

SETTLEMENT AGREEMENT AND RELEASE OF PRIVATE ATTORNEYS
GENERAL ACT CLAIM

This 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 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), 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 settlement installment payment of \$100,000.00, ten (10) calendar days after the Effective Date; and with respect to the second settlement installment payment of \$125,000, ninety (90) calendar days after the Effective Date. 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 Thousand Dollars and Zero Cents (\$225,000.00), 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. "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. "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. 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. 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. 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. 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. 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. 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. In consideration of the promises and agreements contained herein, the Parties agree and covenant as follows:

C. Terms of Settlement

28. 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. 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 Thousand Dollars and Zero Cents (\$225,000.00), 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 (\$75,000.00) 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.
- e. **PAGA Penalty Fund Allocation:** The PAGA Penalty Fund, estimated at \$120,000 shall be allocated \$90,000.00 (75%) for the LWDA Payment, and \$30,000.00 (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 38, herein.

- f. **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. **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. 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. 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. 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.

35. 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.

36. Upon receipt of each installment payment from Defendant, 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. 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. 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) $\frac{\text{PAGA Member's Number of Eligible PAGA Pay Periods}}{\text{All PAGA Members' Eligible PAGA Pay Periods}}$

39. 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. 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. 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. **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. **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. **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. **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. **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. **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. **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. **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. **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. **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, CA 92630

52. **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. **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. **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. **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. **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. **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. **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. **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. **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. **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.

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: 07 / 13 / 2023

By: Mireya Serrato
Plaintiff, Mireya Serrato Martinez

Dated: 7/13/23

By: Brian J. Martin Man. Member
Defendant, EM Tortillas, LLC

AS TO FORM:

Gaines & Gaines, APLC

Dated: 7/14/23

By: DJ
Daniel F. Gaines, Attorneys for Plaintiff

Gigliotti & Gigliotti, LLP

Dated: 7/13/23

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