

SOLOUKI SAVOY LLP

SHOHAM SOLOUKI, State Bar No. 278538

GUY SAVOY, State Bar No. 284077

316 W. 2d Street, Suite 1200

Los Angeles, CA 90012

Telephone: (213) 814-4940

Attorneys for Plaintiff Deonides Monterrosas, individually,
and on behalf of all others similarly situated

CDF LABOR LAW LLP

GARRETT V. JENSEN, State Bar No. 242874

MARIANNE C. KOEPF, State Bar No. 191025

18300 Von Karman Avenue, Suite 800

Irvine, California 92612

Telephone: (949) 622-1661

Attorneys for Defendants The Mochi Ice Cream Company LLC,
The Mochi Ice Cream Company and Craig Berger

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEONIDES MONTERROSAS, individually and
on behalf of all others similarly situated,

Plaintiff,

vs.

THE MOCHI ICE CREAM COMPANY LLC,
THE MOCHI ICE CREAM COMPANY,
CRAIG BERGER; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 22STCV02160

*Assigned For All Purposes To:
Hon. Carolyn B. Kuhl
Dept. SS-12*

**AMENDED STIPULATION AND
SETTLEMENT OF CLASS ACTION AND
PAGA CLAIMS**

Complaint Filed: January 19, 2022

This Amended Stipulation and Settlement of Class Action and PAGA Claims (“Agreement”) is made by and between Plaintiff Deonides Monterrosas (“Plaintiff”), individually and on behalf of the Class Members and Aggrieved Employees, on the one hand, and Defendants The Mochi Ice Cream Company LLC, The Mochi Ice Cream Company and Craig Berger (collectively, “Defendants”), on the other hand, after Plaintiff and Defendants engaged in informal discovery, participated in a full day of mediation, and negotiated this Agreement at arms-length.

1 Plaintiff and Defendants are referred to in this Agreement collectively as the “Parties,” or
2 individually as a “Party.” Capitalized terms used herein shall have the meanings set forth in Article
3 I or as defined elsewhere in this Agreement.

4 For the consideration set forth herein, including, but not limited to, a release of claims by
5 the Participating Class Members, a release by Aggrieved Employees, and a general release of
6 claims by Plaintiffs, Defendant agrees to pay a settlement amount of One Hundred Sixty Four
7 Thousand Seven Hundred and Fifty Dollars and Zero Cents (\$164,750.00) (the “Settlement
8 Amount”) as set forth herein.

9 Now, therefore, it is stipulated and agreed by and among the undersigned Parties, subject to
10 the approval of the Court pursuant to the California Rules of Court, that the Settlement of the
11 Action shall be effectuated subject to the following terms and conditions.

12 **ARTICLE I**

13 **DEFINITIONS**

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

16 a. “Action” means the putative class lawsuit filed by Plaintiff against Defendants on
17 January 19, 2022, in Los Angeles Superior Court, Case No. 22STCV02160, alleging the following
18 claims: (1) failure to provide required meal periods; (2) failure to provide required rest periods, (3)
19 failure to pay overtime wages, (4) failure to pay minimum wage, (5) failure to pay timely wages,
20 (6) failure to pay all wages due to discharged and quitting employees, (7) failure to maintain
21 required records, (8) failure to furnish accurate, itemized wage statements, (9) failure to indemnify
22 employees for necessary expenses incurred in discharge of duties, and (10) unfair and unlaw
23 business practices in violation of the Unfair Competition Law, Calif. Bus. & Prof. Code §§17200
24 *et. seq.* (“UCL”). The Action will be amended to add a PAGA claim, as set forth in Section 3.01,
25 below,

26 b. “Aggrieved Employees” means all current and former non-exempt employees of
27 Defendant The Mochi Ice Cream Company, LLC, or its predecessor, Defendant The Mochi Ice
28 Cream Company, in California at any time during the PAGA Period.

1 c. "Agreement" means this Stipulation and Settlement of Class Action Claims,
2 including any attached Exhibit(s).

3 d. "Attorneys' Fees and Costs" means reasonable attorneys' fees for Class Counsel's
4 litigation and resolution of this Action (not to exceed one-third of the Maximum Settlement
5 Amount), and Class Counsel's expenses and costs reasonably incurred in connection with this
6 Action.

7 e. "Check-Cashing Period" means the period of 180 days after the date Individual
8 Settlement Payment checks are issued.

9 f. "Claims and Allegations at Issue" means all of the claims and allegations asserted in
10 (i) the First Amended Complaint to be filed as set forth in Section 3.01 below; (ii) the Complaint
11 filed by Plaintiff against Defendants on January 19, 2022; (iii) the letter sent to the LWDA on
12 behalf of Plaintiff dated January 5, 2022; and (iv) any claims or allegations that could have been
13 asserted under any applicable Industrial Welfare Commission ("IWC") Wage Order.

14 g. "Class" means all current and former non-exempt employees who are or were
15 employed by Defendants in California at any time during the Class Period.

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

17 Shoham J. Solouki, SBN 278538
18 Grant Joseph Savoy, SBN 284077
19 SOLOUKI / SAVOY LLP
316 W. 2nd Street, Suite 1200
Los Angeles, CA 90012
T: (213) 814-4940
20 E: grant@soloukisavoy.com
shoham@soloukisavoy.com

21 i. "Class List" means a list based on Defendant The Mochi Ice Cream Company,
22 LLC's business records that identifies each Class Member's name, last known home or mailing
23 address, Social Security number or, as applicable, other taxpayer identification number, and the
24 number of Qualifying Workweeks worked during the Class Period and/or Qualifying Pay Periods
25 worked during the PAGA Period.

26 j. "Class Members" means all current and former non-exempt employees of
27 Defendant The Mochi Ice Cream Company, LLC, or its predecessor, Defendant The Mochi Ice
28

1 Cream Company, in California during the Class Period.

2 k. "Class Notice" means the Court approved Notice of Class Action Settlement and
3 Hearing Date for Final Court Approval, to be mailed to Class Members in English and Spanish in
4 the form, without material variation, attached as **Exhibit A**.

5 l. "Class Period" means January 19, 2018 through December 4, 2022.

6 m. "Class Representative" means the named Plaintiff in the operative complaint in this
7 Action seeking Court approval to serve as a Class Representative.

8 n. "Court" means the Los Angeles County Superior Court, where the Action is
9 currently pending.

10 o. "Defendants" mean The Mochi Ice Cream Company, LLC, The Mochi Ice Cream
11 Company, and Craig Berger.

12 p. "Defense Counsel" means counsel for Defendant, who are:

13 Garrett V. Jensen
14 Marianne C. Koepf
15 CDF LABOR LAW LLP
18300 Von Karman Avenue, Suite 800
Irvine, California 92612
Telephone: (949) 622-1661

16 q. "Effective Date" of this Settlement means the later of the following: (i) if there are
17 no objections to the Settlement, then the day Judgment is entered by the Court; (ii) if there are
18 objections to the Settlement, and if an appeal, review or writ is not sought from the Judgment, the
19 sixty-first (61st) day after service of notice of entry of the Judgment; or (iii) if an appeal, review or
20 writ is sought from the Judgment, the date upon which all appellate and/or other proceedings
21 resulting from the appeal, review or writ have been finally terminated in such a manner as to permit
22 the Judgment to take effect in substantially the form described herein.

23 r. "Final Fairness and Approval Hearing" means the hearing to be conducted by the
24 Court to determine whether to finally approve and implement the Settlement pursuant to the terms
25 of this Agreement.

26 s. "Final Order" means the final order signed by the Court following the Final Fairness
27 and Approval Hearing in accordance with the terms herein, approving this Agreement.

1 t. "Gross Settlement Amount" means the settlement amount of One Hundred Sixty
2 Four Thousand Seven Hundred and Fifty Dollars and Zero Cents (\$164,750.00) which Defendant
3 The Mochi Ice Cream Company, LLC, shall pay in connection with this Settlement, by way of a
4 common fund, which shall be inclusive of all Individual Settlement Payments, Attorneys' Fees and
5 Costs, the Enhancement Payments, Settlement Administration Costs, and the LWDA Payment.

6 u. "Employer's Share of Payroll Taxes" means Defendant The Mochi Ice Cream
7 Company, LLC's portion of payroll taxes, including, but not limited to FICA and FUTA, on the
8 portion of the Individual Settlement Payments that constitutes wages. The Employer's Share of
9 Payroll Taxes shall be submitted by Defendant The Mochi Ice Cream Company, LLC, to the
10 Settlement Administrator in addition to the Gross Settlement Amount.

11 v. "Enhancement Payment" means a monetary award subject to Court approval of up
12 to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) that will be paid to Plaintiff
13 pursuant to Section 3.07 (d) of this Agreement.

14 w. "Individual Class Settlement Payment" means each Participating Class Member's
15 pro rata share of the Net Settlement Amount calculated according to the number of Workweeks
16 worked during the Class Period.

17 x. "Individual PAGA Settlement Payment" means each Aggrieve Employee's pro rata
18 share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked
19 during the PAGA Period.

20 y. "LWDA" means the California Labor and Workforce Development Agency.

21 z. "LWDA Payment" means the portion of the PAGA Payment payable to the LWDA.

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

26 bb. "Motion for Preliminary Approval" means Plaintiff's written motion, including any
27 evidence as may be required for the Court to grant preliminary approval of the Settlement
28 Agreement as required by Rule 3.769 of the California Rules of Court.

1 cc. "Net Settlement Amount" means the Gross Settlement Amount less the amount
2 allocated to Settlement Administration Costs, Attorneys' Fees and Costs, Enhancement Payments,
3 and the PAGA Payment.

4 dd. "Objection" means the Class Member's timely submission of a written objection
5 from the Class Settlement, which must explain the reason for the objection and be signed by the
6 Class Member.

7 ee. "Operative Complaint" means the First Amended Complaint pursuant to Section
8 3.01, below.

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

11 gg. "PAGA Payment" means the amount payable from the Maximum Settlement
12 Amount to resolve the PAGA claim alleged in the Action, of which seventy-five percent (75%)
13 shall be paid to the LWDA and twenty-five percent (25%) shall be paid to Aggrieved Employees.

14 hh. "PAGA Period" means the period from June 5, 2021 through December 4, 2022.

15 ii. "Pay Period" means any pay period during which an Aggrieved Party worked at
16 least one day for Defendant The Mochi Ice Cream Company, LLC, or its predecessor, Defendant
17 The Mochi Ice Cream Company, as non-exempt employees in California during the PAGA Period.

18 jj. "Participating Class Member" means a Class Member who does not timely request
19 to be excluded from the Settlement and will therefore receive a share of the Net Settlement
20 Amount.

21 kk. "Preliminary Approval Date" means the date the Court preliminarily approves the
22 Settlement in accordance with the terms of this Agreement.

23 ll. "Preliminary Approval Order" means the order the Court enters approving and
24 authorizing the mailing of the Notice by the Settlement Administrator, setting the date of the Final
25 Fairness and Approval Hearing and granting preliminary approval of the Settlement set forth in this
26 Agreement, among other things.

27 mm. "Released Class Claims" means the claims being released as described in Section
28 4.01, below.

1 nn. "Released PAGA Claims" means the claims being released as described in Section
2 4.02, below.

3 oo. "Released Parties" are defined in Section 4.01, below.

4 pp. "Request for Exclusion " means the Class Member's timely submission of a written
5 request to be excluded from the Class Settlement signed by the Class Member.

6 qq. "Settlement" means the final resolution and disposition of the Action pursuant to
7 this Agreement.

8 rr. "Settlement Administration Costs" means all costs (not to exceed \$7,500.00)
9 incurred by the Settlement Administrator in administering the Settlement, including, but not
10 limited to, the following: (i) printing, mailing and re-mailing (if necessary) of Class Notice to Class
11 Members in English and Spanish; (ii) preparing and submitting to Participating Class Members and
12 government entities all appropriate tax filings and forms; (iii) computing the amount of and
13 distributing Individual Settlement Payments, the Enhancement Award, Attorneys' Fees and Costs,
14 and the LWDA Payment; (iv) processing and validating Request for Exclusion Forms and Notices
15 of Objection; (v) establishing a Qualified Settlement Fund ("QSF"), as defined by the Internal
16 Revenue Code; and (vi) calculating and remitting to the appropriate government agencies all
17 employer and employee payroll tax obligations arising from the Settlement and preparing and
18 submitting filings required by law in connection with the payments required by the Settlement.

19 ss. "Settlement Administrator" means ILYM Group, Inc., which will be responsible
20 for the administration of the Settlement pursuant to the terms of this Agreement.

21 tt. "Workweeks" means any week during which a Class Member worked at least one
22 day for Defendant The Mochi Ice Cream Company, LLC, or its predecessor, Defendant The Mochi
23 Ice Cream Company, as non-exempt employees in California during the Class Period.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ARTICLE II

CONTINGENT NATURE OF THE AGREEMENT

Section 2.01: Stipulation to Class Certification for Settlement Purposes

The Parties agree that the Action will be stayed until the request for preliminary and final approval of the Settlement is either granted or denied, with the exception of Plaintiff filing a First Amended Complaint as set forth in Section 3.01 below. Because the Parties have stipulated to the certification of the Class with respect to all causes of action alleged in the Operative Complaint for settlement purposes only, this Agreement requires preliminary and final approval by the Court. Defendants do not consent to certification of the Class for any purpose other than to effectuate the Settlement of the Action. Accordingly, the Parties enter into this Agreement on a conditional basis. This Agreement is contingent upon the approval and certification by the Court.

Section 2.02: Continued Best Efforts to Obtain Court Approval of Settlement

The Parties and their respective counsel shall take all steps that may be requested by the Court relating to the approval and implementation of the Settlement in accordance with the terms of this Agreement and shall use their respective best efforts to obtain Court approval and to implement this Agreement. If the Court does not grant the Motion for Preliminary Approval and/or the Motion for Final Approval, the Parties agree to meet and confer to address the Court's concerns. If the Parties are unable to reach a resolution, the Parties agree to seek the assistance of mediator Todd Smith to resolve the dispute.

Section 2.03: Effect of Non-Occurrence of Effective Date

If the Effective Date does not occur, the Parties agree as follows:

- (a) Any conditional certification of the Class will be vacated and Plaintiffs, Defendant, and the Class will be returned to their positions with respect to the Action as if this Agreement had not been entered into. Any Settlement Administration costs incurred to that point will be split by the Parties.
- (b) Any orders of the Court preliminarily or finally approving certification of any class contemplated by this Agreement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity.

- 1 (c) The fact that the Parties were willing to stipulate to certification for the
2 purposes of this Agreement shall have no bearing on, nor be admissible in
3 connection with, the issue of certification of the Class with respect to any
4 cause of action alleged in the Action.
- 5 (d) The fact of the settlement terms reflected in this Agreement and the fact that
6 Defendants did not oppose the certification of a Class under this Agreement
7 or that the Court preliminarily approved the certification of the Class shall
8 not be used or cited thereafter by any person or entity in any manner
9 whatsoever, including without limitation any contested proceeding relating
10 to the certification of any class.
- 11 (e) This Agreement shall be deemed null and void, shall be of no force or effect
12 whatsoever, and shall not be referred to or used for any purpose whatsoever.

13 **ARTICLE III**

14 **PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT**

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

17 **Section 3.01: Filing of First Amended Complaint**

18 As part of this Settlement, the Parties shall stipulate to the filing a First Amended
19 Complaint (“FAC”) in the Action, which shall add a representative claim under California’s Private
20 Attorneys General Act (“PAGA”), which PAGA claim shall be based on the same facts and
21 theories as Plaintiff’s Labor Code claims set forth in its initial Complaint. The FAC will allege
22 claims under PAGA from June 5, 2021 until December 4, 2022. The FAC shall become the
23 Operative Complaint in the Action. All material allegations in the FAC shall be deemed denied by
24 Defendants without the necessity of Defendants filing an Answer to the FAC or any other pleading
25 in the Action. The FAC shall be submitted by Plaintiff prior to the Motion for Preliminary
26 Approval.

1 **Section 3.02: Preliminary Approval and Conditional Class Certification**

2 Within 60 days of this Stipulation and Settlement of Class Action Claims being executed by
3 all Parties, Plaintiffs will submit the Motion for Preliminary Approval along with this Agreement to
4 the Court for preliminary approval pursuant to Rule 3.769 of the California Rules of Court.
5 Plaintiffs' Motion for Preliminary Approval will request an order conditionally certifying the Class.
6 The Motion for Preliminary Approval will request a hearing date for the Final Fairness and
7 Approval Hearing to be included in the Preliminary Approval Order. Defendants will not oppose
8 the Motion for Preliminary Approval. 14 days prior to submission of her Motion for Preliminary
9 Approval, Plaintiff's counsel will prepare and deliver to Defense Counsel a draft of the Motion for
10 Preliminary Approval papers, including the draft of the notice, memorandum in support, and any
11 supporting declarations.

12 **Section 3.03: The Settlement Administrator**

13 **a. Settlement Administrator Duties, Generally**

14 The Parties have chosen ILYM Group, Inc. to administer the Settlement pursuant to this
15 Agreement and to act as the Settlement Administrator. The Settlement Administrator shall perform
16 all functions required under this Agreement and take necessary steps to effectuate the Settlement,
17 including, but not limited to, the following: distributing and responding to inquiries about the Class
18 Notice; determining the validity of any Requests for Exclusion and/or notice of Objection;
19 calculating the Net Settlement Amount and the Individual Settlement Payments; issuing the
20 Individual Settlement Payment checks and distributing them to Participating Class Members and
21 Aggrieved Employees; issuing the PAGA Payment to the LWDA; and issuing payment to Class
22 Counsel for Attorneys' Fees and Costs, to Plaintiff for her Enhancement Award, and to the
23 appropriate taxing authorities for the Employer's Share of Payroll Taxes, which will be paid by
24 Defendant The Mochi Ice Cream Company, LLC, separately and in addition to the Gross
25 Settlement Amount. The Settlement Administrator shall provide Class Counsel an estimated
26 average of the recovery for the Class Members, and the estimated high and low ranges of possible
27 recoveries. To protect Class Members' privacy rights, the Settlement Administrator shall maintain
28 any all Class Member identifying information provided to it by Defendant The Mochi Ice Cream

1 Company ("Class Data") in confidence, use the Class Data only for purposes of this Settlement and
2 for no other purpose, and restrict access to the Class Data to Administrator employees who need
3 access to the Class Data to effect and for this Agreement. The Settlement Administrator has a
4 continuing duty to immediately notify Defense Counsel if it discovers the confidentiality of the
5 Class Data has been breached. In addition, the Settlement Administrator shall notify Defense
6 counsel only of any opt-out notices received.

7 **Section 3.04: Notice to Class Members**

8 No later than twenty-one (21) days after the Preliminary Approval Date, Defendant The
9 Mochi Ice Cream Company, LLC, will provide the Settlement Administrator the Class List.

10 Within ten (10) business days of receiving the Class List from Defendant The Mochi Ice
11 Cream Company, LLC, the Settlement Administrator will send Class Members, by first-class mail,
12 at their last known addresses, the Court approved Class Notice. The Class Notice will include a
13 calculation of each Class Member's estimated share of the Net Settlement Amount. Class Members
14 will have forty-five (45) days from the date of mailing of the Notice to postmark objections or
15 requests for exclusion. Prior to the initial mailing, the Settlement Administrator will check all Class
16 Member addresses against the National Change of Address database and shall update any addresses
17 before mailing. Class Members shall not be required to submit claim forms in order to receive a
18 share of the Net Settlement Amount.

19 If a Class Notice is returned with a forwarding address, the Settlement Administrator shall
20 re-mail the Class Notice to the forwarding address. With respect to each Class Member whose
21 Notice is returned to the Settlement Administrator as undeliverable, the Settlement Administrator
22 shall promptly attempt to obtain a valid mailing address by performing a skip trace or mass search
23 on LexisNexis databases based on set criteria and, if another address is identified, shall mail the
24 Notice to the newly identified address. It is the intent of the Parties that reasonable means be used
25 to locate Class Members and that the Settlement Administrator be given discretion to take steps in
26 order to facilitate notice of the Settlement and delivery of the Individual Settlement Payments to
27 the Participating Class Members.

1 If a Class Member's Notice is re-mailed, the Class Member shall have ten (10) days from
2 the re-mailing, or forty-five (45) days from the date of the initial mailing, whichever is later, to
3 postmark objections or requests for exclusion. If the Class Notice is re-mailed, the Settlement
4 Administrator will note for its own records and notify Class Counsel and Defense Counsel of the
5 date of each such re-mailing as part of a weekly status report provided to the Parties.

6 In the event a Class Notice remains undeliverable sixty (60) days after its initial mailing, the
7 Settlement Administrator will not mail the Class Member's Individual Settlement Payment. The
8 Settlement Administrator will hold the Class Member's Individual Settlement Payment during the
9 Check-Cashing Period on behalf of the Class Member. If, at the conclusion of the Check-Cashing
10 Period, the Class Member's Notice and Individual Settlement Payment remain undeliverable, the
11 Settlement Administrator will send the funds from those checks to the State of California's State
12 Controller Unclaimed Property Fund with an identification of the amount of unclaimed funds
13 attributable to each such Class Member.

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

19 If the Final Fairness and Approval Hearing is continued for any reason, the Settlement
20 Administrator will mail notice to the Class Members advising them of the new date, time, and
21 location of the Final Fairness and Approval Hearing.

22 **Section 3.05: Responses to Notice**

23 **a. Settlement Terms Bind All Class Members Who Do Not Submit a**
24 **Timely Request for Exclusion**

25 Any Class Member who does not affirmatively opt out of the Settlement by submitting a
26 timely Request for Exclusion will be bound by all of its terms including those pertaining to the
27 Released Claims, as well as any Final Order that may be entered by the Court if it grants final
28 approval of the Settlement.

1 **b. Class Member Disputes**

2 If a Class Member disputes the Individual Settlement Payment or any other information on
3 the Notice of Class Action Settlement that s/he receives, the Class Member may produce evidence
4 to the Settlement Administrator for the Class Period. In order for the dispute to be considered, s/he
5 must follow the directions on the Notice of Class Action Settlement.

6 Written notice of the dispute must be received by the Settlement Administrator within 45
7 calendar days of the mailing of the Notice. The date of mailing the Notice by the Settlement
8 Administrator to the Class Member, and the date the notice of dispute was postmarked, shall be
9 conclusively determined according to the records of the Settlement Administrator. Upon the timely
10 receipt of any dispute, the Settlement Administrator will notify Defense Counsel in writing (email
11 constitutes a writing for this purpose) of the dispute. Defendant's records will be presumed
12 determinative, absent evidence to rebut Defendant's records, but the Settlement Administrator will
13 evaluate the evidence submitted by the Class Member and make the final decision as to the validity
14 of such evidence.

15 **c. Requests for Exclusion from Class Members**

16 By entering into this Agreement, Plaintiff agrees that she will not request exclusion from
17 the Class.

18 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must
19 send the Administrator by mail, a Request for Exclusion that must be signed by the Class Member
20 or his or her authorized representative, and must be sent to the Settlement Administrator,
21 postmarked by no later than forty-five (45) days after the date the Settlement Administrator initially
22 mails the Notice to the Class Members (or ten (10) days after the Settlement Administrator re-mails
23 the Notice to the Class Member, whichever is later). The Class Notice shall contain instructions on
24 how to validly exclude oneself from the Class and this Settlement. The date of the initial mailing
25 of the Class Notice, and the date the signed Request for Exclusion was postmarked, shall be
26 conclusively determined according to the records of the Settlement Administrator. Any Class
27 Member who timely and validly submits a Request for Exclusion will not be entitled to any
28 Individual Settlement Payment from the Net Settlement Amount, will not be bound by the terms

1 and conditions of this Agreement, and will not have any right to object, appeal, or comment
2 thereon. However, even if Class Members validly opt out of the Settlement, they may still be
3 entitled to a portion of the employees' share of the PAGA Payment if the Class Member also is an
4 Aggrieved Employee.

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

10 Defendants have the unilateral right to void this Agreement in the event more than five
11 percent (5%) of Class Members opt out of the Settlement. Defendants must notify Class Counsel
12 and the Court whether it is exercising this right to void no later than fourteen (14) days after the
13 end of the class notice period and the Settlement Administrator notifies the Parties of the total
14 number of valid Request for Exclusion Forms it has received. If Defendant exercises this option, it
15 must pay for any costs incurred by the Settlement Administrator.

16 **d. Objections to Settlement**

17 Class Members may object to the Settlement by submitting to the Settlement Administrator
18 his or her notice of Objection or by appearing at the Final Fairness and Approval Hearing to
19 explain their objection(s). In order for a Class Member to object to this Agreement, or any term of
20 it, the Class Member must not submit a Request for Exclusion notice (*i.e.*, must not opt out). A
21 notice of Objection must include the Class Member's full name, a written statement of the grounds
22 of objection, and be signed by the objecting Class Member or his or her attorney, along with all
23 supporting papers. The notice of Objection and supporting papers should send to the Settlement
24 Administrator by mail no later than forty-five (45) days after the Class Notice was initially mailed
25 to the Class Members (or ten (10) days after the Settlement Administrator re-mails the Notice to the
26 Class Member, whichever is later). The date of the initial mailing of the Class Notice, and the date
27 the signed notice of Objection was postmarked, shall be conclusively determined according to the
28 records of the Settlement Administrator. The Settlement Administrator shall send any notice of

1 Objection it receives to Defense Counsel and Class Counsel within three (3) business days of
2 receipt.

3 The Court retains final authority with respect to the consideration and admissibility of any
4 Class Member objections.

5 **e. Encouragement of Class Members**

6 The Parties, Class Counsel, and Defense Counsel shall not, directly or indirectly, through
7 any person, encourage or solicit any Class Member to exclude himself or herself from this
8 Settlement (opt out) or to object to the Settlement. However, nothing in this Agreement shall bar
9 or prohibit any Party, Class Counsel, or Defense Counsel from responding to questions from Class
10 Members concerning this Settlement.

11 **Section 3.06: Final Fairness and Approval Hearing**

12 The Final Fairness and Approval Hearing shall be held before the Court in order to (1)
13 review this Agreement and determine whether the Court should grant final approval pursuant to the
14 Motion for Final Approval, and (2) consider any timely objections made pursuant to Section
15 3.05(d), above, and any responses from the Parties to such objections. At the Final Fairness and
16 Approval Hearing, the Parties shall ask the Court to grant final approval of this Agreement and
17 shall submit to the Court a proposed Final Order.

18 **Section 3.07: Settlement Payment Procedures**

19 **a. Funding the Settlement Amount**

20 In exchange for the releases set forth in this Agreement and subject to the terms and
21 conditions set forth herein, Defendant The Mochi Ice Cream Company, LLC, agrees to pay the
22 Gross Settlement Amount on a non-reversionary basis. The Gross Settlement Amount includes
23 Individual Settlement Payments to Participating Class Members and Aggrieved Employees,
24 Settlement Administration Costs, Attorneys' Fees and Costs, Enhancement Payments, and the
25 LWDA Payment. The Employer's Share of Payroll Taxes will be paid by Defendant The Mochi Ice
26 Cream Company, LLC, separate from and in addition to the Gross Settlement Amount.

27 Within thirty (30) calendar days after the Effective Date, Defendant The Mochi Ice Cream
28 Company, LLC, will issue the Gross Settlement Amount to the Settlement Administrator in one

installment, plus the Employer's Share of Payroll Taxes, as set forth herein.

b. Payment of Attorneys' Fees and Costs

Class Counsel shall apply for an award of attorneys' fees of up to one-third (1/3) of the Gross Settlement Amount, which is Fifty-Four Thousand Three Hundred Sixty-Eight Dollars and Zero Cents (\$54,368.00). In addition, subject to Court approval, Class Counsel shall be entitled to an award of reasonable costs associated with Class Counsel's prosecution of the Action not to exceed Fifteen Thousand Dollars (\$15,000.00). Such application for attorneys' fees and costs shall be heard by the Court at the Final Fairness and Approval Hearing. Defendants will not object to or oppose Plaintiff's application for these amounts. Class Counsel shall be paid any Court-awarded attorneys' fees and costs no later than fourteen (14) days after Defendant The Mochi Ice Cream Company, LLC, provides the Settlement Administrator with the Gross Settlement Amount. The Court's approval of attorneys' fees and/or costs in an amount less than that requested by Class Counsel shall not invalidate this Agreement.

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

c. Payment of Settlement Administration Costs

The Settlement Administration Costs shall be paid out of the Gross Settlement Amount and shall not constitute payment to any Participating Class Member. Class Counsel will submit an application for Court approval for an allocation of Settlement Administration Costs no greater than Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00). Defendants will not object to or oppose Plaintiff's application for this amount. To the extent there are unused funds of this cost allocation, such funds will be reallocated to the Net Settlement Amount.

d. Payment of Enhancement Payments to Plaintiff

Subject to Court approval, Plaintiff shall receive an Enhancement Payment of up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) for services as class representatives and in exchange for a general release of Plaintiff's claims. Defendants will not oppose this request. The Enhancement Payment will be paid from the Gross Settlement Amount and is not allocated as payment to any Participating Class Member. Plaintiff shall be paid the Court-awarded Enhancement Payment no later than fourteen (14) days after Defendant The Mochi Ice Cream Company, LLC, provides the Settlement Administrator with the Gross Settlement Amount. To the extent that the Court approves less than the amount of the Enhancement Payment that Plaintiff has requested, the difference between the requested and awarded amount will be reallocated to the Net Settlement Amount.

Because it is the intent of the Parties that the Enhancement Payment represents payment to Plaintiff for services performed on behalf of the Class Members and not to be considered wages, the Settlement Administrator will not withhold any taxes from the Enhancement Payment. The Enhancement Payment will be reported on an IRS Form 1099, which the Settlement Administrator will provide to each Plaintiff and to the pertinent taxing authorities as required by law.

e. LWDA Payment

In consideration of claims alleged under PAGA, Class Counsel will request that the Court approve allocation of Ten Thousand Dollars and Zero Cents (\$10,000.00) of the Gross Settlement Amount as PAGA penalties. Seventy-five percent (75%), or Seven Thousand Five Hundred Dollars (\$7,500.00), of this amount will be paid to the LWDA, and twenty-five percent (25%), or Two Thousand Five Hundred Dollars (\$2,500.00) will be allocated to the Net Settlement Amount for distribution to Aggrieved Employees. Defendants will not oppose this request for allocation and distribution of payments under this Section 3.08(e). The Court's adjustment, if any, of the amount allocated as PAGA penalties will not invalidate this Agreement, as long as the Gross Settlement Amount does not exceed \$164,750.00 (subject to Section 3.08(a) above) and final approval of the Settlement is granted.

1 **f. PAGA Payments to Aggrieved Employees**

2 If a Class Member requests exclusion from the Settlement, the Class Member is still entitled
3 to his or her share of the employees' portion of the PAGA Payment, which will be determined on a
4 pro rata basis based upon the number of workweeks that the Aggrieved Employee worked during
5 the PAGA Period.

6 **g. Individual Settlement Payments to Participating Class Members**

7 The Parties agree that the Net Settlement Amount shall be used to fund Individual
8 Settlement Payments. The Parties agree that the Net Settlement Amount shall be divided between
9 all Participating Class Members in proportion to the number of Qualifying Workweeks for each
10 Class Member. To calculate the amount each Participating Class Member will receive, the Net
11 Settlement Amount will be divided by the total number of Qualifying Workweeks worked by all
12 Participating Class Members during the Class Period to determine the base dollar amount per
13 Qualifying Workweek. The Settlement Administrator shall then multiply the number of Qualifying
14 Workweeks for each Participating Class Member by the base dollar amount. In addition, all
15 Aggrieved Employees shall receive a pro rata share of the portion of the PAGA Payment allocated
16 to Aggrieved Employees based on their Qualifying Pay Periods during the PAGA Period. The
17 Settlement Administrator shall disperse Individual Settlement Payments to Participating Class
18 Members within fourteen (14) days after Defendant The Mochi Ice Cream Company, LLC,
19 provides the Gross Settlement Amount to the Settlement Administrator.

20 Each Individual Settlement Payment will represent wages, penalties, and interest allocated
21 using the following formula: twenty-five (25%) allocated to wages and seventy-five percent (75%)
22 allocated to penalties and interest.

23 Based on the information contained in the Class List, the Settlement Administrator shall
24 calculate: (a) the Net Settlement Amount, (b) the Individual Settlement Payment for each
25 Participating Class Member based on the formula specified above, (c) the amount of the Individual
26 Settlement Payments to be allocated to wages and interest and penalties based on the formula
27 specified above, (d) Defendant The Mochi Ice Cream Company, LLC's share of the payroll taxes
28

1 applicable to the Net Settlement Amount allocated to wages; and (e) the employee tax withholding
2 amount based on the allocation of each Individual Settlement Payment to wages.

3 Individual Settlement Payments allocated to wages will be reduced by applicable employee
4 withholdings, and the Settlement Administrator will issue a Form W-2 for the wage portion of the
5 Individual Settlement Payments. The Settlement Administrator will issue a Form 1099 for the
6 interest and penalty portions of the Individual Settlement Payments.

7 Participating Class Members shall have 180 days from the date their Individual Settlement
8 Payment checks are dated to cash their settlement checks.

9 **h. Distribution of the Gross Settlement Amount**

10 The Settlement Administrator will distribute the Individual Settlement Payments to
11 Participating Class Members no later than fourteen (14) days after receipt of the Gross Settlement
12 Amount from Defendant The Mochi Ice Cream Company, LLC. If Individual Settlement Payments
13 are returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall
14 promptly attempt to obtain a valid mailing address by performing a skip trace or a mass search on
15 LexisNexis databases based on set criteria and, if another address is identified, shall mail the check
16 to the newly identified address. If the Settlement Administrator is unable to obtain a valid mailing
17 address or if any funds representing Individual Settlement Payments remain uncashed upon the
18 expiration of the Check-Cashing Period, the Settlement Administrator will deliver the monies
19 represented by the check to the State of California's State Controller Unclaimed Property Fund
20 with an identification of the amount of unclaimed funds attributable to each Class Member.

21 **i. No Credit Toward Benefit Plans**

22 The Individual Settlement Payments made to Participating Class Members under this
23 Agreement, as well as any other payments made pursuant to this Agreement, will not be utilized to
24 calculate any additional benefits under any benefit plans to which any Class Members may be
25 eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock
26 purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is
27 the Parties' intent that this Agreement will not affect any rights, contributions, or amounts to which
28 any Class Members may be entitled under any benefit plans.

1 **ARTICLE IV**

2 **RELEASES**

3 **Section 4.01: Releases by Participating Class Members and Plaintiff**

4 a. Upon the date that Defendant The Mochi Ice Cream Company, LLC, provides the
5 Settlement Administrator with the Gross Settlement Amount, Plaintiff and Participating Class
6 Members will release the Released Parties (defined in this paragraph below) from all claims under
7 federal, state or local law, arising out of the facts, claims, and theories expressly pleaded in the
8 First Amended Complaint, or any prior Complaints; the facts, claims or theories expressly raised in
9 Plaintiff's notice to the LWDA dated June 5, 2022, regarding Defendants; and/or any facts, claims
10 or theories arising under any applicable IWC Wage Orders, including claims for: (1) failure to
11 provide required meal periods; (2) failure to provide required rest periods, (3) failure to pay
12 overtime wages, (4) failure to pay minimum wage, (5) failure to pay timely wages, (6) failure to
13 pay all wages due to discharged and quitting employees, (7) failure to maintain required records,
14 (8) failure to furnish accurate, itemized wage statements, (9) failure to indemnify employees for
15 necessary expenses incurred in discharge of duties, and (10) unfair and unlaw business practices in
16 violation of the Unfair Competition Law, Calif. Bus. & Prof. Code §§17200 *et. seq.* ("UCL") that
17 arose during the Class Period ("Released Claims").

18 Plaintiff and Participating Class Members will waive and release the Released Claims
19 against Defendants The Mochi Ice Cream Company, LLC, The Mochi Ice Cream Company, and
20 Craig Berger, together with The Mochi Ice Cream Company, LLC's and/or The Mochi Ice Cream
21 Company's shareholders, officers, directors, current and former employees and agents
22 (collectively, including Defendants, the "Released Parties").

23 **Section 4.02: Release by Aggrieved Employees and Plaintiff**

24 In addition to the release set forth in Section 4.01 above, upon Defendant The Mochi Ice
25 Cream Company, LLC, providing the Gross Settlement Amount to the Settlement Administrator,
26 Plaintiff and all Aggrieved Employees shall be deemed to have released the Released Parties of any
27 and all claims and/or causes of action under PAGA which are based upon the facts, claims and
28 theories expressly pleaded in the First Amended Complaint and/or any prior Complaints, and/or

any facts, claims, or theories set forth in the LWDA Notice against Defendants dated June 5, 2022; and arising at any time during the PAGA Period.

Section 4.03: General Release by Plaintiff

Upon Defendant The Mochi Ice Cream Company, LLC, providing the Gross Settlement Amount to the Settlement Administrator, Plaintiff for herself and her heirs, successors, and assigns, waives, releases, acquits, and forever discharges the Released Parties from any and all claims, actions, charges, complaints, grievances, and causes of action, of any nature arising from Plaintiff's employment with Defendant The Mochi Ice Cream Company, LLC, or its predecessor Defendant The Mochi Ice Cream Company, whether known or unknown, which exist or may exist as of the Parties' execution of this Agreement.

Section 1542 of the California Civil Code provides as follows:

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

Plaintiff's general release provided herein is made with an express waiver and relinquishment of any claim, right, or benefit under California Civil Code § 1542. Plaintiff warrants that she has read this Agreement, including this waiver of California Civil Code § 1542, and that Plaintiff has consulted with or had the opportunity to consult with counsel about this Agreement and specifically about the waiver of § 1542, and that Plaintiff understands this Agreement and the § 1542 waiver, and so she freely and knowingly enters into this Agreement. Plaintiff further acknowledges that Plaintiff later may discover facts different from or in addition to those Plaintiff now knows or believes to be true regarding the matters released or described in this Agreement, and even so Plaintiff agrees that the releases and agreements contained in this Agreement shall remain effective in all respects notwithstanding any later discovery of any different or additional facts.

Section 4.03: Plaintiff's Employment

It is understood that by entering into this Agreement, the Parties agree that Plaintiff's employment with The Mochi Ice Cream Company, LLC, has ended. The Parties agree that The

1 Mochi Ice Cream Company, LLC, had legitimate, non-discriminatory and non-retaliatory reasons
2 for ending the employment relationship.

3 **Section 4.04: No Additional Attorneys' Fees or Costs**

4 Except for the allocation of attorneys' fees and costs from the Gross Settlement Amount set
5 forth herein, the Parties agree to bear their own attorneys' fees and costs related to this Action.

6 **Section 4.05: Inapplicability of California Labor Code 206.5**

7 The Participating Class Members, including Plaintiff, shall be deemed to have
8 acknowledged and agreed that there is a bona fide dispute as to their claim for wages and/or
9 penalties and/or any other recovery solely in connection with this Action, and that the payments to
10 them set forth in this Agreement constitute payment of all sums allegedly due to them solely from
11 the claims alleged in the Action. Participating Class Members, including Plaintiffs, shall be
12 deemed to have acknowledged and agreed that Labor Code section 206.5 does not apply to any
13 such payments. That section provides in pertinent part as follows: **"No employer shall require
14 the execution of any release of any claim or right on account of wage due, or to become due,
15 or made as an advance on wages to be earned, unless payment of such wages has been made."**
16 Each Participating Class Member shall be deemed to have made the foregoing Release as if by
17 manually signing it. This section in no way limits the releases set forth in Sections 4.01, 4.02 and
18 4.03, above.

19 **ARTICLE V**

20 **LIMITATIONS ON USE OF THIS SETTLEMENT**

21 **Section 5.01: No Admission**

22 Defendants dispute the allegations in the Action and contends that, but for this Settlement, a
23 Class should not have been certified in the Action. This Agreement is entered into solely for the
24 purpose of settling highly disputed claims. Nothing in this Agreement is intended nor will be
25 construed as an admission of liability or wrongdoing by Defendants. The Parties enter into this
26 Agreement to resolve the dispute that has arisen between them and to avoid the burden, expense,
27 and risk of continued litigation. In entering into this Agreement, Defendants do not admit—and in
28 fact specifically deny—that they violated any federal, state, or local law; violated any regulations

1 or guidelines promulgated pursuant to any statute or any other applicable laws, regulations, or legal
2 requirements; breached any contract; violated or breached any duty; engaged in any
3 misrepresentation or deception; or engaged in any other unlawful conduct with respect to any and
4 all employees at Defendant The Mochi Ice Cream Company, LLC, and/or its predecessor, The
5 Mochi Ice Cream Company. Neither this Agreement, nor any of its terms or provisions, nor any of
6 the negotiations connected with it, will be construed as an admission or concession by Defendants
7 of any such violations or failures to comply with any applicable law. Except as necessary in a
8 proceeding to enforce the terms of this Agreement, this Agreement and its terms and provisions
9 will not be offered or received as evidence in any action or proceeding to establish any liability or
10 admission on the part of Defendants or the Released Parties or to establish the existence of any
11 condition constituting a violation of, or non-compliance with, federal, state, local, or other
12 applicable law.

13 **Section 5.02: Non-Evidentiary Use**

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

23 **Section 5.03: Nullification**

24 The Parties have agreed to the certification of the Class encompassing all claims alleged in
25 the Action for the sole purpose of effectuating this Agreement. If (a) the Court should for any
26 reason fail to certify this Class for settlement, or (b) the Court should for any reason fail to approve
27 this Settlement, or (c) the Court should for any reason fail to enter the Final Order, or (d) the Final
28 Order is reversed, or declared or rendered void, or (e) the Court should for any reason fail to

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

10 In the event of a timely appeal from the Final Order, the Final Order shall be stayed and the
11 Gross Settlement Amount shall not be distributed until 30 days after the Effective Date with respect
12 to any appeal. The Effective Date is defined in Article I, Section q of this Stipulation and
13 Settlement of Class Action Claims.

14 **ARTICLE VI**

15 **MISCELLANEOUS PROVISIONS**

16 **Section 6.01: Amendments or Modification**

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

20 **Section 6.02: Assignment**

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

1 **Section 6.03: Governing Law**

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

5 **Section 6.04: Entire Agreement**

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

16 **Section 6.05: Waiver of Compliance**

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

23 **Section 6.06: Counterparts and Electronic Signatures**

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

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

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

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

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

8 **Section 6.09: Cooperation in Drafting**

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

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

13 The Parties believe that this Agreement reflects a fair, reasonable, and adequate settlement
14 of the Action and have arrived at this Agreement through arm's-length negotiation and in the
15 context of adversarial litigation, taking into account all relevant factors, current and potential. The
16 Parties further believe that the Settlement is consistent with public policy, and fully complies with
17 applicable law. The Parties further acknowledge that they are each represented by competent
18 counsel and have had an opportunity to consult with their counsel regarding the fairness and
19 reasonableness of this Settlement.

20 **Section 6.11: Headings**

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

24 **Section 6.12: Notice**

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

To Plaintiffs and the Class:
Shoham J. Solouki, SBN 278538
Grant Joseph Savoy, SBN 284077
SOLOUKI / SAVOY LLP
316 W. 2nd Street, Suite 1200
Los Angeles, CA 90012

And

To Defendant:
CDF LABOR LAW LLP
Garrett V. Jensen
Marianne C. Koepf
18300 Von Karman Avenue, Suite 800
Irvine, California 92612

Section 6.13: Enforcement of Settlement and Continuing Court Jurisdiction

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

Section 6.14: Mutual Full Cooperation

The Parties agree fully to cooperate with each other to accomplish the terms of this Agreement, including but not limited to execution of such documents, and taking such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts contemplated by this Agreement, to effectuate this Agreement and its terms. 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.

Section 6.15: Authorization to Act

Class Counsel represent and warrant 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 Agreement, except for signing documents, including but not limited to
2 this Agreement, that are required to be signed by the Parties. Defendants represent and warrant that
3 the individuals executing this Agreement on their behalf have the full right, power, and authority to
4 enter into this Agreement and to carry out the transactions contemplated herein.

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

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

13 **EXECUTION BY PARTIES AND COUNSEL**

14 The Parties hereby execute this Agreement.

15 Dated: August 9, 2023

DEONIDES MONTERROSAS

17 By: *Deonides Monterrosas*

19 Dated: 8/14/2023

THE MOCHI ICE CREAM COMPANY LLC,
AND THE MOCHI ICE CREAM COMPANY

22 By: *Craig Berger*
Craig Berger

24 Dated: 8/14/2023

CRAIG BERGER

26 By: *Craig Berger*

1 Approved as to form:

2 Dated: August 9, 2023

SOLOUKI | SAVOY LLP

3 *Shoham J. Solouki*

4 By: _____

Shoham Solouki

Attorneys for Plaintiff Deonides Monterrosas

5
6 Dated: August 15, 2023

CDF Labor Law LLP

7
8 *Garrett V. Jensen*

9 By: _____

Garrett V. Jensen

Attorneys for Defendants

10 The Mochi Ice Cream Company, LLC,

11 The Mochi Ice Cream Company and

12 Craig Berger

EXHIBIT “A”

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING
DATE FOR FINAL COURT APPROVAL**

Deonides Monterrosas v. The Mochi Ice Cream Company, LLC, et. al.
Los Angeles Superior Court, Case No. 22STCV20160

The Superior Court for the State of California authorized this Notice. Read it carefully! It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.

You may be eligible to receive money from an employee class action lawsuit (“Action”) against The Mochi Ice Cream Company, LLC, The Mochi Ice Cream Company, and Craig Berger (collectively, “Defendants” or “The Mochi Ice Cream Company”) for alleged wage and hour violations. The Action was filed by a former employee of The Mochi Ice Cream Company, LLC, Deonides Monterrosas (“Plaintiff”) and seeks (1) damages and penalties for a class of hourly employees (“Class Members”) who worked for The Mochi Ice Cream Company, LLC, or its predecessor, The Mochi Ice Cream Company, during the Class Period (January 19, 2018 to December 4, 2022); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all hourly employees who worked for The Mochi Ice Cream Company, LLC, during the PAGA Period (June 5, 2021 to December 4, 2022) (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring The Mochi Ice Cream Company to fund Individual Class Payments, and (2) a PAGA Settlement requiring The Mochi Ice Cream Company to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on The Mochi Ice Cream Company’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$ _____ (less withholding) and your Individual PAGA Payment is estimated to be \$ _____**. The actual amount you may receive may be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to The Mochi Ice Cream Company’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on The Mochi Ice Cream Company’s records showing that **you worked __ workweeks** during the Class Period and **you worked __ pay periods** during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment

that requires Defendants to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendants.

If you worked for The Mochi Ice Cream Company, LLC, or its predecessor, The Mochi Ice Cream Company, during the Class Period (January 19, 2018 through December 4, 2022) and/or the PAGA Period (June 5, 2021 through December 4, 2022), you have the following options under the Settlement:

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendants that are covered by this Settlement
You Can Opt-out of the Class Settlement but not the PAGA Settlement	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. You cannot opt-out of the PAGA portion of the proposed Settlement. The Mochi Ice Cream Company, LLC, must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement.	All Class Members who do not opt-out ("Participating Class Members") can object to the proposed Settlement by writing to the Settlement Administrator.
You Can Appear at the Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on . You don't have to attend but you do have the right to appear in person, by telephone or by using the Court's virtual appearance platform.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of The Mochi Ice Cream Company. The Action accuses Defendants of violating California labor laws by failing to pay overtime wages, minimum wages, wages on a timely basis, wages due upon termination and reimbursable expenses and failing to provide meal periods, rest breaks and accurate itemized wage statements. Based on the same

claims, Plaintiff has also asserted a claim for unlawful business practices under California's Unfair Competition Law, Calif. Business and Prof. Code §§ 17200 et. seq.) and for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) ("PAGA"). Plaintiff is represented by attorneys in the Action ("Class Counsel"):

Defendants strongly deny violating any laws or failing to pay any wages and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendants or Plaintiff are correct on the merits. In the meantime, Plaintiff and Defendants hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendants have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendants do not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendants have agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Defendants will pay \$164,750.00 as the Gross Settlement Amount (Gross Settlement). Defendant The Mochi Ice Cream Company, LLC, has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, The Mochi Ice Cream Company will fund the Gross Settlement within 30 days after it receives service of the notice of entry of Judgment by the Court. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$54,368 (one-third of the Gross Settlement] to Class Counsel for attorneys' fees and up to \$15,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

- B. Up to \$7,500 to Plaintiff as an Enhancement Award for filing the Action, working with Class Counsel and representing the Class. An Enhancement Award will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
- C. Up to \$ \$7,500 to the Administrator for services administering the Settlement.
- D. Up to \$10,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

- 3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.
- 4. Taxes Owed on Payments to Class Members. Plaintiff and Defendants are asking the Court to approve an allocation of 25% of each Individual Class Payment to taxable wages ("Wage Portion") and 75% to interest and penalties ("Non-Wage Portion"). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Defendants have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

- 5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name.

If the monies represented by your check is sent to the Controller's Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

- 6. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Defendants have agreed that, in either case, the Settlement will be void:

Defendants will not pay any money and Class Members will not release any claims against Defendants.

7. Administrator. The Court has appointed ILYM Group, Inc. (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.
8. Participating Class Members’ Release. After the Judgment is final and Defendant The Mochi Ice Cream Company, LLC, has fully funded the Gross Settlement, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims under federal, state or local law, arising out of the fact, claims and theories expressly pleaded in the First Amended Complaint or any prior Complaints; the facts, claims or theories expressly raised in Plaintiff’s notice to California’s Labor Workforce Development Agency dated June 5, 2022 regarding Defendants; and/or the facts, claims or theories arising under any applicable IWC Wage Orders, including claims for: (1) failure to provide required meal periods, (2) failure to provide required rest periods, (3) failure to pay overtime wages, (4) failure to pay minimum wage, (5) failure to pay timely wages, (6) failure to pay all wages due to discharged and quitting employees, (7) failure to maintain required records, (8) failure to furnish accurate, itemized wage statements, (9) failure to indemnify employees for necessary expenses incurred in discharge of duties, and (10) unfair and unlawful business practices in violation of the Unfair Competition Law, Calif. Bus. and Prof. Code §§ 17200 et. seq. that arose during the Class Period.

The Release Parties mean and include Defendants The Mochi Ice Cream Company, LLC, The Mochi Ice Cream Company, and Craig Berger, together with The Mochi Ice Cream Company LLC’s and/or The Mochi Ice Cream Company’s shareholders, directors, officers, current and former employee and agents (“Released Parties”).

9. Aggrieved Employees’ PAGA Release. After the Court’s judgment is final, and Defendant The Mochi Ice Cream Company, LLC, has paid the Gross Settlement,

all Aggrieved Employees will be barred from asserting PAGA claims against Defendants, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Defendants or the related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement. The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties, from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based facts, claims and/or theories stated in the First Amended Complaint and any prior Complaints, and the LWDA Notice dated January 5, 2022; and which arise at any time during the PAGA Period. These include claims based on alleged Labor Code violations (or arising under applicable IWC Wage Orders) for: (1) failure to provide required meal periods, (2) failure to provide required rest periods, (3) failure to pay overtime wages, (4) failure to pay minimum wage, (5) failure to pay timely wages, (6) failure to pay all wages due to discharged and quitting employees, (7) failure to maintain required records, (8) failure to furnish accurate, itemized wage statements, (9) failure to indemnify employees for necessary expenses incurred in discharge of duties.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.

Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$2,500 by the total number of PAGA Workweeks worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Workweeks worked by each individual Aggrieved Employee.

5. HOW WILL I GET PAID?

Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Note. All individuals who qualify as Aggrieved Employees will receive a check, whether or not they are a Participating Class Member.

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Monterrosas v. The Mochi Ice Cream Company, LLC, et al.*, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by [insert date], or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

You cannot opt-out of the PAGA portion of the proposed Settlement. The Mochi Ice Cream Company, LLC, must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendants are asking the Court to approve. At least 16 court days before the [insert date] Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Court's website: <http://www.lacourt.org/casesummary/ui/index.aspx>.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Enhancement Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending**

written objections to the Administrator is [insert date]. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action as ***Monterrosas v. The Mochi Ice Cream Company, LLC, et. al*** and include your name, current address, telephone number, and approximate dates of employment for The Mochi Ice Cream Company, LLC, or its predecessor, The Mochi Ice Cream Company, and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can by attending the Final Approval Hearing. You should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on [insert date] in Department SS-22 of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend either personally or virtually via LACourtConnect (<https://www.lacourt.org/lacc/>). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should contact the Administrator beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendants and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.lacourt.org/casesummary/ui/index.aspx>) and entering the Case Number for the Action, Case No. 22STCV20160.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Settlement Administrator ILYM Group, Inc. Email Address Mailing Address Telephone Fax Number	Class Counsel: Shoham J. Solouki, SBN 278538 Grant Joseph Savoy, SBN 284077 SOLOUKI / SAVOY LLP 316 W. 2nd Street, Suite 1200 Los Angeles, CA 90012 T: (213) 814-4940 E: grant@soloukisavoy.com shoham@soloukisavoy.com
--	---

