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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*

**DECLARATION OF BRIAN MURRIETA
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

I, Brian Murrieta, hereby declare and state as follows:

1. I am the Managing Partner of EM Tortillas, LLC, the Defendant in this action ("EMT" or "Defendant"). I have personal knowledge of the facts set forth herein and if called as a witness to testify to them, I could and would do so competently.

2. At the time that we reached a settlement in the above captioned matter. We were anticipating receipt of funds through the Employee Retention Tax Credit ("ERTC") program offered by the Federal government. EMT had been advised by Shiftpixy, Inc., (A Professional

1 Employer Organization and the employer of Defendants staff) that they had applied for the ERTC
2 payment for EMT along with a undisclosed number of companies, because EMT staff and the
3 staff of these other companies were paid under the Shiftpixy's Employer Identification Number.

4 3. Late last summer we were advised that Shiftpixy, a publicly traded company, had
5 disclosed in a 10Q filing with the Security and Exchange Commission the following:

6 The Company has filed various ERTCs claims with the IRS on behalf of its clients
7 that have otherwise failed to obtain the related benefits afforded to them pursuant
8 to the filing of Form 7200—the time for the filing of which has expired. To date,
9 the Company has received ERTCs amounting to \$2.8 million. In addition, the
10 Company anticipates filing additional ERTCs claims as clients continue to request
11 that the Company complete the submission thereof to the IRS. Because of the
12 Company's currently existing payroll tax liability, the Company presently receives
13 ERTCs from the IRS in the form of a credit to the Company's outstanding payroll
14 tax liability. The Company is not presently able to remit the ERTCs to its clients
15 and plans to offer its clients restricted shares of the Company's common stock in
16 payment of the ERTCs applicable to such clients. If a client rejects the payment of
17 its respective ERTCs in the form of the restricted shares of the Company's common
18 stock as proposed by the Company, such client may seek to enforce its rights to
19 recover its ERTCs by filing lawsuits against the Company.

14 4. We have since learned that on October 28, 2024 Shiftpixy filed a Chapter 11
15 Bankruptcy, has been delisted from the NASDAQ and that on December 12, 2024, Shiftpixy filed
16 a motion to convert the Chapter 11 bankruptcy to a Chapter 7 bankruptcy.

17 5. Now that it is abundantly clear that EMT will not be receiving the ERTC funds that
18 it is entitled to and that it counted on to fund the settlement in this matter, EMT is no longer in a
19 position to meet the payment schedule that it agreed to at the mediation in May of 2023.

20 6. Because of our present financial condition, we are requesting a payment plan that
21 will allow us to fully fund the original settlement amount over a 24 month period.

22 I declare, under penalty of perjury, under the laws of the State of California, that the
23 foregoing is true and correct.

24 Executed on January 8, 2025, at Santa Ana, California.

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26  1/8/25
27 Brian Murrieta
28 *Managing Partner*