 Class Notice was initially mailed, the Settlement Administrator will not mail the Class Member's
2 Individual Settlement Payment. The Settlement Administrator will hold the Class Member's
3 Individual Settlement Payment during the check cashing period on behalf of the Class Member. If at
4 the conclusion of the check cashing period the Class Member's Class Notice and Individual Settlement
5 Payment remain undeliverable and/or unclaimed and uncashed, the Settlement Administrator will
6 distribute the funds from unclaimed/uncashed checks in accordance with the procedures set forth in
7 Section III(D)(7)(f) below.

8 No later than twenty (20) business days prior to the Final Approval Hearing, the Settlement
9 Administrator shall provide Defense Counsel and Class Counsel with a declaration attesting to
10 completion of the notice process, including any attempts to obtain valid mailing addresses for and re-
11 sending of any returned Class Notices, as well as the number of valid Requests for Exclusion and
12 Objections that the Settlement Administrator received.

13 Compliance with the procedures described in this section shall constitute due and sufficient
14 notice to Class Members of this proposed Settlement and the Final Approval Hearing and shall satisfy
15 the requirements of due process. Nothing else shall be required of the Parties, Class Counsel, Defense
16 Counsel, or the Settlement Administrator to provide notice of the proposed Settlement and the Final
17 Approval Hearing. However, if any Class Member objects to the Settlement and the Final Approval
18 Hearing is continued as a result, the Settlement Administrator shall provide notice to the objecting
19 party of the continuance.

20 **D. Responses to Notice**

21 **1. Class Member Disputes**

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

1 dispute, the Settlement Administrator will be the final arbiter of the Qualifying Workweeks for each
2 Class Member during the Class Period based on the information provided to it. Any dispute not
3 otherwise resolved by the Administrator and the Parties shall be resolved by the Court.

4 **2. Requests for Exclusion from the Class**

5 The Plaintiff may not request exclusion from the Class. In order for any Class Member to
6 validly exclude himself or herself from the Class and this Settlement (*i.e.*, to validly opt out), the
7 Exclusion Form must be completed and signed by the Class Member or his or her authorized
8 representative, and must be mailed to the Settlement Administrator, postmarked by no later than forty-
9 five (45) days after the date the Settlement Administrator initially mails the Class Notice to the Class
10 Members (or fifteen (15) days after the Settlement Administrator re-mails the Class Notice to the Class
11 Member, whichever is later). The Class Notice shall contain instructions that the Exclusion Form
12 must be mailed, the date by which it must be mailed, and state the name and address of the Settlement
13 Administrator. The date of the initial mailing of the Class Notice, and the date the signed Exclusion
14 Form was postmarked, shall be conclusively determined according to the records of the Settlement
15 Administrator. Any Class Member who timely and validly requests exclusion from the Class and this
16 Settlement will not be entitled to any Individual Settlement Payment arising from the Class claims,
17 will not be bound by the terms and conditions of this Settlement as to the Class claims, and will not
18 have any right to object, appeal, or comment thereon. However, the proposed settlement includes the
19 settlement of claims for civil penalties under PAGA. An employee may not request exclusion from
20 the settlement of a PAGA claim. Thus, if the court approves the Settlement, then even if a Class
21 Member requests exclusion from the Settlement, the Class Member will still receive an individual
22 settlement share for the PAGA claims pursuant to the terms in Section III(D)(7)(e) below, and will be
23 deemed to have released the PAGA claims. A Request for Exclusion will preserve the Class Member's
24 right to individually pursue only the remaining Class claims.

25 Any Class Member who fails to timely submit a Request for Exclusion shall automatically be
26 deemed a Class Member whose rights and claims with respect to the issues raised in the Action are
27 determined by the Court's Final Approval Order, and by the other rulings in the Action.

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3. Objections to Settlement

The Plaintiff may not object to the Settlement. For any Class Member to object to this Settlement, or any term of it, the person making the objection must not submit a Request for Exclusion (*i.e.*, must not opt out), and should complete, sign and send the Objection using the instructions provided in the Class Notice to the Settlement Administrator, postmarked no later than forty-five (45) days after the Class Notice was initially mailed to the Class Members (or fifteen (15) days after the Settlement Administrator re-mails the Notice to the Class Member, whichever is later), along with all supporting papers. The date of the initial mailing of the Class Notice, and the date the signed Objection was postmarked, shall be conclusively determined according to the records of the Settlement Administrator. The Settlement Administrator shall send any Objections it receives to Defense Counsel and Class Counsel within three (3) business days of receipt. The Court retains final authority with respect to the consideration and admissibility of any Class Member objections.

4. Encouragement of Class Members

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

5. Defendants' Right to Adjust Gross Settlement Amount

When the Parties agreed to settle this matter, Defendants estimated the number of putative Class Members as 283. If the number of Class Members increases by more than 10% as of the end of the Class Period, Defendants will have the option to either (a) accept the pro rata increase by the gross average recovery by class members for each additional class member over 283, or (b) cut off the Release Period at the day before the pro rata increase would be triggered but must provide the earlier date before Plaintiff's deadline to file her motion for preliminary approval of class action settlement.

6. Final Approval Hearing

On the date set forth in the Order for Preliminary Approval and Class Notice, a Final Approval Hearing shall be held before the Court in order to (1) review this Settlement and determine whether the Court should give it final approval, and (2) consider any objections made and all responses by the

1 Parties to such objections. At the Final Approval Hearing, the Parties shall ask the Court to give final
2 approval to this Settlement and shall submit to the Court a Proposed Final Approval Order.

3 a. Waiver of Right to Appeal

4 Provided that the Final Approval Order is consistent with the terms and conditions of this
5 Settlement, all Class Members who do not submit timely written objections to the Settlement or orally
6 object at the Final Approval Hearing hereby waive any and all rights to appeal from the Final Approval
7 Order and Judgment, including all rights to any post-Final Approval Order proceeding and appellate
8 proceeding, such as a motion to vacate or set-aside the Final Approval Order and Judgment, a motion
9 for new trial, and any extraordinary writ, and the Final Approval Order and Judgment therefore shall
10 become final and non-appealable at the time it is entered. This waiver does not include any waiver of
11 the right to oppose any appeal, appellate proceedings, or post-Final Order proceedings. A modification
12 by the Court of the requested amount of the Enhancement or Class Counsel's fees or costs shall not
13 constitute a basis for appeal of the Final Approval Order within the meaning of this paragraph.

14 b. Vacation, Reversal, or Material Modification of Final Order and
15 Judgment on Appeal or Review

16 If, after a notice of appeal or a petition for a writ of *certiorari* or any other motion, petition, or
17 application, the reviewing court vacates, reverses, or modifies the Final Approval Order such that there
18 is a material modification to the Settlement and that court's decision is not completely reversed, and
19 the Final Approval Order is not fully affirmed on review by a higher court, then Plaintiff and
20 Defendants shall each have the right, but not the obligation, to void the Settlement, which the Party
21 must do by giving written notice to the other Party, the final reviewing court, and the Court no later
22 than thirty (30) days after the final reviewing court's decision vacating, reversing, or materially
23 modifying the Final Order becomes final and non-appealable. A vacation, reversal, or modification
24 of the Court's award of the Enhancement or Class Counsel's fees or costs shall not constitute a
25 vacation, reversal, or material modification of the Final Order and Judgment within the meaning of
26 this paragraph.

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1 **7. Settlement Payment Procedures**

2 a. Gross Settlement Amount

3 In exchange for the releases set forth in this Agreement, Defendants agree to pay the Gross
4 Settlement Amount in the amount of Ninety Thousand Dollars (\$90,000), subject to a pro rata increase
5 under the condition set forth in Section III(D)(5). The Gross Settlement Amount includes all claims
6 of the Settlement Class and all Settlement Administration costs, Class Counsel's attorney's fees and
7 costs, LWDA Payment, and Enhancement Award.

8 No later than ten (10) calendar days after the Court's final approval of the Settlement (i.e., the
9 date the final approval order is signed), Defendants will transfer the Gross Settlement Amount into an
10 account established by the Settlement Administrator either directly or by sending the funds to the
11 Settlement Administer to be deposited and distributed. All of Defendants' obligations under this
12 Settlement are deemed to be satisfied upon Defendants' timely deposit of the entire Gross Settlement
13 Amount and acknowledgement of receipt of said funds and Defendants shall have no further
14 obligations to the Class including, without limitation, any further obligations to make any other
15 payments of any kind to, or on behalf of, the Class (except for the employer's share of payroll taxes).

16 The Settlement Administrator will use these funds to fund payment of the Individual
17 Settlement Payments to Participating Class Members, Class Counsel's attorneys' fees and costs,
18 LWDA Payment, the Enhancement Award, and employer and employee tax withholdings applicable
19 to the Net Settlement Amount allocated to wages. Ten (10) calendar days after Defendants fully fund
20 the Settlement, the Settlement Administrator will pay the Class Members' Individual Settlement
21 Payments, Court-approved attorney's fees and costs, settlement administration costs, Enhancement
22 Award, and LWDA Payment.

23 b. Payment of Attorneys' Fees and Costs

24 Class Counsel shall submit an application for an award of attorneys' fees of up to one-third of
25 the Gross Settlement Amount (which may increase pursuant to Section III(D)(5), i.e., pro rata increase
26 provision), which, based on the current Gross Settlement Amount, is Thirty Thousand Dollars
27 (\$30,000). Class Counsel shall submit an application for an award of costs not to exceed Twenty
28 Thousand Dollars (\$20,000). Such application for attorneys' fees and costs shall be heard by the Court

1 at the Final Approval Hearing. Defendants shall not object to or oppose any such application in these
2 amounts.

3 Any fees and costs awarded by the Court shall be paid from the Gross Settlement Amount and
4 shall not constitute payment to any Class Member(s). The attorneys' fees and costs for Class Counsel
5 approved by the Court shall encompass all work performed, costs, and expenses related to the
6 investigation, prosecution, and settlement of the Action incurred through the Effective Date. To the
7 extent that the Court approves less than the amount of attorney's fees and/or costs that Class Counsel
8 requests, the difference between the requested and awarded amounts will be reallocated to the Net
9 Settlement Amount.

10 Any award of attorneys' fees and costs shall include and satisfy all past and future attorneys'
11 fees and costs incurred to prosecute, settle, and participate in administering the Settlement, including
12 obtaining the Final Approval Order. Defendants shall have no obligation to Class Counsel for any
13 attorneys' fees and costs incurred in prosecuting this Action other than as stated herein, provided that
14 Defendants fully comply with the terms of this Settlement, including but not limited to timely payment
15 of the Gross Settlement Amount.

16 c. Payment of Settlement Administration Costs

17 The Settlement Administration Costs shall be paid out of the Gross Settlement Amount and
18 shall not constitute payment to any Participating Class Member(s). The amount shall not exceed Eight
19 Thousand Seven Hundred and Fifty Dollars (\$8,750).

20 d. Payment of Enhancement Award to Named Plaintiff

21 Subject to Court approval, Plaintiff shall receive an Enhancement Award of up to Five
22 Thousand Dollars (\$5,000), the request for which Defendants will not object to or oppose. The
23 Enhancement Award shall be paid out of the Gross Settlement Amount and shall not constitute
24 payment to any Participating Class Member(s). To the extent that the Court approves less than the
25 amount of Enhancement Award that Class Counsel requests, the difference between the requested and
26 awarded amounts will be reallocated to the Net Settlement Amount.

27 Because it is the intent of the Parties that the Enhancement Award represents payment to
28 Plaintiff for her service to the Class Members, and not wages, the Settlement Administrator will not

1 withhold any taxes from the Enhancement Award. The Enhancement Award will be reported on a
2 Form 1099, which the Settlement Administrator will provide to Plaintiff and to the pertinent taxing
3 authorities as required by law.

4 Although it is the contemplation of the Parties that the Enhancement Award does not represent
5 wages, the Internal Revenue Service, the California Franchise Tax Board, or some other taxing
6 authority may take the position that some or all of the Enhancement Award constitutes wages for
7 income tax and withholding purposes. Plaintiff agrees to assume the responsibility of remitting to the
8 Internal Revenue Service, the California Franchise Tax Board, and any other relevant taxing authority
9 the amounts required by law, if any, to be withheld by Defendants from the Enhancement Award paid
10 under this Settlement. In addition, Plaintiff shall hold Defendants, Released Parties and Class Counsel
11 harmless and indemnify Defendants, Released Parties and Class Counsel for all taxes, interest,
12 penalties, other payments and costs, incurred by Defendants by reason of any valid claims by taxing
13 authorities relating to the non-withholding of taxes from the Enhancement Award.

14 e. Payment to the Labor and Workforce Development Agency and the
15 Class for Settlement of PAGA Claims

16 In consideration of claims made under the California Private Attorneys General Act
17 (“PAGA”), Cal. Labor Code §§ 2698 et seq., Class Counsel will request that the Court approve
18 allocation of Two Thousand and Five Hundred Dollars (\$2,500) of the Gross Settlement Amount to
19 these claims (“PAGA Penalties”). Seventy-five percent (75%) of the PAGA Penalties will be paid to
20 the California Labor and Workforce Development Agency (“LWDA Payment”) and twenty-five
21 percent (25%) will be paid on a pro rata basis to all Aggrieved Employees based on the individual
22 Qualifying Pay Periods worked during the PAGA Period by each Aggrieved Employee, regardless of
23 whether or not they opt out of this Settlement (“PAGA Settlement Payment”). Defendants will not
24 oppose this request. The LWDA Payment and PAGA Settlement Payment will be paid out of the
25 Gross Settlement Amount. The Court’s adjustment, if any, of the amount allocated to Plaintiff’s
26 PAGA claim will not invalidate this Settlement.

27 ///

28 ///

f. Payment of Individual Settlement Payments to Participating Class Members

The Parties agree that the Net Settlement Amount shall be used to fund Individual Settlement Payments. The Parties agree that the Net Settlement Amount shall be divided among all Participating Class Members in proportion to the number of individual Qualifying Workweeks for each Class Member, except for the PAGA portion of the net recovery which will be calculated and distributed to Aggrieved Employees based on their Qualifying Pay Periods as described in section III(D)(7)(e). To calculate the minimum amount, each Class Member will receive based on their individual Qualifying Workweeks, the Net Settlement Amount will be divided by the total number of Qualifying Workweeks by all Class Members during the Class Period and then allocated on a pro rata basis. Each Class Member's individual amount will be included in his or her Class Notice. After final approval by the Court, the Net Settlement Amount will be distributed to Participating Class Members on a pro rata basis based on the individual Qualifying Workweeks worked during the Class Period by each Participating Class Member.

Each Individual Settlement Payment will represent wages and penalties allocated using the following formula: 45% allocated to wages, 45% allocated to penalties and interest, and 10% reimbursements. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms. The employer-side taxes (including employer's portion of FICA, FUTA, SUTA, and all other applicable payroll taxes) will be paid by Defendants separate from and in addition to the Gross Settlement Amount. The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms. Defendants shall not make as part of this Settlement, nor be required to make, any deductions, nor pay any monthly contributions for any insurance, retirement, 401(k) or profit-sharing plans, or any benefit plans related to monies paid as a result of this Settlement.

Based on the Class List, the Settlement Administrator shall calculate: (a) the Net Settlement Amount, (b) the Individual Settlement Payment for each Participating Class Member based on the formula specified above, (c) the amount of the Individual Settlement Payments to be allocated to

1 wages, interest and penalties, and reimbursements based on the formula specified above, (d) the
2 employer share of the payroll taxes applicable to the Net Settlement Amount allocated to wages, and
3 (e) the employee tax withholding amount based on the allocation of each Individual Settlement
4 Payment to wages.

5 No later than ten (10) business days after receiving the entire Gross Settlement Amount from
6 Defendants, the Settlement Administrator shall prepare and mail the checks for the Individual
7 Settlement Payments to Participating Class Members. Defendants shall not bear any liability for lost
8 or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Individual
9 Settlement Payments paid from the Net Settlement Amount allocated to wages will be reduced by
10 applicable employer and employee tax withholdings, and the Settlement Administrator will issue a
11 Form W-2 for the wage portion of the Individual Settlement Payments. The Settlement Administrator
12 will issue a Form 1099 to the extent required by law for the interest and penalty portions of the
13 Individual Settlement Payments. Participating Class Members shall have 180 days from the date their
14 Individual Settlement Payment checks are dated to cash their settlement checks. Any amounts from
15 checks that remain unclaimed and/or uncashed after 180 days of issuance will be disbursed to the
16 California State Controller's Office's Unclaimed Property Division.

17 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
18 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or
19 a mass search on LexisNexis databases or other databases based on set criteria and, if another address
20 is identified, shall mail the check to the newly identified address. If the Settlement Administrator is
21 unable to obtain a valid mailing address through this process, the Settlement Administrator will also
22 transfer the amount represented by the check to California State Controller's Office's Unclaimed
23 Property Division.

24 g. No Credit Toward Benefit Plans

25 The Individual Settlement Payments made to Participating Class Members under this
26 Agreement, as well as any other payments made pursuant to this Agreement, will not be utilized to
27 calculate any additional benefits under any benefit plans to which any Class Members may be eligible,
28 including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans,

1 vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties'
2 intention that this Settlement will not affect any rights, contributions, or amounts to which any Class
3 Members may be entitled under any benefit plans.

4 h. No Effect on Regular Rate or Overtime Compensation

5 Participating Class Members will receive payment under the Settlement as determined by the
6 Settlement Administrator in accordance with this Agreement. The Parties agree that this payment is
7 not viewed as additional compensation for purposes of calculating a "regular rate" of pay under
8 California or federal law for the period during which it is received, and no additional overtime
9 compensation is required as a result of such payment.

10 i. Tax Liability

11 The Parties and counsel for the Parties make no representation as to the tax treatment or legal
12 effect of the payments called for hereunder. Plaintiff and Participating Class Members are not relying
13 on any statement, representation, or calculation by the Parties, counsel for the Parties, or the Settlement
14 Administrator in this regard. Plaintiff, Participating Class Members, and Plaintiff's Counsel
15 understand and agree that they will be solely responsible for the payment of their own portion of any
16 taxes and penalties assessed on the payments that they receive.

17 j. No Additional Contribution by Defendant

18 Other than as set forth above, Defendants shall not be called upon or required to contribute
19 additional monies above the Settlement under any circumstances whatsoever except as specifically set
20 forth herein. In the event that this Settlement is canceled, rescinded, terminated, voided, or nullified,
21 however that may occur, or the Settlement of the Action is barred by operation of law, or invalidated,
22 or ordered not to be carried out by a court of competent jurisdiction, Defendants shall cease to have
23 any obligation to pay any portion of the Settlement to anyone under the terms of this Settlement, except
24 for costs already incurred by the Settlement Administrator, and this action shall resume as though no
25 Settlement had occurred with the Action proceeding in the Orange County Superior Court.

26 **IV. LIMITATIONS ON USE OF THIS SETTLEMENT**

27 **A. No Admission**

28 Defendants deny that they have engaged in any unlawful activity, that they have failed to

1 comply with the law in any respect, that they have any liability to anyone under the claims asserted in
2 the Action, and that but for this Settlement a class should not be certified in this Action. This
3 Settlement is entered into solely for the purpose of compromising highly disputed claims. Nothing in
4 this Settlement is intended or will be construed as an admission of liability or wrongdoing by
5 Defendants.

6 **B. Non-Evidentiary Use**

7 Whether or not the Effective Date occurs, neither this Settlement nor any of its terms will be:
8 (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any
9 purpose adverse to Defendants or any other of the Released Parties, including but not limited to,
10 evidence of a presumption, concession, indication, or admission by any of the Released Parties of any
11 liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to, or offered
12 in evidence against any of the Released Parties in any further proceeding in the Action, except for the
13 purposes of effectuating the Settlement pursuant to the terms herein or for Defendants to establish that
14 a Class Member has resolved any of his/her claims released through this Settlement.

15 **C. Defendants' Right to Terminate Settlement**

16 Defendants shall have the right at their sole discretion to terminate the Settlement if Class
17 Members holding 20% or more of the amount to be actually distributed to the Class, timely elect to
18 opt out of the Settlement. If Defendants elect to exercise their right under this paragraph, Defendants
19 shall be liable solely for administrative costs of the third-party claims administrator selected by the
20 parties. Defendants agree that they will not in any manner take any actions to encourage Class
21 Members to opt-out.

22 **D. Nullification**

23 The Parties have agreed to the certification of the Class encompassing all claims alleged in the
24 Action for the sole purpose of effectuating this Settlement. If (a) the Court should for any reason fail
25 to certify this Class for settlement, or (b) the Court should for any reason fail to approve this
26 Settlement, or (c) the Court should for any reason fail to enter the Final Approval Order, or (d) the
27 Final Approval Order is reversed, or declared or rendered void, or (e) the Court should for any reason
28 fail to dispose of the action in its entirety, then (i) this Settlement shall be considered null and void;

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

Invalidation of any material portion of this Settlement shall invalidate this Settlement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

V. RELEASES

A. Releases by Class Members

Upon the Effective Date and full payment of the Gross Settlement Amount by Defendants, Participating Class Members who do not opt out of the Settlement will release Defendants, together with their present and former parents, subsidiaries, affiliated and related entities, present and former owners, boards, officers, directors, trustees, shareholders, members, partners, employees, agents, insurers, attorneys, representatives, heirs, executors, administrators, successors and assigns (collectively, the “Released Parties”) from any and all claims, debts, liabilities, demands, actions, or causes of action of every nature and description that accrued during the Class Period, under state law and the Wage Orders of the California Industrial Welfare Commission, that were alleged or which could have been alleged based on the factual allegations in the First Amended Complaint in the Action, including claims for unpaid wages, including but not limited to failure to pay minimum wages, straight time compensation, and overtime compensation, and interest; failure to timely pay regular and final wages; missed meal period and rest period wages and premiums; meal period waivers and on-duty meal period waivers; payment for all hours worked; failure to reimburse business expenses; wage statements and paystubs, including wage statements and paystubs furnished or available in physical, electronic, or other forms; failure to keep accurate records; declaratory relief; unfair business practices; penalties, including recordkeeping penalties, wage statement penalties, minimum-wage penalties, and

1 waiting-time penalties; statutory penalties and civil penalties; and attorneys' fees and costs. Without
2 limiting the foregoing, the Released Claims include those claims arising under California Labor Code
3 Sections 201-204, 206, 218.6, 226, 226.7, 510, 512, 1182.12, 1194, 1194.2, 1197, 1198, 2800, 2802,
4 and/or those arising under the Industrial Welfare Commission Wage Orders; and/or those arising under
5 the Industrial Welfare Commission Wage Orders; California Business and Professions Code
6 section 17200 *et seq.*; California Code of Regulations, title 8, Section 11160; the California Civil Code
7 sections 3287, 3289, and 3294; and California Code of Civil Procedure section 1021.5 ("Released
8 Claims").

9 The above release language shall also be included in the Class Notice. Plaintiff and
10 Participating Class Members will release these Released Claims from September 15, 2017 through the
11 Preliminary Approval Date of the Settlement or an earlier date at Defendants' discretion per Section
12 III(D)(5).

13 Class Members who endorse their settlement checks waive and release any claims under the
14 Fair Labor Standards Act ("FLSA") (29 U.S.C. §§ 201, *et seq.*) arising during the Class Period and
15 based on the factual allegations alleged or which could have been alleged in the Class Action
16 Complaint, including the claims noted above.

17 This release excludes the release of claims not permitted by law.

18 Any Class Member who validly excludes himself or herself from the Settlement will still
19 receive a PAGA Settlement Payment, and will be deemed to have released claims against the Released
20 Parties for civil penalties pursuant to PAGA based on the Released Claims ("PAGA Released
21 Claims").

22 **B. Releases by Aggrieved Employees and the State of California**

23 Upon the Effective Date and full payment of the Gross Settlement Amount by Defendants, the
24 State of California and Aggrieved Employees will release Defendants, including its present and former
25 parents, subsidiaries, affiliated and related entities, present and former owners, boards, officers,
26 directors, trustees, shareholders, members, partners, employees, agents, insurers, attorneys,
27 representatives, heirs, executors, administrators, successors and assigns (collectively, the "PAGA
28 Released Parties") from any and all claims, debts, liabilities, demands, actions, or causes of action of

every nature and description that accrued during the PAGA Period, under state law and the California Labor Code, that were alleged or which could have been alleged based on the exhausted claims and factual allegations in Plaintiff's notices sent to the LWDA and alleged in the operative complaint, regardless of whether the Aggrieved Employees opt-out of the Settlement Agreement, including claims for civil penalties based on unpaid wages, including but not limited to failure to pay minimum wages, straight time compensation, and overtime compensation, and interest; failure to timely pay regular and final wages; failure to reimburse business expenses; missed meal period and rest period wages and premiums; meal period waivers and on-duty meal period waivers; payment for all hours worked; wage statements and paystubs, including wage statements and paystubs furnished or available in physical, electronic, or other forms; failure to keep accurate records; penalties, including recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; statutory penalties and civil penalties; and attorneys' fees and costs. Without limiting the foregoing, the PAGA Released Claims include claims for civil penalties arising under California Labor Code Sections 201, 202, 203, 204, 206, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2800, 2802, 2698 *et seq.*, and 2699 *et seq.* and/or those arising under the Industrial Welfare Commission Wage Orders; PAGA; and/or those arising under the Industrial Welfare Commission Wage Orders; California Code of Regulations, title 8, Section 11160; and California Code of Civil Procedure section 1021.5 ("PAGA Released Claims").

The above release language shall also be included in the Class Notice. Plaintiff, the State of California, and Aggrieved Employees will release these PAGA Released Claims from September 11, 2020 through the Preliminary Approval Date of the Settlement or an earlier date at Defendants' discretion per Section III(D)(5).

This release excludes the release of claims not permitted by law.

Any Aggrieved Employee who validly excludes himself or herself from the Settlement will still receive a PAGA Settlement Payment, and will be deemed to have released claims against the PAGA Released Parties for civil penalties pursuant to PAGA based on the PAGA Released Claims.

C. Plaintiff's General Release

Plaintiff does hereby, for herself, and for her heirs, successors, predecessors, attorneys, agents,

1 representatives and assigns, forever release the Released Parties from any and all charges, complaints,
2 claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of
3 action, injuries, suits, rights, demands, costs, losses, debts, judgments, accounts, attorneys' fees,
4 interest, expenses (including back wages, penalties, liquidated damages, and attorneys' fees and costs
5 actually incurred), and other legal responsibilities arising in law, equity or otherwise, of any kind,
6 nature, and character whatsoever, from the beginning of time through the date of her signature on this
7 Settlement, known or unknown, suspected or unsuspected, unforeseen, or unanticipated including but
8 not limited to all claims arising out of, based upon, or relating to her employment with Defendants,
9 the termination or resignation of her employment with Defendants, or the remuneration for such
10 employment. Without limiting the generality of the foregoing, Plaintiff expressly releases all claims
11 which were or could have been raised in the Action and all claims or rights arising out of alleged
12 violations of any contracts, express or implied (including but not limited to any contract of
13 employment); any contract or covenant of good faith or fair dealing (express or implied); any tort,
14 including negligence, fraud, misrepresentation under California Labor Code § 970, negligent infliction
15 of emotional distress, intentional infliction of emotional distress, and defamation; any other common
16 law claim; any "retaliation" claims; any claims relating to any breach of public policy; any claim for
17 costs, fees, interest, or other expenses including attorneys' fees; any legal restrictions on Defendants'
18 right to discharge employees or refuse to hire applicants; and any federal, state, or other governmental
19 statute, regulation, or ordinance, including, without limitation: (1) Title VII of the Civil Rights Act of
20 1964, as amended (race, color, religion, sex, and national origin discrimination or harassment,
21 including retaliation for reporting discrimination or harassment); (2) The Civil Rights Act of 1991, as
22 amended; (3) Sections 1981 through 1988 of Title 42 of the United States Code, as amended; (4) The
23 Age Discrimination in Employment Act of 1967, as amended; (5) The Employee Retirement Income
24 Security Act of 1974, as amended; (6) The Immigration Reform and Control Act, as amended; (7) The
25 Americans with Disability Act, as amended; (8) Sections 503 and 504 of the Rehabilitation Act of
26 1973 (disability discrimination); (9) The Workers Adjustment and Retraining Notification Act, as
27 amended; (10) The Occupational Safety and Health Act, as amended; (11) California Equal Pay Law,
28 as amended; (12) Equal Pay Act, 29 U.S.C. § 209(4)(1) (equal pay); (13) Americans with Disabilities

1 Act, 42 U.S.C. § 12100 *et seq.* (disability discrimination); (14) Family and Medical Leave Act, 29
2 U.S.C. § 2601 *et seq.* (family/medical leave); (15) California Fair Employment and Housing Act [*Gov.*
3 *Code*, §§ 12900, *et seq.*] (discrimination or harassment in employment and/or housing, including
4 discrimination or harassment based on race, religious creed, color, national origin, ancestry, physical
5 or mental disability, marital status, sex (including pregnancy), sexual orientation, genetic, or age,
6 including retaliation for reporting discrimination or harassment); (16) California Family Rights Act,
7 [*Gov. Code*, §§ 12945.1, *et seq.*] (family/medical leave); (17) California Labor Code or any Industrial
8 Welfare Commission Wage Order; (18) FLSA; (19) Executive Order 11246 (race, color, religion, sex,
9 and national origin discrimination or harassment); (20) Executive Order 11141 (age discrimination);
10 (21) California health and safety laws and regulations; and (22) any other federal, state, or local law,
11 regulation or ordinance, including those regulating compensation, and those prohibiting
12 discrimination, harassment, or retaliation of any kind. This release excludes the release of claims not
13 permitted by law.

14 **D. Plaintiff's Release of Unknown Claims**

15 Plaintiff, in her individual capacity, also expressly waives, as to the Released Claims any and
16 all provisions, rights and benefits conferred by any law or principle of common law or equity, that is
17 similar, comparable, or equivalent, in whole or in part, to California Civil Code § 1542. For the
18 purpose of implementing a full and complete release, Plaintiff expressly acknowledges that the release
19 given in this Settlement is intended to include in its effect, without limitation, claims that each did not
20 know or suspect to exist in her favor at the time of the effective date of this Settlement, regardless of
21 whether the knowledge of such claims, or the facts upon which they might be based, would materially
22 have affected the settlement of this matter, and that the consideration given under the Settlement was
23 also for the release of those claims and contemplates the extinguishment of any such unknown claims.
24 Plaintiff expressly waives the provisions of section 1542 of the Civil Code of California, which
25 provides:

26 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
27 **THAT THE CREDITOR OR RELEASING PARTY DOES NOT**
28 **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

1 **OR RELEASED PARTY.**

2 Thus, subject to and in accordance with this Agreement, even if Plaintiff may hereafter discover facts
3 in addition to or different from those he now knows or believes to be true, Plaintiff, upon the Effective
4 Date, shall be deemed to have fully, finally, and forever settled and released any and all claims against
5 the Released Parties that were alleged or could have been alleged in the Action, as well as any other
6 claims, whether known or unknown, suspected or unsuspected, contingent or non-contingent, that now
7 exist, upon any theory of law or equity, including without limitation, conduct which is negligent,
8 intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the
9 subsequent discovery or existence of such different or additional facts.

10 **E. No Additional Attorneys' Fees or Costs**

11 Except for the attorneys' fees and costs set forth in this Settlement, the Parties agree to bear
12 their own attorneys' fees and costs related to this Action.

13 **VI. MISCELLANEOUS PROVISIONS**

14 **A. Amendments or Modification**

15 The terms and provisions of this Settlement may be amended or modified only by an express
16 written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel
17 and approval by the Court.

18 **B. Assignment**

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

24 **C. Governing Law**

25 This Settlement shall be governed, construed, and interpreted, and the rights of the Parties shall
26 be determined, in accordance with the laws of the State of California, irrespective of the State of
27 California's choice of law principles.

28 ///

1 **D. Entire Agreement**

2 This Settlement, including the Exhibit referred to herein, which form an integral part hereof,
3 contains the entire understanding of the Parties hereto with respect of the subject matter contained
4 herein. In case of any conflict between text contained in Articles I through VI of this Settlement and
5 text contained in the Exhibit to this Settlement, the former (*i.e.*, Articles I through VI) shall be
6 controlling, unless the Exhibit are changed by or in response to a Court order. There are no restrictions,
7 promises, representations, warranties, covenants, or undertakings governing the subject matter of this
8 Settlement other than those expressly set forth or referred to herein. This Settlement supersedes all
9 prior agreements and understandings among the Parties hereto with respect to the settlement of the
10 Action, including correspondence between Class Counsel and Defense Counsel and drafts of prior
11 agreements or proposals.

12 **E. Waiver of Compliance**

13 Any failure of any Party, Defense Counsel, or Class Counsel hereto to comply with any
14 obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the extent
15 permitted under applicable law, by the Party or Parties and their respective counsel hereto entitled to
16 the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon
17 strict compliance with any representation, warranty, covenant, agreement, or condition shall not
18 operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

19 **F. Counterparts and Fax/PDF Signatures**

20 This Settlement, and any amendments hereto, may be executed in any number of counterparts
21 and any Party and/or their respective counsel hereto may execute any such counterpart, each of which
22 when executed and delivered shall be deemed to be an original and all of which counterparts taken
23 together shall constitute one instrument. A fax or PDF signature on this Settlement shall be as valid
24 as an original signature.

25 **G. Meet and Confer Regarding Disputes**

26 Should any dispute arise among the Parties or their respective counsel regarding the
27 implementation or interpretation of this Settlement, a representative of Class Counsel and a
28 representative of Defense Counsel shall meet and confer in an attempt to resolve such disputes prior

1 to submitting such disputes to the Court.

2 **H. Agreement Binding on Successors**

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

5 **I. Cooperation in Drafting**

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

9 **J. Fair Settlement**

10 Plaintiff, Defendants, Class Counsel, and Defense Counsel believe that this Settlement reflects
11 a fair, reasonable, and adequate settlement of the Action and have arrived at this Settlement through
12 arm's-length negotiations, taking into account all relevant factors, current and potential, and is
13 consistent with public policy, and fully complies with applicable provisions of law.

14 **K. Headings**

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

18 **L. Notice**

19 All notices, demands, or other communications given under this Settlement must be in writing
20 and addressed as follows:

21 *To Plaintiff and the Class:*

22 Jose R. Garay
23 jose@garaylaw.com
24 **JOSE GARAY, APLC**
24 249 E. Ocean Blvd. #814
24 Long Beach, CA 90802
25 Telephone: (949) 208-3400
25 Facsimile: (562) 590-8400

26 Daniel J. Hyun
27 dh@danielhyunlaw.com
27 LAW OFFICE OF DANIEL J. HYUN
28 1100 West Town and Country Road, Suite 1250
28 Orange, California 92868

Telephone: (949) 596-4782
Facsimile: (949) 528-2596

And

To Defendants:

NANNINA L. ANGIONI
nangioni@kaedianllp.com
HENRY L. WHITEHEAD
hwhitehead@kaedianllp.com
8383 Wilshire Blvd., Ste. 210
Beverly Hills, CA 90211
Telephone: (310) 893-3372
Facsimile: (310) 893-3191

M. Enforcement of Settlement and Continuing Court Jurisdiction

To the extent consistent with class action procedure, this Settlement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court 3.769(h). The disposition entered by the Court will not adjudicate the merits of the Action or the liability of the Parties resulting from the allegations of the Action. Its sole purpose is to adopt the terms of the Settlement and to retain jurisdiction over its enforcement. To that end, the Court shall retain continuing jurisdiction over this Action and over all Parties and Class Members, to the fullest extent to enforce and effectuate the terms and intent of this Settlement.

N. Mutual Full Cooperation

The Parties agree fully to cooperate with each other to accomplish the terms of this Settlement, including but not limited to execution of such documents, and to take such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Settlement shall use their best efforts, including all efforts contemplated by this Settlement, to effectuate this Settlement and the terms set forth herein. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of the Settlement, the Parties agree to seek the assistance of the Court.

O. Authorization to Act

Class Counsel warrants and represents that they are authorized by Plaintiff, and Defense Counsel warrants that they are authorized by Defendants, to take all appropriate action required to

1 effectuate the terms of this Settlement, except for signing the documents, including but not limited to
2 this Settlement, that are required to be signed by the Parties.

3 **P. No Reliance on Representations**

4 The Parties have made such investigation of the facts and the law pertaining to the matters
5 described herein and to this Settlement as they deem necessary, and have not relied, and do not rely,
6 on any statement, promise, or representation of fact or law, made by any of the other parties, or any of
7 their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted
8 rights, or with regard to the advisability of making and executing this Settlement, or with respect to
9 any other matters. No representations, warranties, or inducements have been made to any party
10 concerning this Settlement.

11 **Q. No Collateral Attack**

12 This Settlement shall not be subject to collateral attack by any Class Member or any recipient
13 of the Class Notice after the Effective Date. Such prohibited collateral attacks shall include but not
14 be limited to claims that the Class Member failed for any reason to receive timely notice of the
15 procedure for disputing the calculation of his or her Individual Settlement Payment.

16 **R. Invalidity of Any Provision**

17 Before declaring any provision of this Agreement invalid, the Court will first attempt to construe the
18 provision as valid to the fullest extent possible consistent with applicable precedents so as to define all
19 provisions of this Agreement valid and enforceable. If any provision of this Agreement or the application
20 thereof is held invalid, the invalidity shall not affect other provisions or applications of this Agreement which
21 can be given effect without the invalid provisions or application and, to this end, the provisions of this
22 Agreement are declared to be severable. Notwithstanding the foregoing, no portion of any release contained
23 herein may be deemed severed or deleted from this Agreement, except upon waiver in writing by the applicable
24 party.

25 **S. Confidentiality/Non-Publicity**

26 Plaintiff and her counsel will keep the First Amended Complaint, PAGA Letter, and this
27 Agreement confidential through preliminary approval. Thereafter, Plaintiff and her counsel will
28 further agree to keep this Agreement, First Amended Complaint, and the PAGA Letter confidential,

including without limitation no disclosures to current or former employees of the Defendants, to the media, or on any websites, blogs, social media, and/or online platforms. Exceptions to the obligation of confidentiality in this section are: (i) disclosures necessary to comply with the law, judicial process, or for financial planning or tax preparation purposes; (ii) to obtain and seek approval of this settlement in court and as is necessary to provide settlement information to Class Members, and (iii) if any party seeks to enforce any term or condition of this Agreement against any other party.

EXECUTION BY PARTIES

The Parties hereby execute this Settlement.

Dated: 4/20/2023

MAYTE PEREZ

By: _____

(Signature)

DocuSigned by:



B6359805EA11443...

Dated: _____

FAYE WICKLAND

By: _____

(Signature)

Dated: _____

VELVET YOGURT, INC. D/B/A ACTIVE CULTURE

By: _____

(Signature)

(Printed Name)

(Title)

///

///

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1 of confidentiality in this section are: (i) disclosures necessary to comply with the law, judicial process,
2 or for financial planning or tax preparation purposes; (ii) to obtain and seek approval of this settlement
3 in court and as is necessary to provide settlement information to Class Members, and (iii) if any party
4 seeks to enforce any term or condition of this Agreement against any other party.

5 **EXECUTION BY PARTIES**

6 The Parties hereby execute this Settlement.

7
8 Dated: _____ MAYTE PEREZ

9 By: _____
(Signature)

10
11 Dated: 4/25/2023 FAYE WICKLAND

12 By: [Signature]
(Signature)

13
14
15 Dated: 4/25/2023 VELVET YOGURT, INC. D/B/A ACTIVE
16 CULTURE

17 By: [Signature]
(Signature)

18 Faye Wickland
(Printed Name)

19 Owner/COO
(Title)

20
21
22 Approved as to form only:

23
24 Dated: _____ JOSE GARAY, APLC &
25 LAW OFFICE OF DANIEL J. HYUN &

26
27 By: _____
28 Jose R. Garay
Daniel J. Hyun
Attorneys for Plaintiff Mayte Perez

1 Approved as to form only:

2
3 Dated: April 20, 2023

JOSE GARAY, APLC &
LAW OFFICE OF DANIEL J. HYUN &

4
5 By: 

6 Jose R. Garay

Daniel J. Hyun

7 Attorneys for Plaintiff Mayte Perez

KAEDIAN LLP

8 Dated: April 26, 2023

9
10 By: 

Nannina L. Argioni

Henry L. Whitehead

11 Attorneys for Defendant Velvet Yogurt, Inc. d/b/a
12 Active Culture and Faye Wickland
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NOTICE OF CLASS ACTION SETTLEMENT. READ CAREFULLY.

Perez v. Velvet Yogurt, Inc. d/b/a Active Culture, et al.
Orange County Superior Court
Case No. 30-2021-01221399-CU-OE-CXC

If you worked as a non-exempt hourly employee for Velvet Yogurt, Inc. d/b/a Active Culture (“Active Culture”) in California at any time from September 15, 2017 through [DATE], you are eligible to receive compensation from a class action settlement.

- You have been identified as a Class Member (defined below) in a Lawsuit (defined below) brought by an employee of Velvet Yogurt, Inc. d/b/a Active Culture. The Lawsuit was filed against Defendants Velvet Yogurt, Inc. d/b/a Active Culture and Faye Wickland (collectively “Defendants”). Defendants deny all allegations and contend they have complied with California law at all relevant times. However, to avoid the continuing expense of litigation, the Parties have reached a settlement of highly disputed claims (the “Settlement”). The Court has preliminarily approved the Settlement, finding it to be fair, reasonable, adequate, and in the best interests of the Class Members.
- The Class Settlement will affect all of Active Culture’s non-exempt hourly California employees from September 15, 2017 through [DATE] (the “Class Period”). The PAGA Settlement will affect all of Active Culture’s non-exempt hourly California employees from September 11, 2020 through [DATE] (the “PAGA Period”).
- If the Court grants final approval of the Settlement, you will receive a settlement payment.

*A court authorized this notice. This is not an advertisement.
You are not being sued. Your rights will be affected by this notice and settlement.*

YOUR LEGAL RIGHTS AND OPTIONS	
<u>PARTICIPATE IN THE SETTLEMENT – NO ACTION REQUIRED</u>	Stay in this Lawsuit. Receive a payment. Give up certain rights. By doing nothing, you become part of the Settlement Class (defined below), will receive a settlement payment, and will give up certain rights to sue Defendants separately about the legal claims raised in this Lawsuit.
<u>OBJECT TO THE SETTLEMENT – ACTION REQUIRED</u>	Stay in this Lawsuit. May give up certain rights. If you object to the Settlement, you will remain a member of the Class (defined below), and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object.
<u>ASK TO BE EXCLUDED – ACTION REQUIRED</u>	Opt-out of the Settlement. Receive no payment from the settlement for the Class claims but receive an individual settlement share for civil penalties under the California Private Attorneys General Act of 2004 (“PAGA”). Keep rights to individually pursue only the Class claims. If you opt out of the Settlement, you won’t receive any share of the

	Class payment and instead retain the option to sue Defendants separately about the Class claims in this Lawsuit, if you choose. Also, if you opt out, you will still be deemed to have released the PAGA claims and will receive an individual settlement share only for claims for civil penalties pursuant to PAGA.
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- To object to the Settlement or to ask to be excluded, you must act before [DATE], 2023.
- **Any questions?** Read on or contact Class Counsel (defined below) or the Settlement Administrator (defined below).

WHAT THIS NOTICE CONTAINS

BASIC INFORMATIONPAGE 3-5

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2. What is the Lawsuit about?
3. What is a class action and who is involved?
4. Why is this Lawsuit a class action?
5. What are the terms of the proposed Settlement?

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THE LAWYERS REPRESENTING YOUPAGE 8-9

12. Do I have a lawyer in this case?
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17. Are more details available?

BASIC INFORMATION

1. Why did I get this notice?

Records show that you are a potential member of the Class because you worked for Active Culture in California as a non-exempt employee during the Class Period. The Court has given preliminary approval to the Settlement of a class action lawsuit that may affect your legal rights and ordered that this Notice be sent to you to explain your rights in connection with the Settlement. The Court has determined only that there is sufficient evidence to suggest that the proposed Settlement might be fair, adequate, and reasonable; the Court has not made any ruling on the merits of Plaintiff's claims or Defendants' defenses.

The lawsuit is known as *Perez v. Velvet Yogurt, Inc. d/b/a Active Culture, et al.*, Case No. 30-2021-01221399-CU-OE-CXC (the "Lawsuit"). You can view the Lawsuit's records online by visiting the Court's website (<https://civilwebshopping.occourts.org/Search.do#searchAnchor>), entering the Case Number in the search box for the section titled "Case Number," and selecting "Search."

2. What is this Lawsuit about?

The Lawsuit is about whether Defendants failed to pay minimum, regular, and overtime wages for all hours worked, failed to provide proper meal and rest breaks, failed to provide accurate itemized wage statements, failed to pay all wages timely upon separation of employment, and failed to reimburse business expenses to its non-exempt employees as required by applicable California laws. Based on these alleged violations, the Lawsuit also alleges violations of California's Labor Code and Unfair Competition Law ("UCL") and seeks penalties under California's Private Attorneys General Act.

Defendants deny any and all wrongdoing and liability. Defendants contend they conducted business and compensated employees consistent with the laws of the State of California. Defendants contend they have no liability for any claims under any statute, wage order, common law, or equitable theory.

3. What is a class action and who is involved?

In an employment class action lawsuit such as this, a person called the "Class Representative" sues his or her employer or former employer on behalf of other current or former employees who may have similar claims. The people who may have similar claims are called "Class Members," and Class Members are collectively referred to as "the Class." The Class Representative is also called the Plaintiff. There is one Plaintiff/Class Representative in this Action, Mayte Perez. The company and individual that were sued (in this case Velvet Yogurt, Inc. d/b/a Active Culture and Faye Wickland) are called the Defendants. In class action litigation, one Court resolves the issues for everyone in the Class in one lawsuit, except for those people who choose to exclude themselves from the Class.

4. Why is this Lawsuit a class action?

As part of the Settlement, Plaintiff and Defendants agreed to conditionally certify the Lawsuit as a class action for all of Plaintiff's alleged claims for settlement purposes only and to ask the Court to approve the Settlement.

By agreeing to the terms of the settlement, Defendants do not admit any of the allegations in this Action, that they have done anything wrong or that any Class Member has suffered any damage. Defendants

settled this case to avoid additional expense, inconvenience, and interference with their business operations. The Court has not ruled on the merits of Plaintiff's claims or the defenses of Defendants. Defendants retain the right to defend themselves against any of the allegations involved in the Lawsuit if for any reason the Settlement is not approved by the Court.

5. What are the terms of the proposed Settlement?

The major terms of the Settlement are as follows:

1. Defendants have agreed to pay \$90,000. This \$90,000 total settlement figure is known as the "Gross Settlement Amount," unless increased on a pro rata basis according to the terms of the Settlement Agreement.
2. Plaintiff Mayte Perez has agreed to a general release of all of her claims against Defendants.
3. Plaintiff seeks the following allocation of the Gross Settlement Amount:
 - a. Up to one-third (1/3) of the Gross Settlement Amount (or currently approximately \$30,000) for Class Counsel's attorneys' fees;
 - b. Up to \$20,000 for reimbursement of Class Counsel's litigation costs;
 - c. An enhancement payment of up to \$5,000 for Plaintiff Mayte Perez for dedicating personal time and performing work in connection with the Lawsuit, assisting Class Counsel in investigating the alleged claims, being available to answer Class Counsel's questions, providing a general release of claims, and undertaking the risks of filing the Lawsuit;
 - d. All costs of the Settlement Administrator, which are currently estimated to be no more than \$8,750; and
 - e. \$2,500 as PAGA civil penalties. Per Labor Code Section 2699(i), seventy-five percent (75%) of this amount (\$1,875) will be payable to the California Labor and Workforce Development Agency ("LWDA"). The remaining twenty-five percent (25%), or \$625, will be payable to the Class as the "PAGA Amount."
4. After the above deductions from the Gross Settlement Amount, the remaining funds will be distributed to Class Members on a pro rata basis. To ensure timely payment, please contact and inform the Settlement Administrator listed in Section 17, below, of any changes to your mailing address.

If the Court approves this proposed allocation, the Parties estimate that \$24,375 (the "Net Settlement Amount") will be distributed to Class Members who do not request exclusion (the "Participating Class Members") according to the following formula:

The Net Settlement Amount shall be divided among all Participating Class Members in proportion to the number of individual Qualifying Workweeks for each Class Member. To calculate the minimum amount each Class Member will receive based on their

individual Qualifying Workweeks, the Net Settlement Amount will be divided by the total number of Qualifying Workweeks by all Class Members during the Class Period and then allocated on a pro rata basis. Each Class Member's individual amount will be included in his or her Class Notice. After final approval by the Court, the Net Settlement Amount will be distributed to Participating Class Members on a pro rata basis based on the individual Qualifying Workweeks worked during the Class Period by each Participating Class Member.

"Qualifying Workweeks" means the weeks that Class Members worked for Active Culture in hourly, non-exempt positions during the Class Period.

The PAGA Amount will be distributed to Aggrieved Employees according to the following formula:

The PAGA Amount shall be divided among all Aggrieved Employees in proportion to the number of individual Qualifying Pay Periods for each Aggrieved Employee. To calculate the minimum amount each Aggrieved Employee will receive based on their individual Qualifying Pay Periods, the PAGA Amount will be divided by the total number of Qualifying Pay Periods by all Aggrieved Employees during the PAGA Period and then allocated on a pro rata basis. Each Aggrieved Employee's individual amount will be included in his or her Class Notice. After final approval by the Court, the PAGA Amount will be distributed to Aggrieved Employees on a pro rata basis based on the individual Qualifying Pay Periods worked during the PAGA Period by each Aggrieved Employee.

"Aggrieved Employees" means all persons currently or formerly employed as non-exempt employees in California by Active Culture at any time during the PAGA Period

"Qualifying Pay Periods" means any pay period during which an Aggrieved Employee was employed by Active Culture during the PAGA Period.

Your estimated Individual Settlement Payment is listed in Section 8 of this Notice. Employee-side payroll deductions will be made to your Individual Settlement Payment for state and federal withholding taxes and any other applicable payroll deductions owed by you as a result of the payment, with 45% allocated to wages, 45% allocated to penalties and interest, and 10% allocated to expense reimbursements. Defendants will pay employer-side taxes separate and apart from the Gross Settlement Amount.

Nothing in this Notice or the Settlement is intended to be tax advice. You should consult your tax advisor for any tax issues pertaining to this Settlement.

WHO IS IN THE CLASS?

6. Am I part of this Class?

The "Settlement Class" consists of all persons who worked as non-exempt hourly employees in California for Defendants at any time from September 15, 2017 through **[DATE]**.

7. What is my approximate Individual Settlement Payment?

According to payroll records maintained by Defendants, your total number of Qualifying Workweeks during the Class Period is [REDACTED] and Qualifying Pay Periods during the PAGA Period is [REDACTED]. As a result, your estimated Individual Settlement Payment will be \$ [REDACTED].

You do not need to do anything further to receive your Individual Settlement Payment, other than to ensure that the Settlement Administrator has an accurate mailing address for you. It is important that you contact and inform the Settlement Administrator listed in Section 17, below, of any changes to your mailing address for timely payment.

If you believe your total number of Qualifying Workweeks or Qualifying Pay Periods (shown above) are not accurate, you may submit a signed written dispute to the Settlement Administrator, indicating what you believe is the correct number of Qualifying Workweeks or Qualifying Pay Periods. Please be advised that your number of Qualifying Workweeks and Qualifying Pay Periods is presumed to be correct, unless you submit documents to support your contention to the Settlement Administrator no later than [DATE], 2023.

8. What rights am I releasing if I participate in the Settlement?

If the Court grants final approval of the Settlement, each Class Member who does not validly opt-out will be mailed an Individual Settlement Payment. In addition, each Class Member who does not validly opt-out, on behalf of themselves, and on behalf of all those who claim by and through them, or in their stead, including, but not limited to agents, attorneys, representatives, predecessors, successors and assigns will be deemed to forever release, acquit, and discharge, and covenant not to sue, Defendants, including their present and former parents, subsidiaries, affiliated and related entities, present and former owners, boards, officers, directors, trustees, shareholders, members, partners, employees, agents, insurers, attorneys, representatives, heirs, executors, administrators, successors and assigns (collectively, the “Released Parties”) from any and all claims, debts, liabilities, demands, actions, or causes of action of every nature and description that accrued during the Class Period, under state law and the Wage Orders of the California Industrial Welfare Commission, that were alleged or which could have been alleged based on the factual allegations in the First Amended Complaint in the Action, including claims for unpaid wages, including but not limited to failure to pay minimum wages, straight time compensation, and overtime compensation, and interest; failure to timely pay regular and final wages; missed meal period and rest period wages and premiums; meal period waivers and on-duty meal period waivers; payment for all hours worked; failure to reimburse business expenses; wage statements and paystubs, including wage statements and paystubs furnished or available in physical, electronic, or other forms; failure to keep accurate records; declaratory relief; unfair business practices; penalties, including recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; statutory penalties and civil penalties; and attorneys’ fees and costs. Without limiting the foregoing, the Released Claims include those claims arising under California Labor Code Sections 201-204, 206, 218.6, 226, 226.7, 510, 512, 1182.12, 1194, 1194.2, 1197, 1198, 2800, 2802, and/or those arising under the Industrial Welfare Commission Wage Orders; and/or those arising under the Industrial Welfare Commission Wage Orders; California Business and Professions Code section 17200 *et seq.*; California Code of Regulations, title 8, Section 11160; the California Civil Code sections 3287, 3289, and 3294; and California Code of Civil Procedure section 1021.5 (“Released Claims”).

Class Members who endorse their settlement checks waive and release any claims under the Fair Labor

Standards Act (“FLSA”) (29 U.S.C. §§ 201, *et seq.*) arising during the Class Period and based on the factual allegations alleged or which could have been alleged in the Class Action Complaint, including the claims noted above.

This release excludes the release of claims not permitted by law.

For members of the Class who do not validly opt out, the release period shall run from September 15, 2017 through [DATE] for non-exempt hourly employees.

The proposed Settlement also includes the settlement of claims for civil penalties under PAGA. An employee may not request exclusion from the settlement of a PAGA claim. Thus, if the court approves this Settlement, then even if you request exclusion from the Settlement, you will still receive an individual settlement share for the PAGA claims and will be deemed to have released the PAGA claims. A request for exclusion will preserve your right to individually pursue only the remaining Class claims.

In addition, if the Court grants final approval of the Settlement, the State of California and Aggrieved Employees will be deemed to forever release, acquit, and discharge, and covenant not to sue, Defendants, including its present and former parents, subsidiaries, affiliated and related entities, present and former owners, boards, officers, directors, trustees, shareholders, members, partners, employees, agents, insurers, attorneys, representatives, heirs, executors, administrators, successors and assigns (collectively, the “PAGA Released Parties”) from any and all claims, debts, liabilities, demands, actions, or causes of action of every nature and description that accrued during the PAGA Period, under state law and the California Labor Code, that were alleged or which could have been alleged based on the exhausted claims and factual allegations in Plaintiff’s notices sent to the LWDA and alleged in the operative complaint, regardless of whether the Aggrieved Employees opt-out of the Settlement Agreement, including claims for civil penalties based on unpaid wages, including but not limited to failure to pay minimum wages, straight time compensation, and overtime compensation, and interest; failure to timely pay regular and final wages; failure to reimburse business expenses; missed meal period and rest period wages and premiums; meal period waivers and on-duty meal period waivers; payment for all hours worked; wage statements and paystubs, including wage statements and paystubs furnished or available in physical, electronic, or other forms; failure to keep accurate records; penalties, including recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; statutory penalties and civil penalties; and attorneys’ fees and costs. Without limiting the foregoing, the PAGA Released Claims include claims for civil penalties, attorneys’ fees, and costs arising under California Labor Code Sections 201, 202, 203, 204, 206, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2800, 2802, 2698 *et seq.*, and 2699 *et seq.* and/or those arising under the Industrial Welfare Commission Wage Orders; PAGA; and/or those arising under the Industrial Welfare Commission Wage Orders; California Code of Regulations, title 8, Section 11160; and California Code of Civil Procedure section 1021.5 (“PAGA Released Claims”).

Plaintiff, the State of California, and Aggrieved Employees will release these PAGA Released Claims from September 11, 2020 through [DATE] (“PAGA Period”).

This release excludes the release of claims not permitted by law.

Any Aggrieved Employee who validly excludes himself or herself from the Settlement will still receive a PAGA Settlement Payment, and will be deemed to have released claims against the PAGA Released Parties for civil penalties pursuant to PAGA based on the PAGA Released Claims.

9. How do I object to the Settlement?

If you are a Class Member and would like to object to the Settlement, you must not submit a request for exclusion (*i.e.*, must not opt out).

If you submit both a request for exclusion and an objection, you will be excluded from the Settlement (see sections 11 and 12 below), and your objection will not be considered.

To object, mail a written objection to the Settlement Administrator (at the address in Section 17, below) setting forth the grounds of objection, along with any supporting documents postmarked no later than [DATE], 2023, which is 45 days from the date that this Notice was mailed.

All written objections must be signed and must contain your address, telephone number, and a reference to the Lawsuit. You may also appear personally or through an attorney, at your own expense, at the Final Approval Hearing to present your objection directly to the Court. If you object, but the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as a Class Member who does not object.

10. Why would I ask to be excluded?

You have the right to exclude yourself from the Settlement. If you exclude yourself from the Class — sometimes called “opting-out” of the Class — you will only receive an individual settlement share for the PAGA claims and will not receive any compensation from the Settlement for the Class claims. If you exclude yourself, you will not be legally bound by the Court’s disposition of the Class claims, but you will still be deemed to have released the PAGA claims.

11. How do I ask to be excluded from the Class?

If you are a member of the Class described above and would like to exclude yourself from the Class, you need to submit the enclosed Exclusion Form. To exclude yourself from the Settlement, you must mail your completed Exclusion Form to the Settlement Administrator at the address below in Section 17, and it must be postmarked on or before [DATE], 2023. The date of the postmark on the mailing envelope shall be the exclusive means used to determine whether a request for exclusion has been timely submitted. Any Class Member who requests to be excluded from the Class will only receive an individual settlement share for the PAGA claims, will release only his or her PAGA claims, will not receive any compensation from the Settlement for the Class claims, and will not have any right to object, appeal, or comment thereon. Class Members who fail to submit a valid and timely request for exclusion on or before [DATE], 2023, will be bound by all terms of the Settlement and any final disposition entered in this Class Action if the Court approves the Settlement.

THE LAWYERS REPRESENTING YOU

12. Do I have a lawyer in this case?

The Court preliminarily decided that Jose Garay, APLC and the Law Office of Daniel J. Hyun are qualified to represent you and all Class Members in this Lawsuit. These law firms are also called “Class Counsel” in the context of this case.

13. How will the lawyers be paid?

As part of the Settlement with Defendants, Class Counsel has requested one-third of the Gross Settlement Amount (currently, that is equal to approximately \$30,000) in attorneys' fees, plus costs not to exceed \$20,000 to be paid from the Gross Settlement Amount to compensate Class Counsel for their work on this matter. You will not have to pay Class Counsel's fees and costs from your Individual Settlement Payment.

THE SETTLEMENT, APPROVAL, AND PAYMENT PROCESS

14. Who is handling the Settlement Administration process?

The Settlement Administrator, Phoenix Class Action Administration Solutions, will handle the process. The Settlement Administrator's contact information is provided in Section 17, below.

15. When is the Final Approval Hearing and do I have to attend?

The Final Approval Hearing has been set for [DATE], 2023 at [TIME] .m. in Department CX101 of the Superior Court of the State of California, County of Orange, located at 751 W. Santa Ana Blvd., Santa Ana, California 92701. You do not need to attend the hearing to be a part of the Settlement. However, if you wish to object to the Settlement, you may appear at the hearing. If physical access to the Court is restricted due to COVID-19 or other reasons, please contact the Settlement Administrator regarding alternative options to appear at the hearing.

16. When will I get money after the hearing?

Your Individual Settlement Payment from the Net Settlement Amount will be made within approximately [INSERT] days after the Court's final approval of the Settlement, or, if an objection is filed, then approximately [INSERT] days after the Court's final approval of the Settlement, or, if an appeal is filed, then after all rights to appeal expire (assuming that the Court's approval stands), whichever date is later.

GETTING MORE INFORMATION

17. Are more details available?

A copy of the entire Settlement Agreement was filed in this case as Exhibit 1 to the Declaration of Jose R. Garay in Support of Motion for Preliminary Approval, filed on [DATE], 2023.

You may contact the Settlement Administrator, whose contact information is below:

Phoenix Class Action Administration Solutions
[ADDRESS]
[PHONE]
[FAX]

You may also contact Class Counsel, whose contact information is below:

Jose R. Garay
jose@garaylaw.com
JOSE GARAY, APLC
249 E. Ocean Blvd. #814
Long Beach, CA 90802
Telephone: (949) 208-3400
Facsimile: (562) 590-8400

Daniel J. Hyun
LAW OFFICE OF DANIEL J. HYUN
1100 West Town and Country Road, Suite 1250
Orange, California 92868
Telephone: (949) 596-4782
Facsimile: (949) 528-2596
Email: dh@danielhyunlaw.com

Defendants are represented by:

Nannina L. Angioni
Henry L. Whitehead
KAEDIAN LLP
8383 Wilshire Blvd., Ste. 210
Beverly Hills, CA 90211
Telephone: (310) 893-3372
Facsimile: (310) 893-3191
Email: nangioni@kaedianllp.com
Email: hwhitehead@kaedianllp.com

**PLEASE DO NOT CALL OR WRITE TO THE JUDGE OR TO THE COURT REGARDING
THIS NOTICE OR THE LAWSUIT.**

Perez v. Velvet Yogurt, Inc. d/b/a Active Culture
Case No. 30-2021-01221399-CU-OE-CXC

EXCLUSION FORM

MAIL OR FAX TO:

c/o [Administrator]

P.O. Box *****

*****, CA *****

Fax: (***) ***-****

COMPLETE THIS FORM **ONLY IF** YOU WISH TO EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS. IF YOU EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS, YOU **WILL NOT** RECEIVE COMPENSATION FROM THE SETTLEMENT FOR THE CLASS ACTION CLAIMS.

I, _____, request to be excluded from the Settlement Class in the matter of *Perez v. Velvet Yogurt, Inc. d/b/a Active Culture, et al.*, Case No. 30-2021-01221399-CU-OE-CXC (Orange County Superior Court). I understand that by submitting this Exclusion Form, I will no longer be eligible for compensation from the settlement for the class action claims.

Signature and last four digits of your social security number Date _____

Print your name here

By signing this form, I hereby certify that I request exclusion from the Settlement Class as specified above and that the last four digits of my social security number are true and accurate to the best of my knowledge.

Perez v. Velvet Yogurt, Inc. d/b/a Active Culture
Case No. 30-2021-01221399-CU-OE-CXC

EXCLUSION FORM

TO BE TIMELY, A REQUEST SUBMITTED BY FAX MUST BE SENT ON OR BEFORE _____, 2023. A REQUEST SUBMITTED BY MAIL MUST BE POSTMARKED ON OR BEFORE _____, 2023. IT MUST BE SENT TO THE FOLLOWING ADDRESS OR FAX NUMBER:

c/o [Administrator]
P.O. Box *****
*****, CA *****
Fax: (***) ***-*****

[BAR CODE OR CLASS MEMBER ID WILL BE INCLUDED HERE]