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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF ORANGE**

9 MIREYA SERRATO MARTINEZ, on
10 behalf of herself and all "aggrieved
11 employees" pursuant to Labor Code § 2698
et seq.,

12 Plaintiffs,

13 v.

14 EM TORTILLAS, LLC, a California
15 limited liability company, and DOES 1
through 10, inclusive,

16 Defendants.

CASE NO: 30-2022-01263512-CU-OE-CXC

*Assigned to Hon. Melissa R. McCormick,
Dept. CX104*

**THIRD SUPPLEMENTAL DECLARATION
OF DANIEL F. GAINES IN SUPPORT OF
UNOPPOSED MOTION FOR AN ORDER
APPROVING SETTLEMENT OF CLAIMS
BROUGHT PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004,
AWARDING ATTORNEYS' FEES, COSTS,
ENHANCEMENT AWARD, AND
REIMBURSEMENT OF SETTLEMENT
ADMINISTRATION EXPENSES, AND
ENTERING JUDGMENT THEREON**

Date: January 23, 2025
Time: 2:00 p.m.
Dept.: CX104

Complaint Filed: June 3, 2022

1 I, DANIEL F. GAINES, hereby declare and state as follows:

2 1. I am an attorney duly admitted to the practice of law in the State of California. I am
3 the managing shareholder of Gaines & Gaines, APLC, counsel for Plaintiff Mireya Serrato
4 Martinez (“Plaintiff”) in this action. I have personal knowledge of the facts set forth herein and if
5 called as a witness to testify to them, I could and would do so competently.

6 2. Attached hereto as **Exhibit A** is a true and correct copy of the Court’s August 30,
7 2024 Minute Order and August 29, 2024 Tentative Ruling (the “Ruling”) regarding Plaintiff’s
8 Unopposed Motion for an Order Approving Settlement of Claims Brought Pursuant to the Private
9 Attorneys General Act of 2004, Awarding Attorneys’ Fees, Costs, Enhancement Award, and
10 Reimbursement of Settlement Administration Expenses, and Entering Judgment Thereon (the
11 “Motion”).

12 **Plaintiff’s General Release Payment:**

13 3. The Parties have jointly prepared the First Amended Settlement Agreement and
14 Release of Private Attorneys General Act Claim (the “Amended Settlement”) which incorporated
15 the changes from the First Amendment to the Settlement Agreement and Release of Private
16 Attorneys General Act Claim [attached as Exhibit B to the Second Supplemental Declaration of
17 Daniel F. Gaines (ROA 79, Ex. B)], reduced the Gross Settlement Amount, reduced the amount of
18 attorneys’ fees requested, revised the settlement installment payments schedule¹, and took out
19 reference to Plaintiff’s general release payment/enhancement award. Attached hereto as **Exhibit B**
20 is a true and correct copy of the Amended Settlement. Attached hereto as **Exhibit C** is a true and
21 correct redline comparing the original Settlement to the Amended Settlement.

22
23
24 ¹ Defendant is unable to fund the settlement as originally contemplated in the Parties’ original
25 settlement agreement due to financial hardship. *See generally* Declaration of Brian Murrieta (a
26 declaration from Defendant’s Managing Partner describing its current financial situation). As a
27 result, the Parties have revised the settlement installment payments to be paid over twenty-four (24)
28 monthly payments, instead of two (2) payments over approximately three months. Payments to the
State, PAGA Members, Plaintiff’s Counsel, and the Settlement Administrator will still be made in
two pro-rata disbursements. These disbursements will occur after twelve (12) monthly settlement
installment payments have been deposited.

1 4. In the original Settlement Agreement, both Plaintiff's PAGA claims and her
2 individual claims were resolved and memorialized in one agreement (ROA 79, Ex. B). The Court
3 did not believe this process was appropriate (i.e., that Plaintiff's general release payment for a full
4 release of her individual claims against Defendant was incorporated into the PAGA settlement).

5 5. To address the Court's concerns, the Parties prepared the Amended Settlement to
6 remove reference of Plaintiff's general release payment/enhancement award being paid from the
7 PAGA Settlement and Gross Settlement Amount. The Amended Settlement also reduces the Gross
8 Settlement Amount by \$10,000, which will instead be paid to Plaintiff in consideration for her full
9 general release of claims against Defendant. This agreement is memorialized in the separate
10 Confidential Settlement Agreement and Release of Claims (the "Individual Settlement"). A true
11 and correct copy of the Individual Settlement is attached hereto as **Exhibit D**.

12 6. To ensure that the reduction of the Gross Settlement Amount would not affect the
13 Net Settlement Amount, and consequently, how much is paid to the LWDA and to the PAGA
14 Members, my office reduced the amount of attorneys' fees we were requesting by \$10,000 so that
15 the Net Settlement Amount would remain the same.

16 7. In the Ruling, the Court approved a Net Settlement Amount of \$131,098.63. This
17 was calculated as follows:

18 \$225,000 Gross Settlement Amount
19 - \$75,000 attorneys' fees
20 - \$15,551.37 litigation costs
 - \$3,350 settlement administrator costs

 \$131,098.63 Net Settlement Amount²

21 Here, under the Amended Settlement, the Net Settlement Amount would remain the same,
22 less \$650 to account for Phoenix Settlement Administrator's additional fees, discussed below.

23 \$215,000 Gross Settlement Amount
24 - \$65,000 attorneys' fees
25 - \$15,551.37 litigation costs
 - \$4,000 settlement administrator costs

 \$130,448.63 Net Settlement Amount

26
27 _____
28 ² Plaintiff's \$10,000 general release payment/enhancement award was denied by the Court in the
Ruling.

1 Accordingly, the analysis regarding the fairness of the Settlement has not changed because
2 the payouts to the State and PAGA Members are nearly identical as previously approved by the
3 Court in the Ruling.

4 **Settlement Administrator Fees:**

5 8. Jodey Lawrence of Phoenix Settlement Administrators (“Phoenix”) has provided a
6 supplemental declaration to support its request for administrator costs in the amount of \$4,000. The
7 supplemental declaration is being concurrently filed with this declaration and briefing and provides
8 a breakdown of why Phoenix’s fees to administer the settlement will be \$4,000. As previously
9 discussed in further detail in the Second Supplemental Briefing (ROA 77), Phoenix’s bid needed
10 to increase to account for the additional certified Spanish translation of the Eligible Pay Periods
11 Dispute Form and to correct the initial bid which only provided for one disbursement to the PAGA
12 Members. The supplemental declaration of Jodey Lawrence provides a breakdown of the additional
13 costs associated with the second disbursement.

14 9. Phoenix has also provided certified Spanish translations of both the Notice of PAGA
15 Settlement and Release of Claims (the “Notice”) and the Eligible Pay Periods Dispute Form. The
16 certified Spanish translations are attached as Exhibit 2 to the Third Amended Proposed Order
17 Granting Approval of PAGA Settlement and Entering Judgment.

18 **Eligible Pay Periods Dispute Form and Notice to PAGA Members:**

19 10. The Parties have revised the Notice to remove the underlined sentence on the first
20 page of the Notice (ROA 79, Ex. A) and the last sentence of the same paragraph was removed and
21 replaced with the following sentence: “The parties may attempt to reach agreement on disputes,
22 and the settlement administrator may make the initial decision regarding disputes, but the court
23 may review any decision made by the parties and/or the settlement administrator regarding a
24 dispute.” The Parties further revised the Notice to reflect the changes made in the Amended
25 Settlement, discussed above.

26 11. A true and correct copy of the proposed final version of the Notice to PAGA
27 Members, reflecting the above changes, is attached as Exhibit A to Amended Settlement (which is
28

1 attached hereto as **Exhibit B**). A true and correct redline comparing the Notice (ROA 79, Ex. A) to
2 the proposed final version of the Notice to PAGA Members is attached as Exhibit A to the redline
3 comparing the original Settlement to the Amended Settlement (which is attached hereto as **Exhibit**
4 **C**).

5 **Third Amended Proposed Order:**

6 12. The Parties have jointly prepared and are concurrently filing the Third Amended
7 Proposed Order Granting Approval of PAGA Settlement and Entering Judgment. Attached hereto
8 as **Exhibit E** is a true and correct redline comparing the Second Amended Proposed Order to the
9 Third Amended Proposed Order.

10 **Notice to the LWDA:**

11 13. On January 9, 2025, my office uploaded the third supplemental briefing, the third
12 supplemental Gaines declaration, Amendment Settlement, and Declaration of Service to the
13 LWDA. A true and correct copy of the email received by my office confirming submission is
14 attached hereto as **Exhibit F**.

15 I declare, under penalty of perjury, under the laws of the State of California, that the
16 foregoing is true and correct. Executed on January 9, 2025, at Westlake Village, California.

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19 DANIEL F. GAINES
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EXHIBIT A

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER**

MINUTE ORDER

DATE: 08/30/2024

TIME: 11:12:00 AM

DEPT: CX104

JUDICIAL OFFICER PRESIDING: Melissa R. McCormick

CLERK: V. Harting

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: I. Olivares

CASE NO: **30-2022-01263512-CU-OE-CXC** CASE INIT.DATE: 06/03/2022

CASE TITLE: **Martinez vs. EM Tortillas, LLC**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

EVENT ID/DOCUMENT ID: 74374000

EVENT TYPE: Chambers Work - Submitted Matter

APPEARANCES

There are no appearances by any party.

The Court, having taken the above-entitled matter under submission on August 29, 2024, and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

For the reasons stated on the record on August 29, 2024, the hearing on plaintiff's motion for approval of a PAGA settlement is continued to January 23, 2025 at 2:00 p.m. in Department CX104 to enable the parties to address and respond to the issues identified in the court's August 29, 2024 tentative ruling. A supplemental brief and any other necessary supplemental documents shall be filed at least 9 court days before the hearing and shall as necessary address the points identified in the court's tentative ruling.

Clerk to give notice to plaintiff. Plaintiff to give notice to all parties and the LWDA, and to file a proof of service. Plaintiff must also serve the LWDA with any supplemental filings and file a proof of service.

LAW & MOTION CALENDAR TENTATIVE RULINGS

August 29, 2024

Judge Melissa R. McCormick
Dept. CX104

Department CX104 hears law and motion on Thursdays at 2:00 p.m.

Court reporters: Official court reporters typically are not provided in this department for any proceedings. If the parties desire the services of a court reporter, the parties should follow the procedures set forth on the court's website at www.occourts.org.

Tentative rulings: The court endeavors to post tentative rulings on the court’s website by 9:00 a.m. the day of the hearing. Tentative rulings may not be posted in every case. Please do not call the department for tentative rulings if tentative rulings have not been posted.

Submitting on tentative rulings: If all parties intend to submit on the tentative ruling and do not desire oral argument, please advise the courtroom clerk or courtroom attendant by calling (657) 622-5304. Please do not call the department unless all parties submit on the tentative ruling. If all parties submit on the tentative ruling and so advise the court, the tentative ruling will become the court's final ruling and the prevailing party shall give notice of the ruling.

Appearances and public access: Appearances, whether in person or remote, must comply with Civil Procedure Code section 367.75, California Rule of Court 3.672, Orange County Superior Court Local Rule 375, and Orange County Superior Court Appearance Procedure and Information—Civil Unlimited and Complex (pub. 9/9/22).

Unless the court orders otherwise, remote appearances will be conducted via Zoom. All counsel and self-represented parties appearing via Zoom must check in through the court's civil remote appearance website before the hearing begins. Check-in instructions are available on the court's website.

The public may attend hearings by coming to court or via remote access as described above.

Photographing, filming, recording and/or broadcasting court proceedings are prohibited unless authorized pursuant to California Rule of Court 1.150 or Orange County Superior Court Local Rule 180.

Non-appearances: If nobody appears for the hearing and the court has not been notified that all parties submit on the tentative ruling, the court shall determine whether the matter is taken off calendar or the tentative ruling becomes the final ruling. The court also might make a different order. See *Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442 n.1.

NO.	CASE NAME	MATTER
■	[REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

		agreement “includes a broad general release by Plaintiff, which requires compensation.” Plaintiff’s Second Supp. Brief (ROA 77) at 1:16-17. Plaintiff provides no convincing explanation why such compensation would be paid from the Gross Settlement Amount. An enhancement award is not intended to serve as consideration for the release of additional claims. Plaintiff’s request that the court approve payment of the \$10,000 General Release Payment from the Gross Settlement Amount is denied. Plaintiff’s Request for Judicial Notice (ROA 81) of superior court orders from other cases is denied. Plaintiff appears to present these documents not as judicially-noticeable court records, but rather as purportedly persuasive legal authority. See, e.g., Plaintiff’s Second Supp. Brief (ROA 77) at 2:3-4:16. 2. <u>\$75,000.00 for attorneys’ fees</u> (one-third of Gross Settlement Amount). Plaintiff’s motion for approval of \$75,000 in attorneys’ fees is granted. 3. <u>\$15,551.37 in litigation costs</u>. Plaintiff’s motion for approval of \$15,551.37 in litigation costs is granted. 4. <u>\$3,350 for settlement administration costs</u>. In its January 11, 2024 order (ROA 62), the court noted that the settlement administrator’s declaration (Lawrence Declaration, ROA 50) stated the settlement administrator’s fees would not exceed \$2,500 (<i>id.</i> ¶ 17 & Ex. B), but plaintiff’s motion stated the settlement administrator’s fees would not exceed \$4,000. Plaintiff submitted a revised invoice from the settlement administrator reflecting increased fees of \$2,750 in light of the Spanish-language translation. Supp. Gaines Decl. (ROA 71) ¶ 7 & Ex. E. Plaintiff continued to seek \$4,000 in settlement administration fees because “in [plaintiff’s counsel’s] experience, during the disbursement and data gathering processes, situations arise that may require a settlement administrator to increase its fees (for example, if an escalator provision is invoked, and there are additional aggrieved employees, the administrator may need to increase its fees).” Supp. Gaines Decl. (ROA 71) ¶ 7. In its April 25, 2024 order (ROA 75), the court stated that that explanation was speculative and did not support an award of settlement administration fees that exceeds the settlement administrator’s \$2,750 estimate. Plaintiff’s counsel has now submitted a second revised invoice from the settlement administrator (Second Supp. Gaines Decl. (ROA 79) Ex. E) reflecting \$4,000 in settlement administration fees. Plaintiff’s counsel states that, in addition to the \$250 increase for a certified Spanish-language translation discussed above, the
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		settlement administrator has increased its fees by \$600 to account for the preparation and translation of a dispute form. The \$250 and \$600 increases bring the settlement administrator's fees to \$3,350 (\$2,500 + \$250 + \$600). Plaintiff's counsel explains the additional \$650 (\$4,000 - \$3,350) as follows: "Additionally, during these revisions to [the settlement administrator's] bid, my office discovered that it erroneously informed [the settlement administrator] that the original bid it provided would be for one disbursement to the PAGA Members, instead of two, as the Settlement provides. With these changes, [the settlement administrator's] revised bid to administer this Action is \$4,000. . . . Attached hereto as Exhibit E is a true and correct copy of [the settlement administrator's] updated bid." Second Supp. Gaines Decl. (ROA 79) ¶ 9. The second revised invoice attached as Exhibit E to the Second Supplemental Gaines Declaration reflects, among other increases, increased charges for "Programming Database & Setup," "Toll Free Setup," "Notice Packet Formatting" and "QSF Annual Tax Reporting." <i>Compare</i> Second Supp. Gaines Decl. (ROA 79) Ex. E <i>with</i> Supp. Gaines Decl. (ROA 71) Ex. E. It also includes new charges for "Notice Packet" and "Notice." <i>Id.</i> Plaintiff's counsel does not explain why his office's error would have affected these charges, and the settlement administrator has not submitted a declaration. Accordingly, the court has no basis on which to conclude these additional charges are reasonable and necessary. Plaintiff's request for an additional \$650 in settlement administration fees beyond \$3,350 is denied. 5. <u>\$131,098.63 total PAGA penalties</u> (\$98,323.97 to the LWDA and \$32,774.66 to the aggrieved employees). After the above deductions, the total PAGA penalties are \$131,098.63. 6. <u>Dispute resolution</u>. In its January 11, 2024 order (ROA 62), the court asked whether the parties intend for the PAGA Members to be able to dispute the number of pay periods. Plaintiff's counsel stated the parties did not intend for PAGA Members to be able to dispute the number of pay periods. Supp. Gaines Decl. (ROA 71) ¶ 4. In its April 25, 2024 order (ROA 75), the court inquired how the parties proposed to resolve any discrepancies between defendant's records and the PAGA Members' records. Plaintiff's Second Supplemental Brief states that the parties have prepared an amendment to the settlement agreement that provides a dispute procedure. Second Supp. Gaines Decl. (ROA 79) Ex. B. The final sentence of new paragraph 34(a) states: "Defendant's records will be presumed to be accurate, however should the Parties
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EXHIBIT B

**FIRST AMENDED SETTLEMENT AGREEMENT AND RELEASE OF PRIVATE
ATTORNEYS GENERAL ACT CLAIM**

This First Amended Settlement Agreement and Release of Private Attorneys General Act Claim (“Settlement Agreement”) is made by and between, on the one hand, Mireya Serrato Martinez (“Plaintiff”), individually, and on behalf of all other similarly situated PAGA Members and the State of California, and on the other hand, Defendant EM Tortillas, LLC (“Defendant”). Plaintiff and Defendant are collectively referred to herein as the “Parties” and may be individually referred to as a “Party.”

A. Definitions

The following terms, when used in this Settlement Agreement, shall have the following meanings:

1. “Action” or “Lawsuit” means and refers to *Mireya Serrato Martinez v. EM Tortillas, LLC*, Orange County Superior Court Case No. 30-2022-10263512-CU-OE-CXC. The operative complaint in the Action is the Representative Action Complaint filed on June 3, 2022.
2. “Agreement” or “Settlement Agreement,” shall mean this First Amended Settlement Agreement and Release of Private Attorneys General Act Claim, together with all attached Exhibits.
3. “Attorney’s Fees and Costs” means the sum for which Plaintiff’s Counsel shall make application to the Court, that shall not exceed \$65,000.00, and actual litigation costs, not to exceed \$16,000.00, which shall be paid out of the Gross Settlement Amount.
4. “Court” shall mean the Superior Court of the State of California, County of Orange.
5. “Defendant’s Counsel” means and refers to Gigliotti & Gigliotti, LLP.
6. “Effective Date” means the date the Court approves the terms of the Settlement set forth in this Agreement and has entered the Final Order and Judgment.
7. “Eligible Pay Period” means any pay period worked by a PAGA Member in a non-exempt position in California at any time during the PAGA Period. Defendant represents there are no more than 4,500 Eligible Pay Periods worked by no more than 50 PAGA Members during the PAGA Period. If the actual number of pay periods increases beyond 4,500 and/or the actual number of PAGA Members increases beyond 50, Defendant will increase the Gross Settlement Amount by \$50 for each pay period in excess of 4,500 or \$4,500 for each PAGA Member in excess of 50 (the “Escalator Payment”). The larger percentage increase (pay periods v PAGA Members) will control the Escalator Payment.
8. “Final Order and Judgment” means the Court’s Order granting the Motion for Approval of the PAGA Settlement set forth in this Agreement, and entering judgment.
9. “Funding Date(s)” means the twenty-four (24) settlement installment payments Defendant shall deposit with the Settlement Administrator as follows:
 - a. \$5,000 (approximately 2.3% of the GSA), plus a proportionate share of employer payroll taxes, due no later than ten (10) calendar days after the Effective Date;

- b. Five (5) subsequent monthly payments of \$5,000 (approximately 11.6% of the GSA), plus a proportionate share of employer payroll taxes, beginning forty (40) calendar days after the Effective Date and payable on the fifteenth day of each month thereafter for five (5) months;
- c. Seventeen (17) subsequent monthly payments of \$10,000 (approximately 79.1% of the GSA), plus a proportionate share of employer payroll taxes, beginning on the following month after the last monthly payment of \$5,000 and payable on the fifteenth day of each month thereafter for seventeen (17) months; and
- d. One (1) final payment of \$15,000 (approximately 7% of the GSA), plus a proportionate share of employer payroll taxes, beginning on the following month after the last monthly payment of \$10,000 and payable on the fifteenth day of that month.

If the GSA increases due to the Escalator Payment, each installment payment shall increase on a proportionate basis.

- 10. “Gross Settlement Amount” or “GSA” means the maximum settlement amount that Defendant will pay in connection with the Settlement of the Action. The GSA is Two Hundred Fifteen Thousand Dollars and Zero Cents (\$215,000.00), subject to the Escalator Payment memorialized in Paragraph 7, above. No part of the GSA shall revert to Defendant under any circumstances. Defendant shall pay no more and no less than the GSA to resolve the Action as described herein.
- 11. “LWDA Payment” means seventy-five percent (75%) of the PAGA Penalty Fund that shall be paid to the California Labor & Workforce Development Agency (“LWDA”) pursuant to the PAGA for civil penalties.
- 12. “Net Settlement Amount” or “PAGA Penalty Fund” is the amount that remains after deduction of Plaintiff’s Counsel’s Attorney’s Fees and Costs and the Settlement Administrator’s fees and costs from the Gross Settlement Amount.
- 13. “Notice” means the written notice to be mailed to all PAGA Members with their settlement payment checks, once the Court enters its Final Order and Judgment, and the Effective Date occurs, in a form substantially similar to **Exhibit “A,”** and as approved by the Court.
- 14. “PAGA Member(s)” means any and all individuals who were employed by Defendant for at least one Eligible Pay Period in non-exempt position in California during the PAGA Period.
- 15. “PAGA Settlement” or “Settlement” means the settlement of the Action memorialized in this Agreement.
- 16. “PAGA Period” or “Statutory Period” means the time period from March 14, 2021 through May 15, 2023.
- 17. “Plaintiff’s Counsel” means Daniel F. Gaines of Gaines & Gaines, APLC.
- 18. “Released Parties” means Defendant, and each of and all of its respective past, present and future agents, employees, officers, directors, partners, trustees, representatives, shareholders, stockholders, members, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or partnerships, divisions, assigns, predecessors,

successors, insurers, consultants, joint venturers, joint employers, affiliates, alter-egos, co-employers, dual employers, service providers, contracting partners, subcontractors, employee benefit plans and fiduciaries thereof, and all other persons and/or entities acting under, by, through or in concert with any of them.

19. “Settlement Administrator” means Phoenix Class Action Administration Solutions, or a different third-party administrator agreed to by the Parties and approved by the Court.

B. General

20. On or about March 12, 2022, Plaintiff sent a PAGA Notice to the LWDA, with a copy to Defendant via U.S. Certified Mail, alleging the following claims against Defendant: (1) failure to pay all wages; (2) failure to authorize and provide rest periods; (3) failure to provide meal periods; (4) failure to issue accurate wage statements; (5) failure to reimburse expenses; and (6) failure to pay wages timely at separation of employment.

21. Without indication from the LWDA it intended to investigate the claims, on June 3, 2022, Plaintiff filed the Action in the Superior Court of California, County of Orange, which alleged the claims identified in Plaintiff’s PAGA Notice.

22. Defendant denies all of Plaintiff’s claims and allegations, as referenced in the Action and the PAGA Notice, and further denies any liability or wrongdoing of any kind associated with the claims alleged in the Action (or otherwise).

23. The Parties have conducted a thorough investigation into the facts of the Action. This included, among other things, informal discovery involving the exchange of extensive information and key documents relating to the underlying alleged violations. Defendant also provided Plaintiff’s Counsel with detailed financial records to demonstrate its limited financial resources. After engaging in private mediation with Steve Pearl, Esq., the Parties reach the proposed Settlement described in this Agreement, and believe it is fair, reasonable, and adequate. The Parties understand, acknowledge, and agree this Agreement constitutes a compromise of claims alleged by Plaintiff on behalf of the State of California and the LWDA, and it is the desire and intention of the Parties to effect a final and complete resolution of the representative claims Plaintiff has alleged against Defendant and/or any of the Released Parties. The Parties further acknowledge that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission of liability by Defendant.

24. Under California Law, the State may assess and collect civil penalties from employers for violations of certain provisions of the Labor Code. Labor Code §§ 2698, *et seq.* Under PAGA, however, if an “aggrieved employee” “give[s] written notice by certified mail to the [State] and the employer of the specific provision of the [Labor Code] alleged to have been violated,” and the State thereafter decides not to investigate, as is the case here, or does investigate and determines a citation against the employer should not issue, the employee may, “as an alternative” to enforcement by the State, act as a proxy or agent of the state’s labor law enforcement agencies and bring a civil action under PAGA to recover civil penalties “on behalf of himself or herself and other current or former employees.” *Id.* “[C]ivil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the state and 25 percent to the aggrieved employees.” *Id.*

25. California Labor Code § 2699(1)(2) provides “[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part.”

26. In consideration of the promises and agreements contained herein, the Parties agree and covenant as follows:

C. **Terms of Settlement**

27. Subject to the Court's approval of the Settlement pursuant to Labor Code § 2699(1)(2), which counsel and the Parties agree to recommend in good faith to the Court, the Parties agree to the following binding settlement of the Action.

28. Upon the Court entering the Final Order and Judgment and the Effective Date occurring, Defendant shall pay the non-reversionary Gross Settlement Amount of Two Hundred Fifteen Thousand Dollars and Zero Cents (\$215,000.00), subject to the Escalator Payment memorialized in Paragraph 7, above. The Gross Settlement Amount will be distributed in the following manner:

- a. **Settlement Administration Costs:** The costs associated with settlement administration will be paid from the Gross Settlement Amount, and shall not exceed \$4,000.00. The Administrator's services will include, but not be limited to the following: updating PAGA Members' mailing addresses through a search of the National Change of Address database maintained by the U.S. Post Office, and skip-tracing bad addresses on the return of the PAGA Members' Notice and settlement payment checks; formatting and printing the Notice to be mailed to the PAGA Member with their settlement payment checks; calculating, issuing and mailing payments to LWDA and PAGA Members; performing tax reporting to the appropriate authorities, among other things called for by this Agreement. Subject to Court approval, the Parties agree to use Phoenix Class Action Administration Solutions as the Settlement Administrator.
- b. **Attorney's Fees and Costs:** The Parties agree that, subject to the Court's review and approval, Plaintiff's Counsel will be paid up to \$65,000.00 from the GSA, as reasonable attorney's fees, plus actual litigation costs of up to \$16,000.00, also to be paid from the GSA, incurred to litigate the Action and to obtain Court approval of the Settlement. Plaintiff's Counsel's documented litigation costs are presently estimated at \$16,000.00. The Settlement Administrator will issue an IRS Form 1099 to Plaintiff's counsel for the Attorney's Fees and Costs awarded. In no circumstance(s) shall Defendant be liable for any payment(s) of Attorney's Fees and Costs separate from the GSA.
- c. **PAGA Penalty Fund:** After deducting the Attorney's Fees and Costs and Settlement Administration Costs from the Gross Settlement Amount, the remaining net settlement amount, the PAGA Penalty Fund, will be apportioned as required by the PAGA, Labor Code section 2699(i), with distribution of 75% to the LWDA, (the "LWDA Payment") and 25% to the PAGA Members. The PAGA Penalty Fund shall encompass all payments to the LWDA and to the PAGA Members.
- d. **PAGA Penalty Fund Allocation:** The PAGA Penalty Fund, estimated at \$130,000.00 shall be allocated \$97,500.00 (75%) for the LWDA Payment, and \$32,500 (25%) to the PAGA Members, to be distributed on a proportionate basis, using the number of Eligible Pay Periods each PAGA Member was employed during the PAGA Period, as detailed in Paragraph 36, herein.

- e. **Taxes and Reporting:** Each PAGA Member's individual share will be treated as non-wage income for which the Administrator shall issue an IRS Form 1099 to be mailed together with the PAGA Member's settlement check, and reported to the applicable governmental authorities.

D. Releases

29. Release as to the PAGA Representative Claims

- a. Upon approval by the Court of this Settlement, and subject to Defendant's full payment of the GSA, Plaintiff, individually and in her representative capacity on behalf the State of California and the PAGA Members, will fully and finally release and discharge the Released Parties from all claims, rights, demands, liabilities, costs, attorney's fees, and causes of action for civil penalties under the PAGA, for the duration of employment in a non-exempt position in California during the PAGA Period, based on the factual and legal allegations pled in the operative Representative Action Complaint that support or relate to the following alleged violations of law asserted by Plaintiff in the Action pursuant to PAGA: (1) failure to pay all wages under Labor Code §§ 246, 510 and 1194; (2) failure to authorize and provide rest periods under Labor Code § 226.7; (3) failure to provide meal periods under Labor Code §§ 226.7 and 512; (4) failure to issue accurate wage statements under Labor Code §§ 226(a) and 226.3; (5) failure to reimburse expenses under Labor Code §§ 2802; and (6) failure to pay wages timely at separation of employment under Labor Code §§ 201-203 (the "Released PAGA Claims").
- b. In accordance with *Arias v. Superior Court* (2009) 46 Cal.4th 969, a judgment in "a representative action brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004 ... is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding," which the Final Order and Judgment shall so reflect. The Final Order and Judgment shall not bind or release the PAGA Members' individual wage claims (or other individual claims). However, in accordance with *Arias*, the Final Order and Judgment shall be binding on the PAGA Members as to the Released PAGA Claims. A statement to this effect shall be included in the Notice sent to the PAGA Members mailed together with their Settlement payment checks and IRS 1099 Forms.

E. Settlement Approval and Implemental Procedures

30. Plaintiff's Counsel shall prepare a motion for approval of the Settlement pursuant to California Labor Code § 2699(1)(2). Defendant shall not oppose such a motion provided Plaintiff's Counsel sends a draft of the motion for approval to Defendant's Counsel at least three (3) business days before it is filed. Defendant's Counsel will work with Plaintiff's Counsel to provide Plaintiff's Counsel with, and allow Plaintiff's Counsel to submit to the Court, adequate information related to the Released PAGA Claims to obtain approval of the Settlement pursuant to a reasonable request by Plaintiff's Counsel. As required by Labor Code, at the time the motion for approval of the Settlement is filed with the Court, Plaintiff's Counsel shall submit the motion, together with its exhibits, to the LWDA.

31. Within five (5) calendar days after the Effective Date, the Settlement Administrator shall send Defendant's Counsel electronic wiring instructions to fund the Gross Settlement Amount.

32. Within ten (10) calendar days after the Effective Date, Defendant will send to the Settlement Administrator a list which shall provide for each PAGA Member, the following information: (1) full name; (2) last known address; (3) social security number; and (4) the number of Eligible Pay Periods (the “Data List”). The fact that Defendant may not possess/maintain/know any or all of the PAGA Members’ contact information shall not constitute a breach of this Agreement or be grounds for enforcement; however, Defendant will conduct a reasonable search and diligent inquiry to obtain such information and provide to the Settlement Administrator. The Data List shall be treated as and remain confidential and be used solely to manage the notice and payment process described herein, and for no other purpose, and shall not be disclosed to anyone other than the Settlement Administrator, except as may be required by applicable taxing authorities, or pursuant to express written authorization of Defendant, the PAGA Members or by order of the Court.

- a. Within twenty-five (25) calendar days after the Effective Date, the Administrator shall mail the Notice (attached hereto as Exhibit A) to each PAGA Member. PAGA Members shall have forty-five (45) calendar days after the Notice is mailed to challenge the Eligible Pay Periods as reflected on Defendant’s records. To the extent a PAGA Member disputes any of the information listed on his or her Notice, the PAGA Member may produce evidence to the Administrator showing such information the PAGA Member contends should be reflected in the Notice and by mailing a completed Eligible Pay Periods Dispute Form (attached hereto as **Exhibit B**) to the Administrator. Defendant’s records will be presumed to be accurate, however, should the Parties be unable to come to an agreement, they may seek Court intervention to resolve the dispute. The parties may attempt to reach agreement on disputes, and the settlement administrator may make the initial decision regarding disputes, but the court may review any decision made by the parties and/or the settlement administrator regarding a dispute

33. No later than each Funding Date, Defendant shall wire the required portion of the Gross Settlement Amount to the Administrator, as outlined in paragraph 9.

34. Upon receipt of twelve settlement installment payments from Defendant, and subject to the prior occurrence of the forty-five (45) day Eligible Pay Periods dispute deadline, the Administrator will distribute a proportionate share of the Gross Settlement Amount to PAGA Members, the LWDA, Plaintiff’s Counsel, and the Administrator. Should Defendant fail to fund the Gross Settlement Amount at the time and in the amounts as provided for by this Agreement, and unless otherwise agreed upon by the Parties or ordered by the Court, Plaintiff may elect to enforce this Agreement or, at her option, this Agreement and the settlement described within it, shall be rescinded, and the Parties shall be restored to their respective positions as of May 15, 2023.

35. The Settlement Administrator will perform all settlement administration duties, including (i) a National Change of Address (“NCOA”) database search, (ii) skip trace to update PAGA Member addresses on the return of undelivered Notices and checks; , (iii) issuing the Notice and payments to Plaintiff and all PAGA Members, (iv) issuing all required IRS forms, and reporting same to the applicable taxing authorities; and (v) issuing payment to the LWDA, PAGA Members, Plaintiff’s Counsel and to itself.

36. The Administrator shall have the authority and obligation to calculate the amounts of the PAGA Members’ Settlement payments in accordance with the methodology set forth in this Agreement and orders of the Court. Each PAGA Member will be eligible to receive a Settlement payment based on the total number of his/her Eligible Pay Periods worked during the PAGA Period

in relation to the aggregate number of Eligible Pay Periods worked by all PAGA Members during the PAGA Period, e.g.

PAGA Member Payment =

(PAGA Penalty Fund – LWDA Payment) (x) $\frac{\text{PAGA Member's Number of Eligible PAGA Pay Periods}}{\text{All PAGA Members' Eligible PAGA Pay Periods}}$

37. All disbursements to the PAGA Members, the LWDA, the Settlement Administrator, Plaintiff and Plaintiff's Counsel required under this Settlement Agreement shall be made within ten (10) calendar days after each Funding Date. Prior to disbursement, the Settlement Administrator will forward its calculations of the PAGA Members' Settlement payments to all counsel, and receive approval from all counsel as to such amounts. Any Party's failure to respond to the Settlement Administrator's request for approval within five (5) business days shall be deemed approval of the calculations.

38. PAGA Members shall have 180 calendar days after mailing to cash each of their individual settlement checks. If any PAGA Member's check is not cashed within that period, the check will be voided and a stop-payment will be issued. Any funds in the Settlement Administrator's account as a result of a failure to timely cash a settlement check shall be transmitted to the California State Controller's Unclaimed Property Fund in the name of each respective PAGA Member whose check was uncashed and voided. Neither Defendant, Defendant's Counsel, Plaintiff's Counsel, nor Plaintiff will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks. The Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure Code § 384, as the entire Settlement will be paid out to PAGA Members whether or not they all cash their settlement checks. Therefore, Defendant will not be required to pay any interest on said amount. In no circumstance(s) shall Defendant be liable for any interest payment(s).

39. By no later than 240 days after mailing of the final Settlement payment checks to all PAGA Members, the Settlement Administrator shall provide Plaintiff's Counsel and Defendant's Counsel with a declaration setting forth the disbursements made to the PAGA Members, the LWDA, Plaintiff's Counsel for attorneys' fees and litigation costs, and to itself, and shall include information regarding the number of uncashed checks as of that date, the aggregate sum of uncashed checks, and the timeline for transmittal of sum represented by all uncashed checks to California's Controller, Unclaimed Property Division (if applicable).

F. Miscellaneous Provisions

40. **Eligible Pay Periods and PAGA Members:** Defendant has represented there are no more than 4,500 Eligible Pay Periods worked by no more than 50 PAGA Members during the PAGA Period.

41. **Voiding the Agreement:** The Settlement Agreement shall be voidable and unenforceable as to all Parties herein at the option of either Party if (a) the Court should for any reason fail to approve this Settlement in the form agreed to by the Parties, or (b) the Court should for any reason fail to enter a judgment, or (c) the approval of the Settlement and judgment is reversed, modified or declared or rendered void by a court of competent jurisdiction. In that event, then neither the Settlement nor any of the related negotiations or proceedings shall be of any force or effect, and all Parties to the Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court. Notwithstanding the

foregoing, the Parties may attempt in good faith to cure any perceived defects in the Settlement to facilitate approval.

42. **Waiver**: The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

43. **Parties' Authority**: The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

44. **Mutual Full Cooperation**: The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, 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 Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Plaintiff's Counsel shall, with the assistance and cooperation of Defendant and Defendant's counsel, take all necessary steps to secure the Court's approval of the Settlement, and the Final Order and Judgment.

45. **No Prior Assignments**: The Parties hereto represent, covenant, and warrant that they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights released and discharged by this Settlement Agreement.

46. **No Admission**: Defendant denies any and all liability to Plaintiff and/or the PAGA Members in this Action, as to any and all causes of action that were asserted or that might have been asserted in this Action based on the facts set forth in the First Amended Representative Action Complaint. Nonetheless, Defendant wishes to settle and compromise the matters at issue in the Action to avoid further substantial expense and the inconvenience and distraction of protracted and burdensome litigation. Defendant also has taken into account the uncertainty and risks inherent in litigation, and without conceding any infirmity in the defenses that it has asserted or could assert against Plaintiff, have determined that it is desirable and beneficial that Plaintiff's claims be settled in the manner and upon the terms and conditions set forth in this Agreement.

47. **Binding Settlement**: Nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this Settlement Agreement with the intention of avoiding further disputes and litigation with the attendant inconvenience and expenses. This Settlement Agreement is a settlement document and shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement.

48. **Enforcement Actions; Acceleration; Time is of the Essence**: This Agreement is binding and enforceable under California Code of Civil Procedure section 664.6, and the Court shall retain jurisdiction to enforce this Agreement. Except as otherwise provided in this Settlement Agreement, in the event that one or more of the Parties to this Settlement Agreement institutes any action or proceeding in this case under Section 664.6 or otherwise or separate legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement

or to declare rights and/or obligations under this Settlement Agreement, the successful Party or Parties shall be entitled to recover from the unsuccessful Party or Parties reasonable attorney's fees and costs incurred in connection with any enforcement actions. If Defendant breaches the installment payment provisions of this Agreement, all sums due hereunder shall be accelerated and all due and payable. Time is of the essence with respect to all provisions herein.

49. **Notices:** Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

To Plaintiff:

Daniel F. Gaines
Gaines & Gaines, APLC
4550 E Thousand Oaks Blvd, Suite 100
Westlake Village, CA 91362-3824

To Defendant:

Joseph J. Gigliotti
Gigliotti & Gigliotti, LLP
5256 S. Mission Road, Ste. 127
Bonsall, CA 92003

50. **Construction:** The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arm's-length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or her or its counsel participated in the drafting of this Settlement Agreement.

51. **Captions and Interpretations:** Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

52. **Modification:** This Settlement Agreement may not be materially changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. Non-material changes requested by the Court may be made upon stipulation signed by all counsel. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto.

53. **Choice of Law:** This Settlement Agreement shall be governed by and construed, enforced and administered in accordance with the laws of the State of California, without regard to its conflicts-of-law rules.

54. **Integration Clause:** This Settlement Agreement contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

55. **Continuing Jurisdiction**: After entry of the Final Order and Judgment, the Court will have continuing jurisdiction under California Code of Civil Procedure § 664.6 and as otherwise allowed by law solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) settlement administration matters; and (iii) such post-Final Order and Judgment matters as may be appropriate under court rules or as set forth in this Settlement.

56. **Waiver of Appeals**: The Parties waive all appeals from the Court's approval of the Agreement, unless the Court materially modifies the Agreement and/or unless a non-Party files an appeal.

57. **Publicity**: With respect to the Settlement, Plaintiff, Defendant, Defendant's Counsel, and Plaintiff's Counsel agree not to publicize, contact the media, or disclose to the public any information about the Settlement or the negotiation process, with the exception of filing this Settlement Agreement with the Court, and submitting it to the LWDA, informing the Court of the manner in which the Settlement was obtained, and the reasons in support of the fairness of the Settlement only insofar as necessary to obtain Court approval of the settlement of the Action. Plaintiff's Counsel may also respond to inquiries by PAGA Members and the LWDA. With respect to the terms of this Settlement, Plaintiff's Counsel agree not to post the terms of the Settlement on their website or initiate contact with the media about its terms or the negotiations. If asked by the media, Plaintiff's Counsel and Plaintiff agree to state, "The matter was amicably settled. Any further information about the settlement may be obtained by going to the Court's website." Plaintiff's Counsel agree that they will not circumvent this Agreement by facilitating or encouraging any PAGA Group member or any other individual to do what Plaintiff and his counsel have agreed not to do.

58. **Binding On Assigns**: This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

59. **Counterparts**: This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully-signed Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic delivery shall be deemed an original.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties knowingly and voluntarily executed this Settlement Agreement and Release of PAGA Claim as of the date set forth below.

Dated: 01 / 08 / 2025

By: Mireya Serrato
Plaintiff, Mireya Serrato Martinez

Dated: _____

By: _____
Defendant, EM Tortillas, LLC

AS TO FORM:

Gaines & Gaines, APLC

Dated: 01 / 08 / 2025

By: Daniel F. Gaines
Daniel F. Gaines, Attorneys for Plaintiff

Gigliotti & Gigliotti, LLP

Dated: _____

By: _____
Joseph J. Gigliotti, Attorneys for EM
Tortillas, LLC

IN WITNESS WHEREOF, the parties knowingly and voluntarily executed this Settlement Agreement and Release of PAGA Claim as of the date set forth below.

Dated: _____

By: _____
Plaintiff, Mireya Serrato Martinez

Dated: 1/8/25

By: *[Signature]*
Defendant, EM Tortillas, LLC
MANAGING Partner

AS TO FORM:

Gaines & Gaines, APLC

Dated: _____

By: _____
Daniel F. Gaines, Attorneys for Plaintiff

Gigliotti & Gigliotti, LLP

Dated: January 9, 2025

By: *Joseph J. Gigliotti*
Joseph J. Gigliotti, Attorneys for EM
Tortillas, LLC

EXHIBIT A

Notice of PAGA Settlement and Release of Claims

TO: All persons employed by EM Tortillas, LLC (“EM Tortillas” or “Defendant”) in the State of California in non-exempt positions from March 14, 2021 through May 15, 2023 (the “PAGA Members”).

I. Why Are You Receiving This Notice

You are receiving this Notice because the Superior Court for the State of California, County of Orange, has approved a settlement of a claim under the California Labor Code Private Attorneys General Act (“PAGA”). The PAGA claim seeks civil penalties on behalf of the State of California and for which the State of California receives 75% of any civil penalties collected (with PAGA Members receiving the remaining 25%).

The settlement will provide \$215,000 (the “Gross Settlement Amount”) to pay claims to all PAGA Members who worked for Defendant in the State of California in non-exempt positions from March 14, 2021 through May 15, 2023 (the “PAGA Period”).

The “Net Settlement Amount” is the portion of the Gross Settlement Amount that will be available for distribution to PAGA Members and the State of California’s Labor and Workforce Development Agency (“LWDA”). The Net Settlement Amount (or “PAGA Penalty Fund”) is \$ [REDACTED]. 75% of this amount, or \$ [REDACTED], shall be distributed to the LWDA and the remaining 25%, or \$ [REDACTED], shall be distributed to PAGA Members on a proportionate basis, using the number of pay periods worked by a PAGA Member in a non-exempt position in California at any time during the PAGA Period (the “Eligible Pay Periods”). Specifically, the formula used to calculate each PAGA Member’s settlement payment is as follows:

Each PAGA Member will be eligible to receive a Settlement payment based on the total number of his/her Eligible Pay Periods worked during the PAGA Period in relation to the aggregate number of Eligible Pay Periods worked by all PAGA Members during the PAGA Period.

You are receiving this notice because you may be a PAGA Member. Defendant’s records indicate that you were employed by Defendant in the State of California in a non-exempt position at some time from March 14, 2021, through May 15, 2023 (the “PAGA Period”). The Court approved a Settlement Agreement and Release of Private Attorneys General Act Claim (“Settlement”) of the lawsuit *Mireya Serrato Martinez v. EM Tortillas, LLC* and ordered that a portion of the Settlement proceeds allocated to civil penalties under PAGA be distributed to PAGA Members, including you, after certain portions of the penalties are paid to the State of California according to California law.

If you disagree with the data, please submit the enclosed Eligible Pay Periods Dispute Form and provide an explanation and evidence in support of your position to the Settlement Administrator, postmarked, no later than [REDACTED], 2025. The parties may attempt to reach agreement on disputes, and the settlement administrator may make the initial decision regarding disputes, but the court may review any decision made by the parties and/or the settlement administrator regarding a dispute.

On or about [REDACTED], 2025 and [REDACTED], 2025, the Settlement Administrator will mail you installment payments relating to your individual “PAGA Settlement Award” which is your share of the Settlement funds that were allocated to settle claims for civil penalties pursuant to PAGA. Your PAGA Settlement Award is based on your Eligible Pay Periods (pay periods worked in California in a non-exempt position) during the PAGA Period, as set forth in the Settlement. You may deposit or cash the checks without any further obligation on your part and there is no need for you to contact the settlement administrator, the parties, or the Court. The Court-approved Settlement releases claims for civil penalties under PAGA as described in more detail in the section under the heading “Release of Claims” below. No wage claims are released or affected by the Settlement.

II. Summary of Case

On June 3, 2022, Plaintiff Mireya Serrato Martinez (the “Plaintiff”) commenced a lawsuit in the Orange County Superior Court, case number 30-2022-01263512, to recover civil penalties (the “Lawsuit”). Plaintiff alleges in the Lawsuit that Defendant failed to pay all wages due, to pay all minimum and overtime wages due, to provide all meal and rest periods or premium compensation in lieu thereof, to timely pay all wages due upon separation of employment, to reimburse all business expenses, and to issue complete and accurate wage statements. For these alleged violations, Plaintiff seeks penalties pursuant to the PAGA.

Defendant denies all claims and allegations in the Lawsuit and asserts that no penalties are due to Plaintiff, the State of California, or any PAGA Member. The Court has made no determination on the merits of the PAGA claims, but the parties have decided to resolve the action through the Settlement, which the Court has approved.

III. Release of Claims

Plaintiff, individually and in her representative capacity on behalf the State of California and the PAGA Members, will fully and finally release and discharge the Released Parties from all claims, rights, demands, liabilities, costs, attorney’s fees, and causes of action for civil penalties under the PAGA, for the duration of employment in a non-exempt position in California during the PAGA Period, based on the factual and legal allegations pled in the operative Representative Action Complaint that support or relate to the following alleged violations of law asserted by Plaintiff in the Action pursuant to PAGA: (1) failure to pay all wages under Labor Code §§ 246, 510 and 1194; (2) failure to authorize and provide rest periods under Labor Code § 226.7; (3) failure to provide meal periods under Labor Code §§ 226.7 and 512; (4) failure to issue accurate wage statements under Labor Code §§ 226(a) and 226.3; (5) failure to reimburse expenses under Labor Code §§ 2802; and (6) failure to pay wages timely at separation of employment under Labor Code §§ 201-203 (the “Released PAGA Claims”).

The Released Parties are Defendant, and each of and all of its respective past, present and future agents, employees, officers, directors, partners, trustees, representatives, shareholders, stockholders, members, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or partnerships, divisions, assigns, predecessors, successors, insurers, consultants, joint venturers, joint employers, affiliates, alter-egos, co-employers, dual employers, service providers, contracting partners, subcontractors, employee benefit plans and fiduciaries thereof, and all other persons and/or entities acting under, by, through or in concert with any of them.

Under the Settlement, PAGA Members do not need to do anything in order to receive their PAGA Settlement Award. **PAGA Members may not object to, or opt out of, the Settlement. Even if a PAGA Member does not cash their checks, they will still be bound by the Released PAGA Claims.**

IV. Tax Information

For tax purposes, the PAGA Settlement Awards will be allocated 100% to settlement of claims for penalties, which will be paid without withholdings or deductions and shall be reported on an IRS Form 1099. IRS Forms 1099 (and the equivalent California forms) will be distributed to PAGA Members reflecting the payments they receive under the Settlement. PAGA Members should consult with their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

V. Privacy

Because you have a constitutional right of privacy to object to the disclosure of your personal contact information, your personal contact information has not been provided to Plaintiff’s counsel. The Court has authorized a third-party administrator to send you this notice, and they have agreed to keep your contact information confidential. Should you have any questions about this notice, you may contact the attorneys prosecuting this case on behalf of the State of California and the PAGA Members:

Daniel F. Gaines, Esq. SBN 251488
GAINES & GAINES, APLC
4550 East Thousand Oaks Boulevard, Suite 100
Westlake Village, CA 91362
Telephone: (866) 550-0855

VI. Additional Information

You may obtain information by contacting Gaines & Gaines at the number above, or by contacting the Settlement Administrator as follows:

Phoenix Settlement Administrators
P.O. Box 7208
Orange, CA 92863
Telephone: (800) 523-5773

THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE MERITS OF THE CLAIMS OR DEFENSES BY EITHER SIDE IN THIS PROCEEDING. PLEASE DO NOT CONTACT THE COURT REGARDING THIS CASE, THE COURT CLERK'S OFFICE, DEFENDANT OR DEFENDANT'S ATTORNEYS TO INQUIRE

EXHIBIT B

ELIGIBLE PAY PERIODS DISPUTE FORM

ONLY COMPLETE AND SUBMIT THIS ELIGIBLE PAY PERIODS DISPUTE FORM IF YOU DISAGREE WITH THE ELIGIBLE PAY PERIODS CALCULATIONS BELOW.

CALCULATION OF PAGA CLAIM EMPLOYEE SETTLEMENT AWARD

According to the records of Defendant EM Tortillas, LLC (“Defendant”), you are credited with [REDACTED] Eligible Pay Periods while employed by Defendant in California in a non-exempt position from March 14, 2021 through May 15, 2023 (the “PAGA Period”), and the total Eligible Pay Periods worked by all PAGA Members during the PAGA Period is [REDACTED]. As a result, your PAGA Settlement Award is \$ [REDACTED]. The formula used to calculate your PAGA Settlement Award is as follows:

$$\text{PAGA Member Payment} = (\text{PAGA Penalty Fund} - \text{LWDA Payment}) (x) \frac{\text{PAGA Member's Number of Eligible PAGA Pay Periods}}{\text{All PAGA Members' Eligible PAGA Pay Periods}}$$

If you disagree with the Eligible Pay Periods count above, please state below what you believe are the correct number of Eligible Pay Periods:

I believe I worked _____ Eligible Pay Periods while employed by Defendant in a non-exempt position in California from March 14, 2021 to May 15, 2023.

Please submit any documentation or other evidence you have to support your proffered Eligible Pay Periods calculations above.

Date: _____

Signature: _____

Print Name: _____

Residence Street Address: _____

City, State and Zip Code: _____

IN ORDER TO BE TIMELY, THIS ELIGIBLE PAY PERIODS DISPUTE FORM MUST BE COMPLETED, SIGNED, MAILED BY FIRST CLASS MAIL, AND POSTMARKED ON OR BEFORE [45 days after mailing of Notice]. Send this signed form to the Settlement Administrator:

EM Tortillas, LLC Claims Administrator
c/o Phoenix Settlement Administration

[REDACTED]
[REDACTED]

EXHIBIT C

FIRST AMENDED SETTLEMENT AGREEMENT AND RELEASE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

This First Amended Settlement Agreement and Release of Private Attorneys General Act Claim (“Settlement Agreement”) is made by and between, on the one hand, Mireya Serrato Martinez (“Plaintiff”), individually, and on behalf of all other similarly situated PAGA Members and the State of California, and on the other hand, Defendant EM Tortillas, LLC (“Defendant”). Plaintiff and Defendant are collectively referred to herein as the “Parties” and may be individually referred to as a “Party.”

A. Definitions

The following terms, when used in this Settlement Agreement, shall have the following meanings:

1. “Action” or “Lawsuit” means and refers to *Mireya Serrato Martinez v. EM Tortillas, LLC*, Orange County Superior Court Case No. 30-2022-10263512-CU-OE-CXC. The operative complaint in the Action is the Representative Action Complaint filed on June 3, 2022.
2. “Agreement” or “Settlement Agreement,” shall mean this First Amended Settlement Agreement and Release of Private Attorneys General Act Claim, together with all attached Exhibits.
3. “Attorney’s Fees and Costs” means the sum for which Plaintiff’s Counsel shall make application to the Court, that shall not exceed ~~one-third of the Gross Settlement Amount (\$75,000.00)~~, \$65,000.00, and actual litigation costs, not to exceed \$16,000.00, which shall be paid out of the Gross Settlement Amount.
4. “Court” shall mean the Superior Court of the State of California, County of Orange.
5. “Defendant’s Counsel” means and refers to Gigliotti & Gigliotti, LLP.
6. “Effective Date” means the date the Court approves the terms of the Settlement set forth in this Agreement and has entered the Final Order and Judgment.
7. “Eligible Pay Period” means any pay period worked by a PAGA Member in a non-exempt position in California at any time during the PAGA Period. Defendant represents there are no more than 4,500 Eligible Pay Periods worked by no more than 50 PAGA Members during the PAGA Period. If the actual number of pay periods increases beyond 4,500 and/or the actual number of PAGA Members increases beyond 50, Defendant will increase the Gross Settlement Amount by \$50 for each pay period in excess of 4,500 or \$4,500 for each PAGA Member in excess of 50 (the “Escalator Payment”). The larger percentage increase (pay periods v PAGA Members) will control the Escalator Payment.
8. “Final Order and Judgment” means the Court’s Order granting the Motion for Approval of the PAGA Settlement set forth in this Agreement, and entering judgment.
9. “Funding Date(s)” means, ~~with respect to the first~~ twenty-four (24) settlement installment ~~payment of \$100~~ payments Defendant shall deposit with the Settlement Administrator as follows:

- a. \$5,000.00, (approximately 2.3% of the GSA), plus a proportionate share of employer payroll taxes, due no later than ten (10) calendar days after the Effective Date; and with respect to the second settlement installment payment of \$125
- b. Five (5) subsequent monthly payments of \$5,000, ninety (90) (approximately 11.6% of the GSA), plus a proportionate share of employer payroll taxes, beginning forty (40) calendar days after the Effective Date. and payable on the fifteenth day of each month thereafter for five (5) months;
- c. Seventeen (17) subsequent monthly payments of \$10,000 (approximately 79.1% of the GSA), plus a proportionate share of employer payroll taxes, beginning on the following month after the last monthly payment of \$5,000 and payable on the fifteenth day of each month thereafter for seventeen (17) months; and
- d. One (1) final payment of \$15,000 (approximately 7% of the GSA), plus a proportionate share of employer payroll taxes, beginning on the following month after the last monthly payment of \$10,000 and payable on the fifteenth day of that month.

9. If the GSA increases due to the Escalator Payment, each installment payment shall increase on a proportionate basis.

10. “Gross Settlement Amount” or “GSA” means the maximum settlement amount that Defendant will pay in connection with the Settlement of the Action. The GSA is Two Hundred ~~Twenty-Five~~Fifteen Thousand Dollars and Zero Cents (\$~~225~~215,000.00), subject to the Escalator Payment memorialized in Paragraph 7, above. No part of the GSA shall revert to Defendant under any circumstances. Defendant shall pay no more and no less than the GSA to resolve the Action as described herein.
11. “LWDA Payment” means seventy-five percent (75%) of the PAGA Penalty Fund that shall be paid to the California Labor & Workforce Development Agency (“LWDA”) pursuant to the PAGA for civil penalties.
12. “Net Settlement Amount” or “PAGA Penalty Fund” is the amount that remains after deduction of Plaintiff’s Counsel’s Attorney’s Fees and Costs, ~~Plaintiff’s General Release Payment~~, and the Settlement Administrator’s fees and costs from the Gross Settlement Amount.
13. “Notice” means the written notice to be mailed to all PAGA Members with their settlement payment checks, once the Court enters its Final Order and Judgment, and the Effective Date occurs, in a form substantially similar to **Exhibit “A,”** and as approved by the Court.
14. “PAGA Member(s)” means any and all individuals who were employed by Defendant for at least one Eligible Pay Period in non-exempt position in California during the PAGA Period.
15. “PAGA Settlement” or “Settlement” means the settlement of the Action memorialized in this Agreement.
16. “PAGA Period” or “Statutory Period” means the time period from March 14, 2021 through May 15, 2023.
17. “Plaintiff’s Counsel” means Daniel F. Gaines of Gaines & Gaines, APLC.

~~18. “Plaintiff’s General Release Payment” means and refers to the individual settlement payment to Plaintiff in the amount of up to Ten Thousand Dollars and Zero Cents (\$10,000.00) as consideration for Plaintiff’s execution of this Agreement and her general release of the Released Parties.~~

~~19.~~18. “Released Parties” means Defendant, and each of and all of its respective past, present and future agents, employees, officers, directors, partners, trustees, representatives, shareholders, stockholders, members, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or partnerships, divisions, assigns, predecessors, successors, insurers, consultants, joint venturers, joint employers, affiliates, alter-egos, co-employers, dual employers, service providers, contracting partners, subcontractors, employee benefit plans and fiduciaries thereof, and all other persons and/or entities acting under, by, through or in concert with any of them.

~~20.~~19. “Settlement Administrator” means Phoenix Class Action Administration Solutions, or a different third-party administrator agreed to by the Parties and approved by the Court.

B. General

~~21.~~20. On or about March 12, 2022, Plaintiff sent a PAGA Notice to the LWDA, with a copy to Defendant via U.S. Certified Mail, alleging the following claims against Defendant: (1) failure to pay all wages; (2) failure to authorize and provide rest periods; (3) failure to provide meal periods; (4) failure to issue accurate wage statements; (5) failure to reimburse expenses; and (6) failure to pay wages timely at separation of employment.

~~22.~~21. Without indication from the LWDA it intended to investigate the claims, on June 3, 2022, Plaintiff filed the Action in the Superior Court of California, County of Orange, which alleged the claims identified in Plaintiff’s PAGA Notice.

~~23.~~22. Defendant denies all of Plaintiff’s claims and allegations, as referenced in the Action and the PAGA Notice, and further denies any liability or wrongdoing of any kind associated with the claims alleged in the Action (or otherwise).

~~24.~~23. The Parties have conducted a thorough investigation into the facts of the Action. This included, among other things, informal discovery involving the exchange of extensive information and key documents relating to the underlying alleged violations. Defendant also provided Plaintiff’s Counsel with detailed financial records to demonstrate its limited financial resources. After engaging in private mediation with Steve Pearl, Esq., the Parties reach the proposed Settlement described in this Agreement, and believe it is fair, reasonable, and adequate. The Parties understand, acknowledge, and agree this Agreement constitutes a compromise of claims alleged by Plaintiff on behalf of the State of California and the LWDA, and it is the desire and intention of the Parties to effect a final and complete resolution of the representative claims Plaintiff has alleged against Defendant and/or any of the Released Parties. The Parties further acknowledge that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission of liability by Defendant.

~~25.~~24. Under California Law, the State may assess and collect civil penalties from employers for violations of certain provisions of the Labor Code. Labor Code §§ 2698, *et seq.* Under PAGA, however, if an “aggrieved employee” “give[s] written notice by certified mail to the

[State] and the employer of the specific provision of the [Labor Code] alleged to have been violated,” and the State thereafter decides not to investigate, as is the case here, or does investigate and determines a citation against the employer should not issue, the employee may, “as an alternative” to enforcement by the State, act as a proxy or agent of the state’s labor law enforcement agencies and bring a civil action under PAGA to recover civil penalties “on behalf of himself or herself and other current or former employees.” *Id.* “[C]ivil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the state and 25 percent to the aggrieved employees.” *Id.*

~~26.25.~~ California Labor Code § 2699(1)(2) provides “[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part.”

~~27.26.~~ In consideration of the promises and agreements contained herein, the Parties agree and covenant as follows:

C. Terms of Settlement

~~28.27.~~ Subject to the Court’s approval of the Settlement pursuant to Labor Code § 2699(1)(2), which counsel and the Parties agree to recommend in good faith to the Court, the Parties agree to the following binding settlement of the Action.

~~29.28.~~ Upon the Court entering the Final Order and Judgment and the Effective Date occurring, Defendant shall pay the non-reversionary Gross Settlement Amount of Two Hundred ~~Twenty-Five~~Fifteen Thousand Dollars and Zero Cents (\$~~225~~215,000.00), subject to the Escalator Payment memorialized in Paragraph 7, above. The Gross Settlement Amount will be distributed in the following manner:

- a. **Settlement Administration Costs:** The costs associated with settlement administration will be paid from the Gross Settlement Amount, and shall not exceed \$4,000.00. The Administrator’s services will include, but not be limited to the following: updating PAGA Members’ mailing addresses through a search of the National Change of Address database maintained by the U.S. Post Office, and skip-tracing bad addresses on the return of the PAGA Members’ Notice and settlement payment checks; formatting and printing the Notice to be mailed to the PAGA Member with their settlement payment checks; calculating, issuing and mailing payments to LWDA and PAGA Members; performing tax reporting to the appropriate authorities, among other things called for by this Agreement. Subject to Court approval, the Parties agree to use Phoenix Class Action Administration Solutions as the Settlement Administrator.
- b. **Attorney’s Fees and Costs:** The Parties agree that, subject to the Court’s review and approval, Plaintiff’s Counsel will be paid up to ~~one-third of the GSA (\$75~~\$65,000.00) from the GSA, as reasonable attorney’s fees, plus actual litigation costs of up to \$16,000.00, also to be paid from the GSA, incurred to litigate the Action and to obtain Court approval of the Settlement. Plaintiff’s Counsel’s documented litigation costs are presently estimated at \$16,000.00. The Settlement Administrator will issue an IRS Form 1099 to Plaintiff’s counsel for the Attorney’s Fees and Costs awarded. In no circumstance(s) shall Defendant be liable for any payment(s) of Attorney’s Fees and Costs separate from the GSA.
- c. ~~**Plaintiff’s General Release Payment:** The Parties agree that, subject to the Court’s review and approval and Plaintiff’s execution of an individual settlement agreement~~

~~with a general release of all claims, Plaintiff will be paid up to Ten Thousand Dollars and Zero Cents (\$10,000.00), which is Plaintiff's General Release Payment. The appropriate tax documents shall be provided to Plaintiff. In exchange for the General Release Payment, Plaintiff will be bound by a general release in favor of the Released Parties.~~

- c. **PAGA Penalty Fund**: After deducting the Attorney's Fees and Costs, ~~Plaintiff's General Release Payment~~, and Settlement Administration Costs from the Gross Settlement Amount, the remaining net settlement amount, the PAGA Penalty Fund, will be apportioned as required by the PAGA, Labor Code section 2699(i), with distribution of 75% to the LWDA, (the "LWDA Payment") and 25% to the PAGA Members. The PAGA Penalty Fund shall encompass all payments to the LWDA and to the PAGA Members.

- ~~ed.~~ **PAGA Penalty Fund Allocation**: The PAGA Penalty Fund, estimated at ~~\$120130,000.00~~ shall be allocated ~~\$90,00097,500.00~~ (75%) for the LWDA Payment, and ~~\$30,000.0032,500~~ (25%) to the PAGA Members, to be distributed on a proportionate basis, using the number of Eligible Pay Periods each PAGA Member was employed during the PAGA Period, as detailed in Paragraph ~~3836~~, herein.

- ~~fe.~~ **Taxes and Reporting**: Each PAGA Member's individual share will be treated as non-wage income for which the Administrator shall issue an IRS Form 1099 to be mailed together with the PAGA Member's settlement check, and reported to the applicable governmental authorities.

D. **Releases**

30-29. Release as to the PAGA Representative Claims

- a. Upon approval by the Court of this Settlement, and subject to Defendant's full payment of the GSA, Plaintiff, individually and in her representative capacity on behalf the State of California and the PAGA Members, will fully and finally release and discharge the Released Parties from all claims, rights, demands, liabilities, costs, attorney's fees, and causes of action for civil penalties under the PAGA, for the duration of employment in a non-exempt position in California during the PAGA Period, based on the factual and legal allegations pled in the operative Representative Action Complaint that support or relate to the following alleged violations of law asserted by Plaintiff in the Action pursuant to PAGA: (1) failure to pay all wages under Labor Code §§ 246, 510 and 1194; (2) failure to authorize and provide rest periods under Labor Code § 226.7; (3) failure to provide meal periods under Labor Code §§ 226.7 and 512; (4) failure to issue accurate wage statements under Labor Code §§ 226(a) and 226.3; (5) failure to reimburse expenses under Labor Code §§ 2802; and (6) failure to pay wages timely at separation of employment under Labor Code §§ 201-203 (the "Released PAGA Claims").
- b. In accordance with *Arias v. Superior Court* (2009) 46 Cal.4th 969, a judgment in "a representative action brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004 ... is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding," which the Final Order and Judgment shall so reflect. The Final Order and Judgment shall not bind or release the PAGA Members' individual wage

claims (or other individual claims). However, in accordance with *Arias*, the Final Order and Judgment shall be binding on the PAGA Members as to the Released PAGA Claims. A statement to this effect shall be included in the Notice sent to the PAGA Members mailed together with their Settlement payment checks and IRS 1099 Forms.

31. Release as to Plaintiff's Individual Claims

a. ~~Upon approval by the Court of this Settlement, and subject to Defendant's full payment of the GSA, Plaintiff shall be deemed to have fully, finally, and forever released the Released Parties from any and all claims, obligations, demands, actions, rights, causes of action, and liabilities against the Released Parties, of whatever kind and nature, character, and description, whether in law or equity, whether sounding in tort, contract, federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, whether known or unknown, and whether anticipated or unanticipated, including unknown claims covered by Civil Code Section 1542, arising through the date of her signature hereon, for any type of relief, including, without limitation, claims for wages, damages, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief. These claims include, but are not limited to, the Released Claims, as well as any other claims under any provision of the California Labor Code or any applicable California Industrial Welfare Commission Wage Orders, and claims under local, state, or federal discrimination statutes, including, without limitation, the California Fair Employment and Housing Act, California Government Code §§ 12940 et seq.; the Unruh Civil Rights Act, California Civil Code §§ 51 et seq.; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000 et seq.; the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq.; the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 et seq.; the Age Discrimination in Employment Act, 29 U.S.C. §§ 621, et seq., and all of their implementing regulations and interpretive guidelines.~~

b. ~~With respect to these Released Claims as described in this Section, Plaintiff confirms that her release is informed, knowing, and voluntary, and she shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits she may otherwise have had pursuant to Section 1542 of the California Civil Code, which 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.**~~

c. ~~Notwithstanding Section 1542, Plaintiff understands and agrees that this Agreement shall act as a release of all future claims that may arise from Plaintiff's employment or separation from employment with Defendant, or any other matters that existed between Plaintiff and the Released Parties up to the date of this Agreement, whether such claims are currently known or unknown, and that Plaintiff intentionally waives any rights she may have under the provisions of Section 1542, as well as under any other statutes or common law principles of similar effect in the State of California or in any other state.~~

~~d. To the extent applicable, Plaintiff waives and releases hereunder any rights she may have under the Age Discrimination in Employment Act of 1967 (“ADEA”) and the Older Workers Benefit Protection Act (“OWBPA”), including any amendments, is knowing and voluntary. Defendant and Plaintiff agree that this waiver and release does not apply to any rights or claims that may arise under the ADEA after the effective date of this Agreement. Plaintiff acknowledges that she has been advised by this writing, as required by the Older Workers Benefit Protection Act, that (a) she should consult with an attorney prior to executing this Agreement; (b) she has twenty-one (21) days to consider this Agreement (although Employee may, by Employee’s own choice, execute this Agreement earlier), during which time this Agreement will not be amended, modified, or revoked by the Company; (c) she has seven (7) days following the execution of this Agreement to revoke the Agreement by providing written notice to Defendant; and (d) her release of any rights under the ADEA and OWBPA will not be effective until the expiration, without revocation, of the seven (7) day revocation period. Plaintiff’s release of any claims other than those under the ADEA and OWBPA will be effective and enforceable upon his signing of this Agreement. The offer by Defendant to enter into this Agreement, if not accepted by Plaintiff, will become null and void at the end of the twenty first day after this Agreement is presented to her if not executed. If Plaintiff elects to revoke this Agreement within the (7) day revocation period, Plaintiff must do so by sending a certified letter, return receipt requested, to: Joseph J. Gigliotti, Gigliotti & Gigliotti LLP, 26501 Rancho Parkway South, Ste. 101, Lake Forest, CA 92630.~~

E. Settlement Approval and Implemental Procedures

32.30. Plaintiff’s Counsel shall prepare a motion for approval of the Settlement pursuant to California Labor Code § 2699(1)(2). Defendant shall not oppose such a motion provided Plaintiff’s Counsel sends a draft of the motion for approval to Defendant’s Counsel at least three (3) business days before it is filed. Defendant’s Counsel will work with Plaintiff’s Counsel to provide Plaintiff’s Counsel with, and allow Plaintiff’s Counsel to submit to the Court, adequate information related to the Released PAGA Claims to obtain approval of the Settlement pursuant to a reasonable request by Plaintiff’s Counsel. As required by Labor Code, at the time the motion for approval of the Settlement is filed with the Court, Plaintiff’s Counsel shall submit the motion, together with its exhibits, to the LWDA.

33.31. Within five (5) calendar days after the Effective Date, the Settlement Administrator shall send Defendant’s Counsel electronic wiring instructions to fund the Gross Settlement Amount.

34.32. Within ten (10) calendar days after the Effective Date, Defendant will send to the Settlement Administrator a list which shall provide for each PAGA Member, the following information: (1) full name; (2) last known address; (3) social security number; and (4) the number of Eligible Pay Periods (the “Data List”). The fact that Defendant may not possess/maintain/know any or all of the PAGA Members’ contact information shall not constitute a breach of this Agreement or be grounds for enforcement; however, Defendant will conduct a reasonable search and diligent inquiry to obtain such information and provide to the Settlement Administrator. The Data List shall be treated as and remain confidential and be used solely to manage the notice and payment process described herein, and for no other purpose, and shall not be disclosed to anyone other than the Settlement Administrator, except as may be required by applicable taxing authorities, or pursuant to express written authorization of Defendant, the PAGA Members or by order of the Court.

a. Within twenty-five (25) calendar days after the Effective Date, the Administrator shall mail the Notice (attached hereto as Exhibit A) to each PAGA Member. PAGA Members shall have forty-five (45) calendar days after the Notice is mailed to challenge the Eligible Pay Periods as reflected on Defendant's records. To the extent a PAGA Member disputes any of the information listed on his or her Notice, the PAGA Member may produce evidence to the Administrator showing such information the PAGA Member contends should be reflected in the Notice and by mailing a completed Eligible Pay Periods Dispute Form (attached hereto as Exhibit B) to the Administrator. Defendant's records will be presumed to be accurate, however, should the Parties be unable to come to an agreement, they may seek Court intervention to resolve the dispute. The parties may attempt to reach agreement on disputes, and the settlement administrator may make the initial decision regarding disputes, but the court may review any decision made by the parties and/or the settlement administrator regarding a dispute

~~35.33.~~ No later than each Funding Date, Defendant shall wire the required portion of the Gross Settlement Amount to the Administrator. ~~The first installment payment of \$100,000 (i.e. 44.44% of the GSA) shall be paid no later than ten (10) calendar days following the Effective Date. The second installment payment of \$125,000 (i.e. 55.56% of the GSA) shall be paid no later than ninety (90) calendar days following the Effective Date., as outlined in paragraph 9.~~

~~36.34.~~ Upon receipt of ~~each~~ twelve settlement installment ~~payment~~ payments from Defendant, and subject to the prior occurrence of the forty-five (45) day Eligible Pay Periods dispute deadline, the Administrator will distribute a proportionate share of the Gross Settlement Amount to PAGA Members, the LWDA, Plaintiff's Counsel, ~~Plaintiff~~, and the Administrator. Should Defendant fail to fund the Gross Settlement Amount at the time and in the amounts as provided for by this Agreement, and unless otherwise agreed upon by the Parties or ordered by the Court, Plaintiff may elect to enforce this Agreement or, at her option, this Agreement and the settlement described within it, shall be rescinded, and the Parties shall be restored to their respective positions as of May 15, 2023.

~~37.35.~~ The Settlement Administrator will perform all settlement administration duties, including (i) a National Change of Address ("NCOA") database search, (ii) skip trace to update PAGA Member addresses on the return of undelivered Notices and checks; , (iii) issuing the Notice and payments to Plaintiff and all PAGA Members, (iv) issuing all required IRS forms, and reporting same to the applicable taxing authorities; and (v) issuing payment to the LWDA, PAGA Members, Plaintiff's Counsel and to itself.

~~38.36.~~ The Administrator shall have the authority and obligation to calculate the amounts of the PAGA Members' Settlement payments in accordance with the methodology set forth in this Agreement and orders of the Court. Each PAGA Member will be eligible to receive a Settlement payment based on the total number of his/her Eligible Pay Periods worked during the PAGA Period in relation to the aggregate number of Eligible Pay Periods worked by all PAGA Members during the PAGA Period, e.g.

PAGA Member Payment =
(PAGA Penalty Fund – LWDA Payment) (x) PAGA Member's Number of Eligible PAGA Pay Periods
All PAGA Members' Eligible PAGA Pay Periods

~~39.37.~~ All disbursements to the PAGA Members, the LWDA, the Settlement Administrator, Plaintiff and Plaintiff's Counsel required under this Settlement Agreement shall be made within ten (10) calendar days after each Funding Date. Prior to disbursement, the Settlement Administrator will forward its calculations of the PAGA Members' Settlement payments to all counsel, and receive approval from all counsel as to such amounts. Any Party's failure to respond to the Settlement Administrator's request for approval within five (5) business days shall be deemed approval of the calculations.

~~40.38.~~ PAGA Members shall have 180 calendar days after mailing to cash each of their individual settlement checks. If any PAGA Member's check is not cashed within that period, the check will be voided and a stop-payment will be issued. Any funds in the Settlement Administrator's account as a result of a failure to timely cash a settlement check shall be transmitted to the California State Controller's Unclaimed Property Fund in the name of each respective PAGA Member whose check was uncashed and voided. Neither Defendant, Defendant's Counsel, Plaintiff's Counsel, nor Plaintiff will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks. The Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure Code § 384, as the entire Settlement will be paid out to PAGA Members whether or not they all cash their settlement checks. Therefore, Defendant will not be required to pay any interest on said amount. In no circumstance(s) shall Defendant be liable for any interest payment(s).

~~41.39.~~ By no later than 240 days after mailing of the final Settlement payment checks to all PAGA Members, the Settlement Administrator shall provide Plaintiff's Counsel and Defendant's Counsel with a declaration setting forth the disbursements made to the PAGA Members, the LWDA, Plaintiff's Counsel for attorneys' fees and litigation costs, and to itself, and shall include information regarding the number of uncashed checks as of that date, the aggregate sum of uncashed checks, and the timeline for transmittal of sum represented by all uncashed checks to California's Controller, Unclaimed Property Division (if applicable).

F. Miscellaneous Provisions

~~42.40.~~ **Eligible Pay Periods and PAGA Members:** Defendant has represented there are no more than 4,500 Eligible Pay Periods worked by no more than 50 PAGA Members during the PAGA Period.

~~43.41.~~ **Voiding the Agreement:** The Settlement Agreement shall be voidable and unenforceable as to all Parties herein at the option of either Party if (a) the Court should for any reason fail to approve this Settlement in the form agreed to by the Parties, or (b) the Court should for any reason fail to enter a judgment, or (c) the approval of the Settlement and judgment is reversed, modified or declared or rendered void by a court of competent jurisdiction. In that event, then neither the Settlement nor any of the related negotiations or proceedings shall be of any force or effect, and all Parties to the Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court. Notwithstanding the foregoing, the Parties may attempt in good faith to cure any perceived defects in the Settlement to facilitate approval.

~~44.42.~~ **Waiver:** The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

45.43. **Parties' Authority:** The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

46.44. **Mutual Full Cooperation:** The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, 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 Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Plaintiff's Counsel shall, with the assistance and cooperation of Defendant and Defendant's counsel, take all necessary steps to secure the Court's approval of the Settlement, and the Final Order and Judgment.

47.45. **No Prior Assignments:** The Parties hereto represent, covenant, and warrant that they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights released and discharged by this Settlement Agreement.

48.46. **No Admission:** Defendant denies any and all liability to Plaintiff and/or the PAGA Members in this Action, as to any and all causes of action that were asserted or that might have been asserted in this Action based on the facts set forth in the First Amended Representative Action Complaint. Nonetheless, Defendant wishes to settle and compromise the matters at issue in the Action to avoid further substantial expense and the inconvenience and distraction of protracted and burdensome litigation. Defendant also has taken into account the uncertainty and risks inherent in litigation, and without conceding any infirmity in the defenses that it has asserted or could assert against Plaintiff, have determined that it is desirable and beneficial that Plaintiff's claims be settled in the manner and upon the terms and conditions set forth in this Agreement.

49.47. **Binding Settlement:** Nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this Settlement Agreement with the intention of avoiding further disputes and litigation with the attendant inconvenience and expenses. This Settlement Agreement is a settlement document and shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement.

50.48. **Enforcement Actions; Acceleration; Time is of the Essence:** This Agreement is binding and enforceable under California Code of Civil Procedure section 664.6, and the Court shall retain jurisdiction to enforce this Agreement. Except as otherwise provided in this Settlement Agreement, in the event that one or more of the Parties to this Settlement Agreement institutes any action or proceeding in this case under Section 664.6 or otherwise or separate legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this Settlement Agreement, the successful Party or Parties shall be entitled to recover from the unsuccessful Party or Parties reasonable attorney's fees and costs incurred in connection with any enforcement actions. If Defendant breaches the installment payment provisions of this Agreement, all sums due hereunder shall be accelerated and all due and payable. Time is of the essence with respect to all provisions herein.

~~51.49.~~ **Notices:** Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

To Plaintiff:

Daniel F. Gaines
Gaines & Gaines, APLC
4550 E Thousand Oaks Blvd, Suite 100
Westlake Village, CA 91362-3824

To Defendant:

Joseph J. Gigliotti
Gigliotti & Gigliotti, LLP
~~26501 Rancho Parkway South, Suite 101~~
~~Lake Forest~~ 5256 S. Mission Road, Ste. 127
Bonsall, CA 9263092003

~~52.50.~~ **Construction:** The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arm's-length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or her or its counsel participated in the drafting of this Settlement Agreement.

~~53.51.~~ **Captions and Interpretations:** Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

~~54.52.~~ **Modification:** This Settlement Agreement may not be materially changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. Non-material changes requested by the Court may be made upon stipulation signed by all counsel. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto.

~~55.53.~~ **Choice of Law:** This Settlement Agreement shall be governed by and construed, enforced and administered in accordance with the laws of the State of California, without regard to its conflicts-of-law rules.

~~56.54.~~ **Integration Clause:** This Settlement Agreement contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

~~57.55.~~ **Continuing Jurisdiction:** After entry of the Final Order and Judgment, the Court will have continuing jurisdiction under California Code of Civil Procedure § 664.6 and as otherwise allowed by law solely for purposes of addressing: (i) the interpretation and enforcement of the terms

of the Settlement, (ii) settlement administration matters; and (iii) such post-Final Order and Judgment matters as may be appropriate under court rules or as set forth in this Settlement.

~~58-56.~~ **Waiver of Appeals:** The Parties waive all appeals from the Court's approval of the Agreement, unless the Court materially modifies the Agreement and/or unless a non-Party files an appeal.

~~59-57.~~ **Publicity:** With respect to the Settlement, Plaintiff, Defendant, Defendant's Counsel, and Plaintiff's Counsel agree not to publicize, contact the media, or disclose to the public any information about the Settlement or the negotiation process, with the exception of filing this Settlement Agreement with the Court, and submitting it to the LWDA, informing the Court of the manner in which the Settlement was obtained, and the reasons in support of the fairness of the Settlement only insofar as necessary to obtain Court approval of the settlement of the Action. Plaintiff's Counsel may also respond to inquiries by PAGA Members and the LWDA. With respect to the terms of this Settlement, Plaintiff's Counsel agree not to post the terms of the Settlement on their website or initiate contact with the media about its terms or the negotiations. If asked by the media, Plaintiff's Counsel and Plaintiff agree to state, "The matter was amicably settled. Any further information about the settlement may be obtained by going to the Court's website." Plaintiff's Counsel agree that they will not circumvent this Agreement by facilitating or encouraging any PAGA Group member or any other individual to do what Plaintiff and his counsel have agreed not to do.

~~60-58.~~ **Binding On Assigns:** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

~~61-59.~~ **Counterparts:** This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully-signed Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic delivery shall be deemed an original.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties knowingly and voluntarily executed this Settlement Agreement and Release of PAGA Claim as of the date set forth below.

Dated: _____

By: _____
Plaintiff, Mireya Serrato Martinez

Dated: _____

By: _____
Defendant, EM Tortillas, LLC

AS TO FORM:

Gaines & Gaines, APLC

Dated: _____

By: _____
Daniel F. Gaines, Attorneys for Plaintiff

Gigliotti & Gigliotti, LLP

Dated: _____

By: _____
Joseph J. Gigliotti, Attorneys for EM
Tortillas, LLC

EXHIBIT A

Notice of PAGA Settlement and Release of Claims

TO: All persons employed by EM Tortillas, LLC (“EM Tortillas” or “Defendant”) in the State of California in non-exempt positions from March 14, 2021 through May 15, 2023 (the “PAGA Members”).

I. Why Are You Receiving This Notice

You are receiving this Notice because the Superior Court for the State of California, County of Orange, has approved a settlement of a claim under the California Labor Code Private Attorneys General Act (“PAGA”). The PAGA claim seeks civil penalties on behalf of the State of California and for which the State of California receives 75% of any civil penalties collected (with PAGA Members receiving the remaining 25%).

The settlement will provide \$225215,000 (the “Gross Settlement Amount”) to pay claims to all PAGA Members who worked for Defendant in the State of California in non-exempt positions from March 14, 2021 through May 15, 2023 (the “PAGA Period”).

The “Net Settlement Amount” is the portion of the Gross Settlement Amount that will be available for distribution to PAGA Members and the State of California’s Labor and Workforce Development Agency (“LWDA”). The Net Settlement Amount (or “PAGA Penalty Fund”) is \$ [REDACTED]. 75% of this amount, or \$ [REDACTED], shall be distributed to the LWDA and the remaining 25%, or \$ [REDACTED], shall be distributed to PAGA Members on a proportionate basis, using the number of pay periods worked by a PAGA Member in a non-exempt position in California at any time during the PAGA Period (the “Eligible Pay Periods”). Specifically, the formula used to calculate each PAGA Member’s settlement payment is as follows:

Each PAGA Member will be eligible to receive a Settlement payment based on the total number of his/her Eligible Pay Periods worked during the PAGA Period in relation to the aggregate number of Eligible Pay Periods worked by all PAGA Members during the PAGA Period.

You are receiving this notice because you may be a PAGA Member. Defendant’s records indicate that you were employed by Defendant in the State of California in a non-exempt position at some time from March 14, 2021, through May 15, 2023 (the “PAGA Period”). The Court approved a Settlement Agreement and Release of Private Attorneys General Act Claim (“Settlement”) of the lawsuit *Mireya Serrato Martinez v. EM Tortillas, LLC* and ordered that a portion of the Settlement proceeds allocated to civil penalties under PAGA be distributed to PAGA Members, including you, after certain portions of the penalties are paid to the State of California according to California law.

~~Please be advised that the individual data on the enclosed Eligible Pay Periods Dispute Form is presumed to be correct unless you submit documentation proving otherwise.~~ If you disagree with the data, please submit the enclosed Eligible Pay Periods Dispute Form and provide an explanation and evidence in support of your position to the Settlement Administrator, postmarked, no later than [REDACTED], 2024. ~~In the event of a dispute, the Court will resolve the challenge with input from the Defendant and will make a final and binding determination without a hearing or right of appeal by you 2025. The parties may attempt to reach agreement on disputes, and the settlement administrator may make the initial decision regarding disputes, but the court may review any decision made by the parties and/or the settlement administrator regarding a dispute.~~

On or about [REDACTED], 20242025 and [REDACTED], 20242025, the Settlement Administrator will mail you installment payments relating to your individual “PAGA Settlement Award” which is your share of the Settlement funds that were allocated to settle claims for civil penalties pursuant to PAGA. Your PAGA Settlement Award is based on your Eligible Pay Periods (pay periods worked in California in a non-exempt position) during the PAGA Period, as set forth in the Settlement. You may deposit or cash the checks without any further obligation on your part and there is no need for you to contact the settlement administrator, the parties, or the Court. The Court-approved Settlement releases claims for civil penalties under PAGA as

described in more detail in the section under the heading “Release of Claims” below. No wage claims are released or affected by the Settlement.

II. Summary of Case

On June 3, 2022, Plaintiff Mireya Serrato Martinez (the “Plaintiff”) commenced a lawsuit in the Orange County Superior Court, case number 30-2022-01263512, to recover civil penalties (the “Lawsuit”). Plaintiff alleges in the Lawsuit that Defendant failed to pay all wages due, to pay all minimum and overtime wages due, to provide all meal and rest periods or premium compensation in lieu thereof, to timely pay all wages due upon separation of employment, to reimburse all business expenses, and to issue complete and accurate wage statements. For these alleged violations, Plaintiff seeks penalties pursuant to the PAGA.

Defendant denies all claims and allegations in the Lawsuit and asserts that no penalties are due to Plaintiff, the State of California, or any PAGA Member. The Court has made no determination on the merits of the PAGA claims, but the parties have decided to resolve the action through the Settlement, which the Court has approved.

III. Release of Claims

Plaintiff, individually and in her representative capacity on behalf the State of California and the PAGA Members, will fully and finally release and discharge the Released Parties from all claims, rights, demands, liabilities, costs, attorney’s fees, and causes of action for civil penalties under the PAGA, for the duration of employment in a non-exempt position in California during the PAGA Period, based on the factual and legal allegations pled in the operative Representative Action Complaint that support or relate to the following alleged violations of law asserted by Plaintiff in the Action pursuant to PAGA: (1) failure to pay all wages under Labor Code §§ 246, 510 and 1194; (2) failure to authorize and provide rest periods under Labor Code § 226.7; (3) failure to provide meal periods under Labor Code §§ 226.7 and 512; (4) failure to issue accurate wage statements under Labor Code §§ 226(a) and 226.3; (5) failure to reimburse expenses under Labor Code §§ 2802; and (6) failure to pay wages timely at separation of employment under Labor Code §§ 201-203 (the “Released PAGA Claims”).

The Released Parties are Defendant, and each of and all of its respective past, present and future agents, employees, officers, directors, partners, trustees, representatives, shareholders, stockholders, members, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or partnerships, divisions, assigns, predecessors, successors, insurers, consultants, joint venturers, joint employers, affiliates, alter-egos, co-employers, dual employers, service providers, contracting partners, subcontractors, employee benefit plans and fiduciaries thereof, and all other persons and/or entities acting under, by, through or in concert with any of them.

Under the Settlement, PAGA Members do not need to do anything in order to receive their PAGA Settlement Award. **PAGA Members may not object to, or opt out of, the Settlement. Even if a PAGA Member does not cash their checks, they will still be bound by the Released PAGA Claims.**

IV. Tax Information

For tax purposes, the PAGA Settlement Awards will be allocated 100% to settlement of claims for penalties, which will be paid without withholdings or deductions and shall be reported on an IRS Form 1099. IRS Forms 1099 (and the equivalent California forms) will be distributed to PAGA Members reflecting the payments they receive under the Settlement. PAGA Members should consult with their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

V. Privacy

Because you have a constitutional right of privacy to object to the disclosure of your personal contact information, your personal contact information has not been provided to Plaintiff’s counsel. The Court has authorized a third-

party administrator to send you this notice, and they have agreed to keep your contact information confidential. Should you have any questions about this notice, you may contact the attorneys prosecuting this case on behalf of the State of California and the PAGA Members:

Daniel F. Gaines, Esq. SBN 251488

~~Alex P. Katofsky, Esq. SBN 202754~~

GAINES & GAINES, APLC

4550 East Thousand Oaks Boulevard, Suite 100

Westlake Village, CA 91362

Telephone: (866) 550-0855

VI. Additional Information

You may obtain information by contacting Gaines & Gaines at the number above, or by contacting the Settlement Administrator as follows:

Phoenix Settlement Administrators

P.O. Box 7208

Orange, CA 92863

Telephone: (800) 523-5773

THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE MERITS OF THE CLAIMS OR DEFENSES BY EITHER SIDE IN THIS PROCEEDING. PLEASE DO NOT CONTACT THE COURT REGARDING THIS CASE, THE COURT CLERK'S OFFICE, DEFENDANT OR DEFENDANT'S ATTORNEYS TO INQUIRE

EXHIBIT D

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Confidential Settlement Agreement And Release Of Claims (the “Agreement”) is made and entered into by and between Mireya Serrato Martinez, an individual (“Plaintiff”), on the one hand, and EM Tortillas, LLC (“Defendant”) on the other hand. Plaintiff and Defendant are referred to collectively as the “Parties” and individually as a “Party.” This Agreement is intended to resolve all disputes and extinguish those obligations described below.

RECITALS

WHEREAS, on or around March 14, 2022, Plaintiff submitted a Notice with the California Labor and Workforce Development Agency (“LWDA”) alleging various wage and hour violations against Defendant (the “PAGA Notice”);

WHEREAS, on or around June 3, 2022, Plaintiff, filed a representative action against Defendant in Orange County Superior Court alleging claims for violations of Labor Code sections 201, 202, 226(a), 226.3, 226.7, 246, 510, 512, 558, 1194, and 2802 (the “Lawsuit”);

WHEREAS, Defendant denies and disputes any and all of Plaintiff’s alleged claims and allegations in the Lawsuit and the PAGA Notice (collectively, the “Action”);

WHEREAS, the Parties agree that a bona fide dispute exists between Plaintiff and Defendant regarding whether she is owed any additional wages arising out of her employment;

WHEREAS, the Parties agree that a bona fide dispute exists between Plaintiff and Defendant regarding whether she is owed any expense reimbursement arising out of her employment;

WHEREAS, the Parties are concurrently entering into an agreement which memorializes their resolution of the representative PAGA claims alleged in the Lawsuit (the “PAGA Settlement”); and

WHEREAS, the Parties wish to avoid the expense of further proceedings and desire to resolve any and all individual claims alleged by Plaintiff or those individual claims that could be alleged as a result of Plaintiff’s employment, any relationship between Plaintiff and Releasees (defined in Paragraph 3, below), and/or generally arising out of or in connection with Plaintiff’s employment with Defendant and relationship with Releasees (defined in Paragraph 3, below) and the cessation thereof.

AGREEMENT

NOW THEREFORE, in consideration of and exchange for the promises, covenants, and

releases contained in the Agreement and the other valuable consideration described herein, the sufficiency of which is hereby acknowledged by the Parties, the Parties mutually agree as follows:

Settlement Payment. For and in consideration of the commitments made herein by Plaintiff, Defendant agrees to provide to Plaintiff and her counsel the total sum of Ten Thousand Dollars and Zero Cents (\$10,000.00) (“the Settlement Payment”) in full compromise and settlement of all claims released herein by Plaintiff, but specifically excluding all claims resolved in the PAGA Settlement. The Settlement Payment shall be paid by one check made payable to “Mireya Serrato Martinez” in the amount of Ten Thousand Dollars (\$10,000.00) and reported on IRS form 1099.

The Settlement Payment shall be tendered to Plaintiff’s counsel within ten (10) calendar days of the Effective Date of the PAGA Settlement (the Effective Date is the date of entry of the Final Judgment approving the PAGA Settlement), subject to Defendant’ prior receipt of a copy of the Agreement fully executed by the Parties and approved as to form by Plaintiff’s counsel. Upon tender of the Settlement Payment and full compliance with the payment obligations of the PAGA Settlement, Defendant will have fully met its obligations under this Agreement and will not be liable in any manner for the distribution, division or payment of any portion of the Settlement Payment to or between any counsel Plaintiff may have retained and/or consulted. By execution of this Agreement, Plaintiff authorizes payment to be made as set forth in this paragraph.

2. Representations. Plaintiff represents and warrants that no other claims, charges or complaints, excluding the Lawsuit and any workers’ compensation claims she may have, have been filed by Plaintiff and none will be filed against the Defendant by Plaintiff.

With the sole exception being the PAGA Notice sent by Plaintiff to the LWDA, Plaintiff further represents and warrants that she (herself or through counsel or an agent) has not filed a complaint with any other administrative agency, specifically including but not limited to complaints filed with the Department of Fair Employment and Housing (“DFEH”), Department of Industrial Relations Division of Labor Standards Enforcement (“DLSE”), and/or the Equal Employment Opportunity Commission (“EEOC”). Plaintiff agrees to take all steps reasonably necessary to fulfill this portion of Agreement.

By execution of this Agreement, Plaintiff agrees to dismiss, with prejudice, any claims, charges, or complaints Plaintiff may have filed with any governmental or administrative agency specifically including but not limited to the DFEH, and/or the EEOC, or in any judicial forum

against Releasees (defined in Paragraph 3, below). Plaintiff agrees to take all steps reasonably necessary to fulfill this portion of the Agreement. This obligation does not extend to the PAGA Notice sent by Plaintiff to the LWDA, instead Plaintiff acknowledges and agrees that she will take no action to pursue, file or assist in any other Private Attorneys General Act (“PAGA”) claim as to Defendant and Releasees. This obligation also does not extend to any workers’ compensation claims Plaintiff may have. Plaintiff agrees that any proven breach of her representations, warranties, and/or obligations pursuant to this Paragraph could create actionable causes of action for Releasees (defined in Paragraph 3, below) against Plaintiff for claims, including but not limited to: breach of the Agreement; breach of contract; breach of the duty of good faith and fair dealing; fraud; fraudulent inducement; and intentional and negligent misrepresentation.

3. Release: Subject to the occurrence of the Effective Date of the PAGA Settlement and Defendant’s full compliance with the payment obligations of the PAGA Settlement and this Agreement, Plaintiff, for herself and for her heirs, executors, administrators, successors and assigns, hereby releases, acquits and forever discharges Defendant, and each of and all of its respective past, present and future agents, employees, officers, directors, partners, trustees, representatives, shareholders, stockholders, members, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or partnerships, divisions, assigns, predecessors, successors, insurers, consultants, joint venturers, joint employers, affiliates, alter-egos, co-employers, dual employers, service providers, contracting partners, subcontractors, employee benefit plans and fiduciaries thereof, and all other persons and/or entities acting under, by, through or in concert with any of them (collectively, the “Releasees”), from any and all claims, demands, obligations, actions, causes of action, liabilities, debts, promises, agreements, demands, attorneys’ fees, losses and expenses, known or unknown, suspected or unsuspected, filed or unfiled, she may have or have had arising out of any known or unknown fact, condition or incident occurring prior to the date of this Agreement, arising out of or in connection with any claims, demands, charges, or complaints, arising from Plaintiff’s employment with Defendant, or the cessation thereof. This release includes, without limiting the generality of the foregoing: any and all claims, demands, causes of actions, obligations, charges, liabilities, attorneys’ fees, costs, actual, compensatory and punitive damages, and all claims for any other type of relief relating to, arising out of, or based upon: all claims of harassment, discrimination, and/or retaliation in violation of State or Federal law; all claims for failure to accommodate and/or failure to engage in the interactive process;

violations, interference with and/or retaliation for requesting and taking a leave of absence under state or Federal law; all claims of violation of public policy, including a claim for wrongful and/or constructive termination of employment; all claims for fraud or misrepresentation; all claims based on tort and/or breach of contract, whether written or oral, express or implied, and any covenant of good faith and fair dealing; all claims for unpaid wages, commissions, or other benefits, including minimum wage, regular, overtime, double time, vacation, associated penalties and/or premiums, and expense reimbursement; all claims for rest or meal periods and associated penalties and/or premiums; all claims for stock options; all claims for inaccurate wage statements; all claims for the alleged failure to pay all wages at separation; all claims for failure to timely provide documents for review and/or inspection; any claim for unlawful or unfair business practices; and claim regarding rights created in response to COVID-19, and any other applicable laws, regulations, and rules; all claims for emotional distress; and any and all claims generally relating to Plaintiff's employment with Defendant and the cessation thereof, including any alleged violation of any federal, state or other governmental statute, regulation, ordinance, or executive order, including without limitation:

- (1) The Civil Rights Acts of 1866, 1964, and 1991, as amended;
- (2) 42 U.S.C. § 1981;
- (3) The California Fair Employment and Housing Act;
- (4) Section 503 of the Rehabilitation Act of 1973;
- (5) The Fair Labor Standards Act (including the Equal Pay Act);
- (6) The California and United States Constitutions;
- (7) The California Labor Code, specifically including, but not limited to the Private Attorneys General Act pursuant to *Labor Code* § 2699, *et seq.*;
- (8) The California Business and Professions Code;
- (9) The Employee Retirement Income Security Act, as amended;
- (10) The California Family Rights Act;
- (11) The Americans with Disabilities Act;
- (12) The Family Medical Leave Act;
- (13) The California Pregnancy Discrimination Act;
- (14) The California Wage Orders;
- (15) The National Labor Relations Act;

- (16) The Immigration Reform and Control Act;
- (17) California Occupational Safety and Health Act, or the Federal equivalent;
- (18) The Worker Adjustment and Retraining Notification Act;
- (19) The Families First Coronavirus Response Act; and
- (20) COVID-19 Supplemental Paid Sick Leave.

Plaintiff by executing this release is representing and acknowledging that she is currently unaware of any basis to make a claim for workers' compensation benefits at this time, and Plaintiff represents, warrants and affirms that no factual basis exists for a claim for increased compensation under *California Labor Code* section 132a based upon all facts and circumstances surrounding her employment with Defendant and/or employment with Releasees and its termination. This release in all respects has been voluntarily and knowingly executed with the express intention of effecting the legal consequences provided in the *California Civil Code* section 1541, that is, the extinguishment of obligations herein designated. This release does not cover any claims that cannot be waived as a matter of law.

4. Waiver of Section 1542. With the exception of the claims to be released by the PAGA Settlement, Plaintiff hereby agrees that the provisions of California Civil Code § 1542 are waived, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

5. Acknowledgement. Plaintiff acknowledges and agrees that she would not otherwise be entitled to the consideration set forth in Paragraph 1 were it not for her covenants, promises, and releases set forth herein. Plaintiff acknowledges that she has received all wages and compensation due and that Releasees shall owe Plaintiff nothing further once Plaintiff receives the consideration described in Paragraph 1.

6. Attorneys' Fees and Costs. The Parties agree that they will bear their own

attorneys' fees and costs incurred in connection with this matter. This in no way effects or alters the attorney fee and costs provisions set forth in the PAGA Settlement.

7. Confidentiality. Neither Plaintiff nor agents or assigns will hereafter, without compulsion of legal process, disclose to others, either directly, indirectly or by implication, the amounts referred to in this Agreement (either by specific dollar amounts, by number of "figures," or otherwise), or the fact of the payment of said amount, except that Plaintiff may disclose such information to her spouse, or to her attorneys, accountants or other professional advisors to effect the purposes for which they have been consulted, or where disclosure is required by law. Plaintiff may also disclose the Settlement Payment and amount thereof to the Court and the LWDA in connection with the approval of the PAGA Settlement. Any person or entity to whom Plaintiff is permitted to and in fact discloses the amounts referred to in this Agreement, other than where a disclosure is required by law, must be notified of and agree to the terms of this confidentiality provision. In the event that any person or entity to whom Plaintiff discloses the amounts referred to in this Agreement breaches their confidentiality obligation, the effect of such disclosure shall be as if Plaintiff has breached her obligations hereunder. Nothing in this Agreement prevents Plaintiff from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that Plaintiff has reason to believe is unlawful. Nothing in this Agreement is intended to conflict with the whistleblower provisions of any United States federal, state or local law or regulation, including but not limited to Rule 21F-17 of the Securities Exchange Act of 1934 or § 1833(b) of the Defend Trade Secrets Act of 2016. Accordingly, notwithstanding anything to the contrary herein, nothing in this Agreement prohibits, restricts or prevents Plaintiff from reporting possible violations of United States federal, state or local law or regulation to any United States federal, state or local governmental agency or entity, including but not limited to the Department of Justice, the Securities and Exchange Commission, the Congress, and any agency Inspector General, from making other disclosures that are protected under the whistleblower provisions of federal law or regulation, or from disclosing trade secrets and other confidential information in the course of such reporting; provided, however, that Plaintiff uses her or her reasonable best efforts to (A) disclose only information that is reasonably related to such possible violations or that is requested by such agency or entity and (B) requests that such agency or entity treat such information as confidential. Finally, Plaintiff represents and agrees that she will direct her counsel not to disclose any of the terms of the Agreement including the amount

and/or fact of the Settlement Payment.

8. No Representation of Taxability. For the amounts paid to Plaintiff in Paragraph 1 of this Agreement, Plaintiff understands and agrees that she is responsible for payment of any taxes which are required to be paid to the State of California, the United States Government, or any other entity as a result of this settlement and the Settlement Payment above. Plaintiff acknowledges and agrees that Releasees have not warranted or represented how the U.S. Internal Revenue Service or other governmental taxing authorities will treat the payment described above for tax purposes, and agree that no further payment of money to Plaintiff from Releasees will be due in the event that the payment or the release of claims embodied in this Agreement, or any portion thereof, is found by a government taxing authority to be, or to result in, additional taxable income to Plaintiff. Plaintiff agrees that in the event that some federal, state or local agency takes the position that taxes should have been withheld from amounts paid pursuant to this Agreement, that Plaintiff will be responsible for payment of any such alleged tax obligations and will indemnify and hold Releasees harmless from any resulting tax liability, interest, attorneys' fees, or penalty associated therewith. Plaintiff hereby agrees to indemnify Releasees from any and all manner of liability if any should be imposed on them regarding the payment to Plaintiff under this Agreement specified above, including but not limited to any interest, attorneys' fees, penalties, and costs related to such payment. Upon Plaintiff's receipt of written notification from Releasees that such liability has been imposed by any of those governmental entities and the amount thereof, Plaintiff agrees that she shall fully remit such monies to the demanding entity within thirty (30) days from her receipt of such notification. Plaintiff further agrees to give Releasees notice within ten (10) days of the time any demand for payment of taxes is received by Plaintiff from any governmental agency in connection with this payment, and further, Plaintiff will provide a confirmation that she will honor her obligations under this Paragraph. Additionally, if any of the Releasees receive notice from any governmental entity that any additional monies are due, it will notify Plaintiff at her last known address of its initial receipt of said notice.

9. No Admission of Liability. It is understood and agreed by Plaintiff and Defendant that this Agreement represents a compromise and settlement for various disputed matters and that the promises and payments and consideration of this Agreement shall not be construed to be an admission of any liability or obligation by Releasees to Plaintiff, or Plaintiff to Defendant.

10. Attorney Liens. Plaintiff represents and warrants that all legal expenses, bills, costs or contingency fee agreements resulting from or arising out of the representation of Plaintiff by any attorney in relation to Plaintiff's responsibility to pay, and that any liens based on any legal expenses, bills, costs or contingency fee agreements incurred will be satisfied by Plaintiff. Plaintiff will indemnify, defend and hold Releasees harmless from any such claims.

14. No Additional Recovery. It is the intent of this Agreement that Plaintiff, lienholders, and any other individual or entity with an interest in Plaintiff's individual claims shall not recover, directly or indirectly, any sums from Releasees other than the Settlement Payment set forth in Paragraph 1 above. If, despite the provisions of this Paragraph, any Releasee receives any claim for contribution or indemnity arising out of the claims released in this Agreement, Plaintiff shall indemnify, provide a full defense for and hold harmless the Releasees for such amount. In the event a trier of fact determines (and all appeals are exhausted or the time for such appeals have expired) that any Releasee is or would be liable for indemnity under any theory of law or equity, this Agreement shall act as a general release, releasing not only the Releasee but every other individual, trustee, firm, trust, corporation, or entity of any kind, who is or would be entitled to a defense and indemnity from the Releasees with respect to any liability that person, firm, or corporation may have to Plaintiff.

15. Entire Agreement. With the sole exception of the PAGA Settlement, this Agreement constitutes the entire agreement between Plaintiff and Defendant regarding actual or potential claims asserted by Plaintiff against Releasees and the settlement of those claims. With the sole exception of the PAGA Settlement, no other agreement, statement, or promise made by one Party to another as to any matter addressed in this Agreement shall be binding or valid. This Agreement cannot be orally modified. Any amendment or modification to this Agreement must be in writing, signed by Plaintiff and by duly authorized representatives of Defendant. Plaintiff further represents that she is unaware of any agreement or promise, written or oral, between Releasees and/or anyone else that could serve as the basis for any claim or action against Releasees that has not been released in this Agreement or the PAGA Settlement. Plaintiff further understands that nothing in this Agreement is intended to excuse her from any confidentiality or non-disclosure agreements she signed while employed by Defendant.

16. Notices. Any notice required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to be given when served personally, or on the third business

day after mailing if mailed by United States mail, postage prepaid, addressed to the other Party and/or its counsel.

17. No Reliance upon Representations by the Other Side. Each Party hereto represents and acknowledges that in executing this Agreement it does not rely and has not relied upon any representation or statement made by any other Party or by the agents, attorneys or representatives of any other Party with regard to the subject matter of this Agreement, or its basis, or the effects of this Agreement other than those representations specifically set forth in this written document.

18. Binding Nature; No Assignment. This Agreement, and all the terms and provisions contained herein, shall bind the heirs, personal representatives, successors and assigns of each Party, and inure to the benefit of each Party, its agents, directors, officers, employees, servants, successors, and assigns. The Parties promise and guarantee that they have not made, and will not make, any assignment of any claim, chose in action, right of action, or any right of any kind whatsoever, embodied in any of the claims that are released herein, and that no other person or entity of any kind had or has any interest in any of the claims released herein.

19. Construction. This Agreement is the product of arms-length negotiations and is considered to be jointly drafted. As such, it shall not be construed against any Party because that Party caused it to be reduced to a written instrument.

20. Fairness of Settlement. The Parties agree that this settlement is fair, reasonable and adequate. The Parties covenant never to challenge this Agreement.

21. Severability. With the exception of Paragraphs 1 and 3 of this Agreement, should any part, term or provision of this Agreement be declared or determined by any Court of competent jurisdiction to be wholly or partially illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining parts, terms or provisions of this Agreement shall not be affected thereby. Said illegal, invalid or unenforceable part, term or provision shall be deemed not to be a part of this Agreement.

22. Compliance with Terms; No Waiver. The failure to insist upon compliance with any term, covenant or condition contained in this Agreement shall not be deemed a waiver of that term, covenant or condition, nor shall any waiver or relinquishment of any right or power contained in this Agreement at any one time or more times be deemed a waiver or relinquishment of any right or power at any other time or times.

23. Governing Law and Jurisdiction. This Agreement shall be interpreted under the

laws of the State of California, both as to interpretation and performance.

24. Section Headings. The section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

25. Counterparts and Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an executed Agreement and each of which shall be deemed to be one and the same instrument. An electronic signature shall be treated as an original signature for all purposes.

26. Representative Capacity. Each Party executing this Agreement in a representative capacity represents and warrants that he/she is empowered to do so.

27. Survival of Warranties and Representations. The warranties and representations of this Agreement are deemed to survive the date of execution thereof.

28. Voluntary and Knowing. This Agreement is executed voluntarily and without any duress or undue influence on the part or behalf of the Parties hereto.

29. Enforcement Costs. The Parties agree that in the event litigation is initiated by any Party to enforce this Agreement, the prevailing party will be entitled to recover its costs and reasonable attorneys' fees incurred in conjunction with the litigation, in addition to any other relief granted.

30. Agreement Enforceable Pursuant to Section 664.6. It is understood and agreed by the Parties that this Agreement shall be enforceable pursuant to California Code of Civil Procedure Section 664.6 and as otherwise allowed by law.

[SIGNATURES ON FOLLOWING PAGE]

I, having read the foregoing Confidential Settlement Agreement and Release of Claims and knowing the contents thereof, am effecting this Settlement and executing this Release after having the opportunity to obtain legal advice from counsel, and I sign the same as my own free act.

Dated: 12 / 13 / 2024

Mireya Serrato
MIREYA SERRATO MARTINEZ

EM TORTILLAS, LLC

Dated: _____

By: _____

Print Name

Title

I, having read the foregoing Confidential Settlement Agreement and Release of Claims and knowing the contents thereof, am effecting this Settlement and executing this Release after having the opportunity to obtain legal advice from counsel, and I sign the same as my own free act.

Dated: 12 / 13 / 2024

Mireya Serrato
MIREYA SERRATO MARTINEZ

EM TORTILLAS, LLC

Dated: 1/8/25

By: Brian Munche

Brian Munche
Print Name

Managing Partner
Title

EXHIBIT E

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

MIREYA SERRATO MARTINEZ, on behalf
of herself and all “aggrieved employees”
pursuant to Labor Code § 2698 *et seq.*,

Plaintiffs,

v.

EM TORTILLAS, LLC, a California limited
liability company, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: 30-2022-01263512-CU-OE-CXC

*Assigned to Hon. Melissa R. McCormick, Dept.
CX104*

**[~~SECOND-THIRD~~ AMENDED PROPOSED]
ORDER GRANTING APPROVAL OF
PAGA SETTLEMENT AND ENTERING
JUDGMENT**

Date: ~~August 29, 2024~~ January 23, 2025
Time: 2:00 p.m.
Dept.: CX104

Complaint Filed: June 3, 2022

1 **SECOND-THIRD AMENDED ORDER AND JUDGMENT**

2 This matter came on for hearing on ~~August 29, 2024~~January 23, 2025 at 2:00 p.m. in Dept.
3 CX104 of the above-captioned Court on the unopposed motion of Plaintiff Mireya Serrato Martinez
4 (“Plaintiff”) for approval of a settlement agreement pursuant to the California Labor Code Private
5 Attorneys General Act, codified as Labor Code § 2698, *et seq.* (“PAGA”) (the “Settlement”).

6 Having received and considered the First Amended Settlement Agreement and Release of
7 Private Attorneys General Act Claim (the “Amended Settlement”) ~~Settlement Agreement and~~
8 ~~Release of Private Attorneys General Act Claim (“Settlement Agreement”) and the First~~
9 ~~Amendment to the Settlement Agreement and Release of Private Attorneys General Act Claim (the~~
10 ~~“Amendment to Settlement”)~~ between Plaintiff and Defendant EM Tortillas, LLC (the “Parties”),
11 the supporting papers filed by Plaintiff, and the evidence and arguments received by the Court, the
12 Court grants approval of the Settlement and **HEREBY ORDERS AND MAKES THE**
13 **FOLLOWING DETERMINATIONS:**

14 1. Except as otherwise defined in this Order and Judgment (“Order”), all capitalized
15 terms have the same meaning as defined in the Amended Settlement Agreement that is attached as
16 **Exhibit 1** ~~and the Amendment to Settlement that is attached as **Exhibit 2**~~ to this Order.

17 2. The California Labor and Workforce Development Agency (“LWDA”) has been
18 provided notice of the Settlement in accordance with PAGA, California Labor Code
19 § 2699(l)(2), (l)(4). In particular, on the date Plaintiff filed her motion seeking approval of the
20 Settlement with the Court, she submitted to the LWDA the Settlement and a copy of her approval
21 motion papers. Additionally, on the date Plaintiff filed her supplemental briefings regarding
22 approval of the Settlement with the Court, she submitted those documents to the LWDA. Plaintiff’s
23 submission of the Settlement, her approval motion, and supplemental documents in support of the
24 approval motion to the LWDA complied with the notice requirements of PAGA.

25 3. The Court has jurisdiction over the subject matter of this litigation, over all
26 Aggrieved Employees, and over those persons undertaking affirmative obligations under the
27
28

1 Settlement.

2 4. The Settlement is approved under Labor Code § 2699(1)(2).

3 ~~5.~~ The Notice of PAGA Settlement and Release of Claims (the “Notice”), attached as
4 **Exhibit A** to the Settlement, fairly and adequately describes the Action, the approved Settlement,
5 and is the best notice practicable under the circumstances. ~~The certified Spanish translation of the~~
6 ~~Notice of PAGA Settlement and Release of Claims is attached as **Exhibit 3** to this Order.~~

7 ~~5.~~ 6. The Court authorizes the Settlement Administrator to mail the Notice and the
8 Eligible Pay Periods Dispute Form (attached as **Exhibit B** to the Amended Settlement). The certified
9 Spanish translations of the Notice and the Eligible Pay Periods Dispute Form are attached as **Exhibit**
10 **2** to this Order.

11 ~~6.7.~~ The Court finds that each PAGA Member, in accordance with the Settlement,
12 releases all Released PAGA Claims against the Released Parties, as detailed in paragraph ~~293.0~~(a)
13 of the Settlement.

14 ~~7.8.~~ The Gross Settlement Amount, Net Settlement Amount, and the methodology used
15 to calculate the disbursements to the PAGA Members, in accordance with the Settlement, is
16 approved.

17 ~~89.~~ The Gross Settlement (“GSA”) is \$2~~1~~25,000.00, subject to the Escalator Payment
18 memorialized in Paragraph 7 of the Amended Settlement Agreement. The GSA shall be paid in ~~two~~
19 ~~twenty-four~~ installments: ~~the first installment payment of \$100,000 shall be paid no later than ten~~
20 ~~(10) calendar days following the Effective Date; and the second installment payment of \$125,000~~
21 ~~shall be paid no later than ninety (90) calendar days following the Effective Date, as outlined in~~
22 Paragraph 9 of the Amended Settlement.

23 ~~9.~~ ~~The Court approves Plaintiff’s General Release Payment in the amount of~~
24 ~~\$10,000.00. The Court authorizes the Settlement Administrator to make this payment, in accordance~~
25 ~~with the terms of the Settlement Agreement.~~

26 10. The Court approves Phoenix Settlement Administrators to act as the Settlement
27 Administrator. The Court awards the Settlement Administrator in this Action its actual fees and
28

costs in accordance with the terms of the Amended Settlement Agreement, not to exceed \$4,000.00.

11. The Court approves and appoints Gaines & Gaines, APLC as PAGA Counsel.

12. The Court awards PAGA Counsel attorneys' fees in the amount ~~of one-third of the Gross Settlement Amount (or \$7565,000.00)~~ and attorneys' cost of \$15,551.37, which the Court finds to be fair and reasonable. The Court authorizes the Settlement Administrator to make these payments, in accordance with the terms of the Amended Settlement Agreement.

~~13. — The Court authorizes the Settlement Administrator to mail the Notice and the Eligible Pay Periods Dispute Form (attached as Exhibit B to Amendment to Settlement)~~

13. The Court authorizes the Settlement Administrator to calculate the Net Settlement Amount, inclusive of the LWDA Payment and the disbursements to the PAGA Members, in accordance with the terms of the Amended Settlement Agreement.

14. The Court finds that, pursuant to PAGA, the LWDA Payment of ~~\$90,336.47~~ 97,836.47 as its 75% share of the settlement of civil penalties is fair and reasonable. The Court authorizes the Settlement Administrator to pay the LWDA Payment, in accordance with the terms of the Amended Settlement Agreement.

15. The Court finds that, pursuant to PAGA, the disbursements to the PAGA Members in the amount of ~~\$30,112.16~~ 32,612.16 as the PAGA Members' 25% share of the settlement of civil penalties is fair and reasonable. The Court authorizes the Settlement Administrator to issue payments to the PAGA Members, in accordance with the terms of the Amended Settlement Agreement.

16. Checks sent to PAGA Members shall be valid for 180 calendar days after issuance. Any funds in the Settlement Administrator's account as a result of a failure to timely cash a settlement check shall be transmitted to the California State Controller's Unclaimed Property Fund in the name of each respective PAGA Member whose check was uncashed and voided.

17. By no later than 240 days after mailing of the final Settlement payment checks to all PAGA Members, the Settlement Administrator shall provide Plaintiff's Counsel and Defendant's Counsel with a declaration setting forth the disbursements made to the PAGA Members, the LWDA,

1 Plaintiff's Counsel for attorneys' fees and litigation costs, and to itself, and shall include information
2 regarding the number of uncashed checks as of that date, the aggregate sum of uncashed checks,
3 and the timeline for transmittal of sum represented by all uncashed checks to California's Controller,
4 Unclaimed Property Division (if applicable).

5 18. Without affecting the finality of this order and entry of judgment, pursuant to Code
6 of Civil Procedure § 664.6, the Court retains exclusive and continuing jurisdiction over the Action
7 for purposes of supervising, administering, implementing, and enforcing this Order and the
8 Settlement.

9 19. Nothing in this Order or the Settlement shall be construed as an admission or
10 concession by any party. The Settlement and this resulting Order and entry of judgment simply
11 represent a compromise of disputed allegations.

12 20. The Court enters final judgment in accordance with the terms of the Amended
13 Settlement ~~Agreement~~ and this Order.

14 21. Plaintiff is directed to submit a copy of this Order and entry of judgment to the
15 LWDA within 10 days of the date of this Order and entry of judgment.

16 22. The Court shall hold a final accounting hearing on ~~August 28~~ March 4, 202~~7~~5 at 9:00
17 a.m. (or _____ at _____ a.m./p.m.). Plaintiff's Counsel shall submit a final
18 administrator's report that addresses the status of the settlement administration, including the actual
19 amounts paid to the aggrieved employees and the other amounts distributed under the settlement,
20 including any uncashed checks, at least nine (9) court days before the final accounting hearing.

21 **IT IS SO ORDERED:**

22 DATED: _____

23 _____
24 HONORABLE MELISSA R. McCORMICK
25 JUDGE OF THE SUPERIOR COURT
26
27
28

EXHIBIT F